

## Child-Friendly Communication

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### ABSTRACT

Children’s first encounter with any authority is particularly significant in several respects. Professionals represent adult society, which has typically given minors negative experiences, whether they are perpetrators or victims. At the international level, there has been a growing demand for professionals working in various institutions and dealing with minors to choose a form of communication that meets the needs of the target group. The aim of this chapter is to provide a brief overview of the importance of child-friendly communication and certain aspects of the issue. It focuses on the elaboration of the content elements of two important children’s rights: the right to be heard and the right to express an opinion. When communicating with children, it is important to identify and recognize their specific needs and requirements. The following chapters of the book provide a more detailed overview of child-friendly justice as a whole. This chapter also presents some examples of good practice.

### KEYWORDS

child-friendly communication, children rights, right to be heard, right to free expression

The communication problems, as characteristics of juveniles in conflict with the law, which have a restrictive effect on human rights, procedural rights and fundamental rights, are relatively delayed and, in our view, not sufficiently highlighted in international documents. The Council of Europe’s Criminal Procedure on “Procedural Safeguards for Vulnerable Persons Suspected and Accused in Criminal Proceedings”<sup>1</sup> includes children with communication deficits.

### 1. The Communication Ability of Minors

The ability to communicate – or rather the lack of it – has previously been addressed primarily within the broad framework of the right to information. Thus, there are three documents that are – partly indirectly – related to this topic: a) Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and

1 European Commission, 2013.

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translation in criminal proceedings (20 October 2010)<sup>2</sup>; b) Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings (22 May 2012)<sup>3</sup>; c) Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and the right to be informed of the rights of a third party in criminal proceedings and the procedures relating to a European Arrest Warrant, and on the right to communicate with third parties and consular authorities during deprivation of liberty (22 October 2013)<sup>4</sup>.

The aim of Recommendation 2013/C 378/02 is to “encourage Member States to strengthen the procedural rights of all suspects and accused persons who, because of their age, mental or physical condition or disability, are unable to understand and participate effectively in criminal proceedings”. In relation to vulnerable persons, while ensuring non-discrimination, Member States should establish a “presumption of vulnerability” for persons with “serious psychological, mental, physical or sensory impairment or mental or cognitive disability”, ensuring that they have access to information and legal assistance even if they face the risk of deprivation of liberty<sup>5</sup>. However, the human rights approach of the Convention on the Rights of Persons with Disabilities<sup>6</sup> has called into question the tenability of this theoretical concept<sup>7</sup>.

The preamble to the Directive establishing minimum standards on the rights, support and protection of victims of crime states that “(Special attention should be paid to) difficulties in understanding or communicating that may be caused by a disability, such as hearing impairment or speech impairment. Similarly, the criminal procedure should take into account the victim’s limited ability to communicate information.”<sup>8</sup> This approach is continued in the Directive on the right of access to a lawyer.<sup>9</sup>

2 The rights concerned include: the right to a fair trial, the right of defence, the right to translation and interpretation, the right to information, the right to legal advice, the right to communicate with relatives, employers and consular authorities. European Parliament and the Council, 2010, p. 1.

3 The right concerned is essentially the right to information. European Parliament and the Council, 2012a, p. 1.

4 The right concerned already explicitly covers communication with the authorities. European Commission, 2013.

5 European Commission, 2013, pp. 8–10. However, it has been noted that the concept of “vulnerability” used to establish rights for persons with disabilities is not really acceptable under the human rights approach of the CRPD.

6 United Nations, 2006.

7 Centre for the Rights of Persons with Mental Disabilities, 2015, p. 8.

8 European Parliament and the Council, 2012b, Preamble.

9 European Parliament and the Council, 2013.

## 2. Child-Friendly Communication in Justice

The Council of Europe's Guidelines on Child Friendly Justice<sup>10</sup>, which focus specifically on the target population, is a major step forward in all respects, stating that "(Professionals) in direct contact with children shall be trained to communicate in a manner appropriate to the age and developmental level of the child, as well as to communicate with particularly vulnerable children".

Another important achievement is Directive 2016/800/EU<sup>11</sup>, which prescribes the main procedural safeguards to be provided to children who are suspects or accused persons in criminal proceedings or are subjects to European arrest warrant proceedings. It provides the legal framework and emphasises the specific protection and rights of persons under the age of 18 in criminal proceedings.

