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## **Promoting the participation by children in decisions affecting them**

Report  
Social, Health and Family Affairs Committee  
Rapporteur: Ms Minodora CLIVETI, Romania, Socialist Group

### *Summary*

Participation is a fundamental right of the citizen, and children are citizens. The Parliamentary Assembly calls on all decision-makers to consider seriously the opinions, wishes and feelings of children, including the very youngest ones. Children have a unique body of knowledge about their lives, needs and concerns.

Children must therefore be listened to and allowed to participate in decisions in all fields, especially in family life, healthcare, adoption issues and procedures, education, community life, in access to justice and in the administration of justice.

The governments of member states are therefore invited to develop inter alia, a national strategy which would set out the actions to be taken by each member state in order to increase participation by children in decisions affecting them and to implement this right of the child and ensure that all their public authorities and public services also implement it in all walks of life.

The commitment to child participation necessitates the elimination of laws which denigrate children as human beings and governments of all member states are invited to impose an explicit ban on corporal punishment and degrading treatment of children.

The governments of member states should also reconsider the restrictions placed on voting rights for young people and set up – at national or local level or within the institutions for children - the office of independent child ombudsperson with the responsibility of ensuring the promotion and protection of children's rights and empowered to deal with individual complaints and applications from children.

It is imperative to invest in developing and ensuring the proper functioning of organisations directed by children and adolescents, with a view to remove obstacles to the self-promotion of children, and to involve these organisations in the continued monitoring of the United Nations Convention on the Rights of the Child in all member states as well as of the implementation of the relevant Council of Europe treaties and other commitments undertaken by member states to the realisation of the rights of the child.

## **A. Draft recommendation**

1. The Parliamentary Assembly considers that the process of taking part in decisions that affect the lives of individuals and the communities in which they live is a means of constructing and gauging democracy in a given country; participation is a fundamental right of the citizen, and children are citizens.
2. Children's right to participation is recognised in the United Nations Convention on the Rights of the Child (article 12) and in some Council of Europe instruments such as the European convention on the exercise of Children's rights. The Assembly sees an urgent need to alert all those who live and work with children and who take decisions affecting them to the twofold requirement set out in Article 12 of the UN Convention, which all member states have ratified.
3. Under the said Article 12, whenever a decision is taken on a child, his or her opinions, wishes and feelings must be ascertained, whatever his or her age, gender, religion, social status or situation. Article 12 establishes a general principle which is relevant for all children, including children with disabilities, and in the implementation of all the rights enshrined in the above mentioned Convention.
4. Whenever a decision is taken on a child, his or her opinions, wishes and feelings have to be duly taken into account, having due regard to his or her age and degree of maturity. Age and maturity must be considered together, and these two factors do not solely concern the child's intellectual capacity. The way in which children express their feelings, the development of their personality, their evolving capacities and their ability to confront to various emotions and possibilities are just as important.
5. The Assembly would call on all decision-makers to consider seriously the opinions, wishes and feelings of children, including the very youngest ones. The influence wielded by the child over the decision-making process will depend on his or her age and maturity. Participation should always be relevant, voluntarily and enabling. Adults have a responsibility not to expose children at risks or to overburden children with responsibilities that they are not fully developed to take. Children have a unique body of knowledge about their lives, needs and concerns. The Assembly is convinced that it is extremely unlikely for children who have expressed their opinions, wishes and feelings to have no influence at all on the decision to be taken, and that their participation is therefore a major factor in any decisions directly affecting them.
6. The Assembly notes that the debate on participation is geared not merely to ensuring that adults listen to the children concerned, but that they take into consideration and act upon the views and opinions expressed by children; the emphasis nowadays is on the fact that children are supposed to be capable of effective action and above all of ensuring that whatever they say and do leads to changes which are positive for themselves.
7. Children must therefore be listened to and allowed to participate in decisions in all fields, especially in family life, healthcare, adoption issues and procedures, education, community life, in access to justice and in the administration of justice. Additional efforts are needed to ensure that children are allowed to express their opinions freely during judicial and administrative proceedings in a climate of respect, trust and mutual understanding. When promoting a meaningful participation by children, special attention should be paid to avoid that children are harmed, pressured, constrained or manipulated; children should have access to child friendly information, appropriate to their age and to the relevant situation.
8. The Assembly invites the Committee of Ministers to urge governments of member states to:
  - 8.1 consider their legislations, policies and practices vis-à-vis children in all their decision-making processes in order to assess the extent to which children's opinions are heeded and taken seriously. The child's opinions and experiences should be central to this investigation. Where the child's consent is required before a public authority can act, eg in the field of adoption or healthcare, the consequence of setting a minimum age-limit should be examined and corrected if necessary taking the best interest of the child into consideration;
  - 8.2 develop a national strategy setting out the actions to be taken by each member state to increase participation by children in decisions affecting them. The specific needs of children with disabilities, underprivileged children, very young children, children in prisons or other hazardous environments and under-age migrants or asylum-seekers should also be taken into account and all children's right to participation, free from discrimination, should be promoted and safeguarded;
  - 8.3 provide the utmost legal protection for children's right to participation in national constitutions, legislation on human rights and other relevant sectors, (including education, administration of justice