The aim of the Directive is to support children who are involved in formal proceedings. The Directive sets out procedural safeguards for children who are suspects or accused persons.

These safeguards complement those applicable to adult suspects or accused persons. This further expands the scope of minimum procedural standards in line with the 2009 roadmap<sup>12</sup>.

An important provision of the Directive is that children have the right to legal assistance and the right to legal representation.

In some cases, legal assistance is mandatory. This is the case when a child is brought before a court for the purpose of deciding on detention, as well as during the period of detention. A child who has not had legal assistance during court proceedings cannot be sentenced to imprisonment.

EU countries must also ensure that deprivation of liberty, in particular detention, is imposed only as a last resort and for the shortest possible period of time in the case of children. Children in detention must be separated from adults, unless it is in the child's best interests not to do so.

The Directive also contains other safeguards, including the right to: a) be informed immediately of their rights and the general aspects of the proceedings; b) have their parents or other responsible persons informed; c) have these persons present during court hearings and other stages of the proceedings; d) an individual assessment by a suitably qualified person; e) medical examination if the child is deprived of liberty; f) the protection of privacy during criminal proceedings; g) the child being present at the hearing in person; e) effective remedies.

Judges, prosecutors, and other professionals involved in criminal proceedings affecting children must have special competencies or undergo specialised training.

10 Committee of Ministers of the Council of Europe, 2012, p.15.

11 European Parliament and the Council, 2016.

12 Council of the European Union, 2009.

Communication is extremely important in enforcing these rights, whether it concerns the child's communication skills or the professionals' proficiency in child-friendly communication, including their ability to properly understand and interpret verbal and non-verbal messages sent by children.

The importance of this topic is demonstrated by the fact that, in addition to the theoretical directions, the practice reflects a striking picture of the effectiveness of their implementation: according to research by the Prison Reform Trust in England; 60% of juvenile suspects had communication difficulties, 25% had intellectual disabilities, yet there was no "routine or systematic process for identifying the specific support needs of defendants"<sup>13</sup>.

Poor communication skills among children and young people are a serious problem in general, but particularly in the criminal justice system. Several solutions have been developed to achieve the objectives set out in international documents. For example, the communication support system<sup>14</sup> can be of considerable help.

The method developed in New Zealand has its roots in the English (or Welsh) institution of mediation. At the centre of the communication support system is the communication assistant, whose role is twofold: to provide peer review and recommendations in general, and to facilitate better and more effective communication with specific offenders, including assistance with witness testimony.

However, it is not only a question of a concrete mediating role, i.e. "translating the language" of the witness and the person giving evidence, but also of the concrete procedure (i.e. the final understanding of the way justice works) and through this to facilitate the participation of the person concerned.

In this sense, therefore, the role of the communication assistant is not "stationary": both in and out of the courtroom, he/she is expected to play an active role in all relevant legal acts, whether it is in contact with the young person's own legal representatives, lawyers or in the involvement of alternative conflict management techniques aimed at diversion and reintegration into society. Moreover, in this case, such as in family group conferences (FGC<sup>15</sup>), the communication assistant can even help the young person to communicate with his/her parents or even with the adult society (and even with the victim).

13 See: Talbot, 2012.

14 Howard, McCann and Dudley, 2020, pp. 1-15.

15 In Hungarian terminology, the term family decision-making group conference is widely used, hence the accepted abbreviation. See: Csemáné Váradi and Gilányi, 2010.

### **3. Fulfilment of the Right to Free Expression of Views and of the Right To Be Heard by the Help of Child-Friendly Communication**

Partly in view of these facts, it is particularly important to guarantee rights related to communication in the context of children's rights. Of particular note in this regard are the right to free expression of views and the right to be heard.

The free expression includes five attributes: shall assure (it refers to the obligation of the State to undertake all legislative, administrative and other measures in order to implement Article 12 in a manner that solicits the views of the child in all matters affecting him/her and to give due weight to those views<sup>16</sup>); capable of forming his/her own views (it shall be understood in a broad sense with the presumption that a child has the capacity to form his/her views and recognise that he/she has the right to express them. In connection with this term, the CRC Committee consequently underlines that there is no age limit to the right of the child to express views and therefore typically the concluding observation published in state reports as well as other documents; such laws and practices have the capability to restrict the child's right to be heard); the right to express those views freely (it refers to the exercise of this right on a voluntary basis, without any kind of manipulation, undue influence or pressure. In other words it means that the child needs to be given a free choice to benefit from this right and cannot be forced to express any other view, but his/her own. In order to be able to express views freely one should feel safe in the given environment. Therefore, the conditions in which the right is exercised must take into account the individual and social situation of the child. The free expression of views also requires the sufficient amount and quality of information); in all issues affecting the child (according to the opinion of the Open-ended Working Group<sup>17</sup>; it underlines the intention of the drafters to understand Article 12 in as extensively as possible, obviously with a limitation according to the best interest of the child); being given due weight in accordance with the age and maturity of the child.

The last criteria is very important. As Marta Benyusz explains:

'it means that it is not enough to merely listen to the child, but his/her opinion needs to be taken seriously into account. It refers to the capacity of the child, which has to be assessed in order to give due weight to his/her views, or to communicate to the child in a way in which those views can influence the outcome of the process. Similarly to the term "capability of forming his/her views" the Committee underlines here as well, what is also a clear consequence stemming from the text and as such a mere literal analysis of the UNCRC itself that the age cannot in itself determine the weight that is given to the expressed

16 With the help of Benyusz, 2025.

17 Established by the Commission on Human Rights, which coordinated the drafting process of the UNCRC.

views, but the maturity needs to be assessed equally, on a case-by-case basis. Research has shown that information, experience, environment, social and cultural expectations, and levels of support contribute to the child's capacity to form a view.<sup>18</sup>

The right to be heard – pursuant to Article 12 paragraph 2 – has three different attributes: the right to be heard in any judicial and administrative proceedings affecting the child (very important, that the principle uses the word „any”; so it involves the different alternative dispute resolution mechanisms such as arbitration or mediation; so it can be applied in an extensive scope of proceedings (separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical, psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflicts and other emergencies); either directly, or through a representative or an appropriate body (according to the official opinion of the CRC Committee, whenever there is a possibility, the child must be given the opportunity to be directly heard in any of the proceedings; in situations where it is clear that the parents (guardians) have no conflict of interest with the child, they can be adequate representatives; if required, lawyers (child-attorneys), social workers or other supporting experts can take the role of representatives); in a manner consistent with the procedural rules of national law.

When enforcing this fundamental right, it is important to create a safe and sensitive environment for the child that is age-appropriate. It is very important, that the „proceedings must be accessible and child-appropriate, with a special attention to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens and separate waiting rooms.”<sup>19</sup>

Communication support is therefore available not only to defendants but also to witnesses. It is not limited to persons of a certain age, just as the gravity or type of the offence on which the criminal proceedings are based does not mean the application criteria or barriers<sup>20</sup>. A condition for the use of a communication assistant is that the person in the position of witness or prosecution must be able to a) testify in accordance with the purpose, spirit or legal criteria (principles, such as the principle of a fair trial) of the criminal proceedings; b) to understand the events around him/her, the course of the criminal proceedings, the essence of the criminal proceedings, the meaning of the acts of the authorities, in accordance with the purpose, spirit and legal criteria (principles, e.g. the principle of a fair trial) of the criminal proceedings;

18 Benyusz, 2025.

19 Benyusz, 2025.

20 A good example can be in the article of Howard, McCann and Dudley: How can imagery that is adapted to the communication characteristics and age-related features of young people strongly support message delivery. See: Howard, McCann and Dudley, 2020, p. 305.

c) if the answer to the legal filter is negative, whether the reason is due to the person's poor English language skills or to a communication problem he/she already has.

The experience so far has shown that professionals who have been in contact with the method since 2012 have clearly found it to be very positive – regardless of the (extra) burden it has placed on them personally. The reason is the change of focus for the justice system as a whole (the juvenile at the centre of the process) and the clear positive shift in terms of quality assurance (new knowledge and perspective from the professional side, better evidence from the procedural guarantees side). It was also a clear improvement in terms of equality of opportunity and the exercise of fundamental rights, as it increased access to justice for vulnerable persons.

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