and immigration) taking into account the best interest of the child and the evolving capacities of the child. The right of the child to express opinions and to participation should be relevant, voluntary, adapted and enabling. In general, there should be no minimum age for children to be entitled to express their opinions. Children should also be provided with child friendly information, in regional languages, on child rights and child protection issues and on how they can access various services available to them;

8.4 implement this right of the child and ensure that all their public authorities and public services also implement it in all walks of life. There should be no exemptions for specific areas or professions. Children and young people should also be consulted on the quality of existing services and on how these services can become more accessible for all children.

9. The Assembly urges the Committee of Ministers to invite governments of member states to launch public education programmes for children and parents:

9.1 which should inform them of the right of children to express their opinions freely;

9.2 which should present the child as a human being with feelings, opinions, aspirations and rights;

9.3 which should include the development of child friendly materials and services.

10. The Assembly invites the Committee of Ministers to ask governments of member states to:

10.1 ensure that civil codes and legislation on the rights, duties and responsibilities of parents highlight respect for the child's human dignity, feelings and opinions and comprise the obligation to take due account of the child's opinions in the light of the development of his or her capacities;

10.2 make available training on children's rights and participation for the benefit of all persons involved in decision-making process, in particular judges, prosecutors, lawyers, educators and medical staff and to develop capacity building of professionals working with children on how to consult and work with children of various age groups.

11. The Assembly considers that the continued existence of violence sanctioned by legislation in a variety of contexts, including the family circle, harms children as individuals and as a social group, and that the commitment to child participation necessitates the elimination of laws which denigrate children as human beings. It supports the Europe wide initiative to eliminate corporal punishment of children launched within the Council of Europe programme "Building a Europe for and with children". The Assembly therefore strongly urges the Committee of Ministers to require governments of all member states to impose an explicit ban on corporal punishment and degrading treatment of children, even within the family and to also address other forms of abuse and exploitation which hinders the child to participate and to develop according to his/her potential.

12. The Assembly invites the Committee of Ministers to encourage the governments of member states to reconsider the age-related restrictions placed on voting rights in order to encourage young people's participation in the political life.

13. The Assembly invites the Committee of Ministers to urge governments of member states to:

13.1 set up – with respect for their individual legal systems – the office of independent national or even local child ombudsperson with the responsibility of ensuring the promotion and protection of children's rights and empowered to deal with individual complaints and applications from children;

13.2. ensure that abandoned and/or disabled children placed in institutions should also have access to an independent institution responsible for defending their rights (an ombudsperson or at least a special magistrate) who would regularly monitor the safeguard of children's rights by the institutions.

14. The Assembly backs the initiative and conclusions of the Conference of European Ministers of Justice held in Lanzarote in October 2007 to the effect that participation by children in any judicial proceedings affecting them is an important element of a modern and fair justice system and invites the Committee of Ministers, via its competent organs, to prepare European guidelines for child-friendly justice.

15. The Assembly welcomes progress achieved within the programme "building a Europe for and with children" and invites the Committee of Ministers to support and develop, in the member states and within the

Council of Europe, the current project aimed at promoting children's participation, including the development of child friendly information on the Organisation's instruments.

16. Lastly, the Assembly invites the Committee of Ministers to ask governments of member states to:

16.1 invest in developing and ensuring the proper functioning of organisations directed by children and adolescents, seeing to the removal of any obstacles to the self-promotion of children;

16.2 involve these organisations in the continued monitoring of the UN Convention on the Rights of the Child in all member states as well as of the implementation of the relevant Council of Europe treaties and other commitments undertaken by member states to the realisation of the rights of the child.

## B. Explanatory memorandum by Mrs Cliveti, rapporteur

The rapporteur would like to thank warmly Mrs Carolyne Willow, National Co-ordinator, children's Rights Alliance for England (CRAE) for her valuable help in drafting the report.

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1. In June 2006, 12 members of the Council of Europe Parliamentary Assembly supported a motion that the Assembly analyse the way in which children are involved or otherwise in decision-making in the various member states and consider measures to be recommended to ensure their genuine, effective participation.

2. This report summarises significant developments in children's participation across the Council of Europe's 47 member states since the adoption of the Convention on the Rights of the Child (CRC) in 1989. It begins by reflecting on the significance of article 12 of the CRC.

### I. Children are citizens of the world

3. At the opening of the United Nations General Assembly's Special Session on children in 2002, two young people, one from Bolivia the other from Monaco, delivered the children's statement. The speakers located the right to be heard within a broader context of being recognised and respected as human beings. *"We are not just young people: we are people and citizens of this world... You call us the future, but we are also the present."*<sup>1</sup>

4. The inclusion of article 12 in the CRC, adopted by the United Nations 18 years ago, was the chief signifier that children were no longer to be seen as passive recipients of adult wisdom, welfare or diktat. Their status as human beings with rights, valid feelings and individual views and aspirations was now confirmed. This was not an international invitation for charity, sympathy or good deeds for children – being

<sup>1</sup> <http://www.unicef.org/specialsession/documentation/childrens-statement.htm>

no different from any other human rights instrument, the CRC demanded for its beneficiaries respect, human dignity and a much better life. Nearly two decades on, there is plenty of evidence that children have broken through barriers to engage in most decision-making processes. But which children are being listened to and where; and what is changing as a result of all this listening?

## II. Defining participation

5. Fifteen years ago, Roger Hart described children's participation as: “... *the process of sharing decisions which affect one's life and the life of the community in which one lives. It is the means by which a democracy is built and it is a standard against which democracies should be measured. Participation is the fundamental right of citizenship*”.<sup>2</sup>

6. In 2003, the Congress of Local and Regional Authorities of the Council of Europe adopted a charter on the participation of young people in local and regional life which states: “*Participation and active citizenship is about having the right, the means, the space and the opportunity and where necessary the support to participate in and influence decisions and engage in actions and activities so as to contribute to building a better society.*”<sup>3</sup>

7. Whether it be sharing or influencing, or making or changing decisions, the point is that children have the right to *affect* both the processes and outcomes of decision-making. The way in which decisions are made has to change in order that children are and feel themselves to be respected, included, comfortable and able to express themselves: decision-making must become child-friendly - and one simple way of working out what is child-friendly is to observe how children make decisions for and between themselves, away from adult interference. Further, there must be tangible evidence that children's views have been given due weight – a traceable line between what children communicated, said or asked for and what was decided.

8. Article 12 requires three things: that States Parties to the CRC guarantee all children, of whatever age and circumstances, the right to express their views freely in all matters affecting them; that children's views be given due weight in accordance with their age and maturity; and that States Parties pay particular attention to ensuring children are “heard” in judicial and administrative proceedings.

9. The first part of article 12 guarantees that all children, including infants, have the right to express their views freely. The second element of article 12 – that children's views are given due weight in accordance with their age and maturity – is often neglected and widely misunderstood. It requires that children have influence and that adults take seriously what children say and feel. The reference to age and maturity implies that the greater a child's understanding, the more influence he or she will have on the outcome of a decision. It does not, however, mean that children with limited understanding should have no influence whatsoever. Furthermore, the combination of age and maturity means that there can be no fixed age at which a child can or cannot exercise influence – or weight – over a decision. If it can be envisaged that there will be occasions when an individual child, because of their age and maturity, will exercise very or no little influence over a decision, the reverse must be true: that there will be occasions when a child will exercise substantial influence.

10. In addition, article 23 assures to children with disabilities the right to enjoy a full and decent life, of which “active participation in the community” is seen to be central. Interestingly, whereas dignity is not referred to in article 12, it is included in article 23.

11. Several other rights in the CRC directly and indirectly support children's effective participation. Article 5 confirms the importance of parents respecting the child's evolving capacities. This is one of the tailor-made provisions for children – many of the other civil rights relating to participation in the CRC have their origins in the International Covenant on Civil and Political Rights (see especially articles 13-17 and 30 of the CRC). Children's entitlement to information about their rights, expressed in article 42, is key to their involvement in decision-making. The current (2007) chair of the UN Committee on the Rights of the Child, Professor Yanghee Lee, explains:

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<sup>2</sup> Hart, R. A. (1992) Children's participation. From tokenism to citizenship. UNICEF

<sup>3</sup> Revised European Charter on the Participation of Young People in Local and Regional Life. Adopted by the Congress of Local and Regional Authorities of Europe (10th session – 21 May 2003 – Appendix to the Recommendation 128). This definition of participation is used in the Recommendation of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 (Adopted by the Committee of Ministers on 5 April 2006 at the 961st meeting of the Ministers' Deputies)

*"Many children do not know they are holders of rights and they are indeed entitled to exercise them and that their rights are to be protected, upheld, and promoted. This would be the first step in enabling children to become active and responsible citizens."*<sup>4</sup>

12. A child involved in a Save the children consultation on the EU children's rights strategy makes a similar point: *"Because if people are not aware of children's rights nothing can be done to protect them. If everyone knew about children's rights it would be much easier to support children and solve their problems."*<sup>5</sup>

13. All of these rights are reinforced by several procedural rights (in addition to the all-encompassing article 12), namely in article 9(2) the requirement that "all interested parties" be given the opportunity to participate and "make their views known" in all judicial and administrative civil proceedings relating to the child's separation from his or her parents. Article 21 requires that in adoption proceedings, "the persons concerned have given their informed consent". Article 25 grants the right to "periodic review" to children who have been placed in health, social care or educational settings. Child defendants are given the right in article 37d to "prompt access to legal and other appropriate assistance" and the right to "challenge any detention before a court or other competent, independent and impartial authority". Further rights for children in trouble with the law are set out in article 40, including the right to be informed promptly and directly of criminal charges and the right to a fair trial.

14. Insofar as the CRC establishes the minimum standards for the optimum childhood, and expressing views and feelings is a fundamental part of being human, all of the rights in this treaty affect the realisation of article 12. As the Committee of Ministers explained in 1998, *"participation is essential for bringing the United Nations Convention on the Rights of the Child into life"*.<sup>6</sup>

15. For example, it is now widely accepted that children's development and social participation are related inextricably to their standard of living and access to health care (articles 27 and 24 respectively). The continuing high levels of child poverty across many member states inevitably impedes large numbers of children from enjoying their right to participate and children in these circumstances can be "doubly silenced": *"The voices of children who are poor are some of the least likely to be heard in policy and practice; they are doubly silenced both as children and as part of the constituency of the poor."*<sup>7</sup>

16. Violence also inhibits children's participation in decision-making. Like poverty, it can crush children's dignity, self-esteem and capacity to express themselves with any sort of confidence. *"At a broader level"*, the World Report on Violence against Children explains, *"violence can stunt the potential for personal development and achievement in life"*.<sup>8</sup> Separation from the family and institutionalisation, including in custody, can limit considerably the opportunities for children to participate in decision-making. At the same time, children in these circumstances are often required to contribute to highly complex and formal proceedings that make life-changing (and not always life-enhancing) decisions.

17. Annex A sets out other important human rights obligations pertaining to children's involvement in decisions concerning them.

### III. National constitutions

18. If a member state does not have a constitution, clearly children are no worse or better off than adults. But if there is a constitution, a lot can be gleaned about children's position in society and the importance given to the child's voice and influence.

19. Of those member states that have national constitutions, six make specific provision relating to the promotion of children's involvement in decision-making. Finland's constitution (1999) requires that *"Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development"*. (Section 6)

<sup>4</sup> [http://www.coe.int/t/transversalprojects/children/JusticeSpeeches/Yanghee\\_en.asp](http://www.coe.int/t/transversalprojects/children/JusticeSpeeches/Yanghee_en.asp)

<sup>5</sup> Feinstein, C. and Haldorsson, O. L. (2007) "You could always begin by listening to us". A consultation with children on the EC Communication "Towards an EU Strategy on the Rights of the Child"

<sup>6</sup> Recommendation No. R (98) 8 of the Committee of Ministers to member states on children's participation in family and social life

<sup>7</sup> Ridge, T. 'Childhood poverty: a barrier to social participation and inclusion' in Tisdall, K. et al (2006) Children, young people and social inclusion. Participation for what? Policy press

<sup>8</sup> Pinheiro, P. S. (2006) World report on violence against children. United Nations Secretary-General's study on violence against children

20. The Polish constitution (1997) requires parents to respect the child's evolving capacities and places a far-reaching duty on public authorities in relation to children's views: *"Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child"*. (Article 72(3))

21. Article 49(5) of the Romanian constitution (2003) requires that: *"The public authorities are bound to contribute to secure the conditions towards the free participation of young people in the political, social, economic, cultural, and sporting life of the country"*.

22. The Swiss constitution (1999) grants children and adolescents *"the right to special protection of the personal integrity and to promotion of their development"* and affirms that children and young people can *"exercise their rights according to their capacity to discern"* (article 11). Article 41(g) requires that: *"Children and adolescents are encouraged to become independent and socially responsible persons and are supported in their social, cultural, and political integration"*.

23. In a specific article on youth, Portugal's constitution (1976) emphasises: *"The priority objectives of the youth policy shall be the development of young people's personality, the creation of the conditions needed for their effective integration into the active life, a love of free creativity and a sense of community service. Acting in co-operation with families, schools, businesses, residents' organisations, cultural associations and foundations and cultural and recreational groups, the state shall foster and support youth organisations in the pursuit of the said objectives, as well as international youth exchanges"*. (Article 70(2) and (3))

24. Children's involvement in school decision-making is promoted (albeit to a limited degree) in Spain's constitution (1992). Article 27(7) provides that: *"Teachers, parents, and in some cases, the students, shall participate in the control and management of all [education] centers maintained by the Administration with public funds, under the terms established by law"*.

#### **IV. Incorporation of the Convention on the Rights of the Child (CRC)**

25. Norway incorporated the CRC through an amendment to its Human Rights Act in August 2003. UNICEF Innocenti research centre's study of the actions taken by European states to implement the general measures of the CRC reports that:

- Spain incorporated the CRC in 1996
- The Czech Republic incorporated aspects of the CRC in its 2002 Social and Legal Protection of the Children Act
- The 2004 Law on Protection and Promotion of the Rights of the Child brought many aspects of the CRC into force in Romania.<sup>9</sup>

#### **V. Participation in the family**

26. The UN Committee on the Rights of the Child consistently urges States Parties to the CRC to reflect in legislation all of the provisions of article 12, including in relation to family life. Of the 14 Council of Europe member states it has examined from 2004, the UN Committee has issued recommendations to all but two urging more action in relation to children's involvement in the family. The UN Committee expects children not only to be listened to, but also for their views to be taken seriously. In this respect it has criticized *"traditional societal attitudes"*: *"... the Committee remains concerned that the weight given in practice to the views of the child is limited owing to traditional societal attitudes towards children, especially within the family"*. (Slovakia, June 2007)

27. The importance of babies and young children being respected and taken seriously within the family is emphasized in the UN Committee's general comment on early childhood: *"Respect for the young child's agency - as a participant in family, community and society - is frequently overlooked, or rejected as inappropriate on the grounds of age and immaturity. In many countries and regions, [young children] ... have been powerless within their families, and often voiceless and invisible within society... To achieve the right of participation requires adults to adopt a child-centred attitude, listening to young children and respecting their dignity and their individual points of view"*.<sup>10</sup>

<sup>9</sup> UNICEF Innocenti research centre (2006) The general measures of the CRC. The process in Europe and central Asia.

<sup>10</sup> Committee on the Rights of the Child General Comment no. 7 (2005) Implementing child rights in early childhood.



28. In Finland, parents have been required for more than 20 years to consult children before making any decision affecting them. There is no minimum age for the application of this far-reaching duty. The Child Custody and Right of Access Act 1983 states: *"Before a custodian makes a decision on a matter relating to the person of the child he shall, where possible, discuss the matter with the child taking into account the child's age and maturity and the nature of the matter. In making a decision the custodian shall give due consideration to the child's feelings, opinions and wishes"*.

29. The Norwegian Children Act 1981 (amended in 2007) stipulates that: *"As and when the child becomes able to form its own point of view on matters that concern it, the parents shall listen to the child's opinion before making a decision on the child's personal situation. Attention shall be paid to the opinion of the child, depending on the age and maturity of the child. The same applies to other persons with whom the child lives or who are involved with the child. When the child reaches the age of 7, it shall be allowed to voice its view before any decisions are made about the child's personal situation, including which of the parents it is to live with. When the child reaches the age of 12, the child's opinion shall carry significant weight. Children who have reached the age of 15 shall themselves decide the question of choice of education and of applying for membership of or resigning from associations. Parents shall steadily extend the child's right to make his or her own decisions as he or she gets older and until he or she comes of age"*.

30. In Sweden, the Parent and Guardianship Code requires parents and carers to consider the child's views and wishes *"in pace with the child's increasing years and development"*.

31. The UNICEF Innocenti research centre reports that in the Czech Republic parents or other caretakers must take into account the views of the child, and the child has the right to be informed of the consequences of any decisions the parent makes affecting him or her. Since 2004, parents in Romania *"must provide information, explanations and advice according to the children's age and understanding, as well as to allow them to express their own point of view, ideas and opinions."*<sup>11</sup>

32. Scottish legislation requires parents and carers making any "major decision" to *"have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity"*.

## VI. Community participation

33. UNICEF's child-friendly cities initiative, launched in 1996, has compiled the essential ingredients of a city fit for children. Children's participation in decision-making is top of the list. Progress across Europe includes:

- Albania's Youth Parliament brings together children aged between 14 and 18 years (elected by their peers) to influence local and national decision-making. Members participate regularly in district council meetings and have ongoing contact with locally elected bodies.
- In Croatia, the Towns and Districts Friends of Children initiative has brought together a diverse range of non-governmental organisations to work towards increasing respect for children's rights. Materials have been produced for local authorities, including children's-rights-based indicators.
- In Germany, the Munich City for children programme places great emphasis on listening to children. The city has formally adopted the CRC and a city-wide child-friendly strategy.
- In the UK, the Greater London Authority's Children and Young People's Unit was created to co-ordinate policies affecting the city's 1.62 million children. In addition to its overarching strategy, the Unit produces a periodic State of London's Children report, using the framework of the CRC. Children's participation is central to the Unit's work.<sup>12</sup>

34. Undoubtedly, children in all member states have far more opportunities to express their views freely than their predecessors ever did. But the CRC requires that children's views be given due weight and the UN Committee on the Rights of the Child is extremely protective of this aspect of article 12. In June 2006, in relation to Latvia, the Committee observed: *"The Committee regrets that little information was provided on the attitudes towards children's views and proposals, as well as information on the extent to which their*

<sup>11</sup> UNICEF Innocenti research centre (2006) The general measures of the CRC. The process in Europe and central Asia.

<sup>12</sup> Chaudhuri, E. R. (2004) Cities fit for children in a world fit for children. Background paper prepared for Making Europe and central Asia fit for children second intergovernmental conference, 13-15 May 2004

*views have been sought, expressed or integrated in all institutions attended by children at the local level and in the family”.*

35. In relation to Sweden, despite considerable commitment and activity, the UN Committee regretted the lack of evidence of children's “real influence” and repeated the expectation that participation rights be enjoyed by all children: “... *the Committee remains concerned that, despite the remarkable efforts, some children and young persons do not feel they have any real influence in matters concerning their life in society*”.

## **VII. Consent to medical treatment**

36. In almost all member states, 18 is the point at which children acquire full legal capacity. However, in Scotland children acquire full legal capacity from the age of 16 years and in Austria and Switzerland adulthood is deemed to start at 19 and 18 years respectively. In Romania, a person can receive “child protection” until the age of 26 years.

37. Some member states have a designated age at which children are assumed to have equivalent adult capacity to consent to or refuse medical treatment. In Austria and Italy this is 14 years; in Denmark, Finland and Germany 15 years; and in the UK 16 years.

38. Importantly, all of these states have provision for children younger than the designated age to give or refuse consent – if they are deemed to have sufficient understanding. It is interesting to note that, following its first examination of Sweden in 1993, the UN Committee on the Rights of the Child's questioned “*the advisability of permitting a child of seven years or older to accept legal or medical counselling without parental consent*”. More than a decade later, reflecting changing international norms, the Committee in its general comment on young children asserted:

*“The Committee wishes to emphasize that article 12 applies both to younger and to older children. As holders of rights, even the youngest children are entitled to express their views... The right to express views and feelings should be anchored in the child's daily life at home (including, when applicable, the extended family) and in his or her community; within the full range of early childhood health, care and education facilities, as well as in legal proceedings...”*<sup>13</sup>

39. In the UK, the child's right to refuse medical treatment was diluted in 1992 when the House of Lords (highest court) determined that no person under the age of 18 years has an absolute right to refuse treatment. The case concerned a 16 year-old girl living in a children's home. She was being forcibly tube fed because of her refusal to eat. At 16 she applied unsuccessfully to the court to exercise her right to refuse treatment on the same basis as an adult.<sup>14</sup>

40. Clearly, the right to consent to or refuse medical treatment is dependent on the right to information. In Romania, the 2003 Law on the Rights of the Patient requires doctors to give full information to patients: the statute does not distinguish between adult and child patients. The Act apparently supersedes an earlier Ministry of Health Order (1990) that prohibited information about a child's HIV status being passed to the child. Such information could only be given to the parent. Human Rights Watch has researched the effects of the 1990 Order and reports that in one hospital only about 65% of children with HIV were aware of their status. Despite the recent legislation, “...*infectious disease doctors consistently told Human Rights Watch that they were barred by law from disclosing HIV status to children without the parents' consent, and that this limitation on diagnostic disclosure to children made it difficult for them to convince children who did not know their diagnosis to comply with often unpleasant life-prolonging therapies*”.<sup>15</sup>

## **VIII. Participation in schools**

41. In recent years, the UN Committee has praised several member states for their efforts towards strengthening the child's voice and influence in schools (Albania, Austria, Ireland, Latvia, Lithuania, Slovenia and Sweden). The UN Committee's first general comment, issued in 2001, on the aims of education stressed the importance of children's participation: “*Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent*

<sup>13</sup> Committee on the Rights of the Child General Comment no. 7 (2005) Implementing child rights in early childhood.

<sup>14</sup> Re W [1992] 3 WLR 758

<sup>15</sup> Human Rights Watch (August 2006) “Life doesn't wait”. Romania's failure to protect and support children and youth living with HIV

*dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life.*"<sup>16</sup>

42. Between December 2002 and May 2003, the Council of Europe's Education for Democratic Citizenship project surveyed the laws, policies and rules of member states in relation to pupil participation. Information was obtained from 37 countries or regions. The research report documents a wide range of positive initiatives in primary and secondary school settings. In relation to legislative support for the enjoyment of article 12 in schools, the report notes: "... *practically all countries that contributed to the study have rules or legal provisions for some form of pupil participation, though varying in intensity. The need to create active and participative learning opportunities in the school environment, therefore, seems to be widely recognised in Europe as an educational principle and appears to have a stable legal basis*".<sup>17</sup>

43. Noting the creation of A.S. Neill's Summerhill "free" school in 1924 and the first attempts by the German state of Baden-Wurttemberg, in 1945, to include pupils in school decision-making, the report highlights progressive laws and practice, including:

- The requirement in the Swedish School Act 1985 that, *"It is not in itself sufficient that education imparts knowledge of fundamental democratic values. It must also be carried out using democratic working methods and develop the pupils' ability and willingness to take personal responsibility and participate actively in civic life"*;
- the concept of *Schulgemeinschaft* in Austrian law: *"co-operation between teachers, parent (or guardians) and pupils"*;
- the notion of pupil *"co-responsibility"* in German law;
- the provision in Spain's national constitution permitting children to be involved in the "control and management" of their schools;
- articles 45-47 of the Education Law 1566/85 in Greece which gives children the right to establish "collective bodies" in schools;
- Statutory "student parliaments" in Hungarian schools and the *"general meeting of school students at least once a year in order to review the operation of the student parliament and the enforcement of students' rights"* (section 63(7) 1993 Act on Public Education);
- the National Council for Students Rights, representing children from the age of six years, established by Hungarian law to put forward opinions and proposals to the Minister of Education, and to "take a stand on any questions concerning students' rights";
- The involvement of Norwegian children in national education bodies, including the steering group of the Norwegian Board of Education, the National Evaluation Committee on Education and the National Board on Vocational Education;
- the requirement on the Minister of Education in Luxembourg to convene a National Pupil Conference (with representatives from all of the country's secondary schools) at least twice every six months.

44. Despite these positive developments, there are very few member states where children have the independent right to make complaints about their education or to be heard and/or represented in administrative proceedings concerned with exclusions. It is regrettable, therefore, that the European Court of Human Rights still does not apply article 6 to educational decision-making processes. Furthermore, having a pro- children's rights legislative and policy framework, although essential, is no guarantee that children will enjoy their right to be heard and taken seriously. A survey of 3400 school children – all members of pupil boards – by Finland's Ombudsperson for children in 2006 found: *"... Children wished they [had] more say on their daily school life, for instance on physical environment, school yards, school meals and the general structure of the school day. Children wish among other things that they would not have to rush through their lunch and that their school playgrounds were more pleasant and comfortable. Overall school satisfaction would be improved by better physical school environment and by intervening bullying incidents duly. More*

<sup>16</sup> The Aims of Education: CRC/GC/2001/1

<sup>17</sup> Dürr, K. (2005) Education for democratic citizenship 2001-2004. The school: A democratic learning community. The all-European study on pupils' participation in school. Council of Europe

than 50% of the respondents think that due to a rush and large class sizes the teachers do not have enough time to listen to their pupils".<sup>18</sup>

## IX. Children's consent to adoption

45. The Convention on the Rights of the Child entitles children separated from their parents to "special protection and assistance" and requires that the child's best interests be the paramount consideration in adoption. It would be unconscionable for a legal order to be made severing the relationship between two adults, when the wishes and feelings of only one of those adults had been taken into account. This kind of action has the hallmarks of slavery and would not be tolerated in any civilised society. Yet children's voices are still not being adequately heard – or taken seriously – in the adoption process.

46. Article 4d of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (1993) requires, "*having regard to the age and degree of maturity of the child*", that: children are counselled and informed of the consequences of adoption and giving consent (where this is required); consideration is given to the child's wishes and opinions; where consent from the child is a legal requirement, that this has been given freely and in written form.

47. Not all member states require the consent of children before an adoption proceeds. The table below provides an illustration of the age at which children's consent is mandatory in member states that grant this right:

**Consent to adoption**

<b>Member state</b>	<b>Age that child must give consent to an adoption before it can proceed</b>
Slovakia	No minimum age – if child has sufficient understanding, his or her consent must be sought
Lithuania	10 years
Croatia, Georgia and the Russian Federation	11 years
Denmark, Finland and Norway	12 years
Poland	13 years
Bulgaria	14 years

48. Other states have minimum ages at which the child's views may simply be considered (but not necessarily followed). In Albania this is 10 years. In Belgium and Scotland there is an obligation to hear the views of all children from the age of 12, and those below this age if they have sufficient understanding. A recent change in Norwegian adoption law means that children must be consulted from the age of seven about their adoption, and younger still if they have sufficient understanding. In Romania a child must be heard from the age of 10, but younger if they have sufficient understanding. In the UK there is a duty on the courts and, since 2002, adoption agencies to have regard to the child's wishes and feelings (considered in the light of the child's age and understanding) – note there is no minimum age but the provision only requires that children's views are regarded (in child protection and alternative care social workers must give the child's wishes and feelings "due consideration"). Notably, in Denmark an adoption cannot be revoked in relation to a child aged 12 years or over *unless the child gives his or her consent*.

49. In its most recent examination of Albania, the UN Committee expressed concern "*that [in custody decisions and adoptions] the views of the child are not taken into consideration at all before the age of 10 years*".

50. The danger of fixed ages is that they reinforce the deficit model of childhood – that children as a group lack the personality, insight, skills and experience to influence decisions. They set a benchmark below which all children's wishes and feelings can be ignored or dismissed. This is harmful to individual children, and to children's wider social status. At the same time, a fixed age is a social guarantee to a child in an adult's world that they will be listened to – they do not have to convince adult professionals they understand and can cope with what is happening, and what may happen. As one child observed during a discussion

<sup>18</sup> The ombudsman for children in Finland. Annual report for the ENOC meeting in Barcelona 2007

about the implementation of children's rights in England: "And sometimes when you ask adults for something they'll ask you all these questions and they know you're stuck and you can't say anything until you just give up".<sup>19</sup>

51. Many professionals still see their prime function as rescuing and rehabilitating, rather than enabling and empowering children. It is within this context that the concept of children's evolving capacities operates. While legislators and policy makers debate the merits of giving children the right to be heard at this or that age, there are others who document the personhood of babies: "... babies are people with thoughts, feelings and rights, as other people close to them know... babies express their views strongly and clearly through sounds and gestures, and in play when they make choices and show intense concentration and enjoyment. As infants start to use words, they make their views and wishes still more clearly known, unless they are strongly discouraged from doing so. The right to express a view and to be responded to begins to be honoured or withheld from birth..."<sup>20</sup>

52. It is important to stress that article 12 bestows a right, not a duty – children affected by adoption, or any other matter, should never be compelled to express their views and feelings. As the chair of the UN Committee on the Rights of the Child, Professor Yanghee Lee, explains: "*The Convention does not encourage pressurising children to participate, but to provide all necessary means to encourage and enable children to make their views heard*".<sup>21</sup>

## X. Other judicial and administrative proceedings

53. The UN Committee observed in relation to Hungary in 2006: "*While the Committee welcomes the efforts made by the State party to promote respect for the views of the child, it is aware of a general attitude in society to pay little attention to children's views and in particular notes that the views of the child are insufficiently taken into account in the decision-making process of alternative care placements and custody cases*".

54. Some member states have defined an age above which children must be heard in judicial or administrative proceedings. Yet none of these states gives children ultimate control of judicial and administrative decisions, as is the case where a child's refusal to consent to adoption effectively stops the process. It is therefore difficult to understand why a minimum age exists. Without knowledge of the child's wishes and feelings (and this includes being informed that the child does not want to express their views or, in the case of infants and some children with disabilities, that these views have been obtained indirectly, through advocates or other adults close to the child), decision makers have only a partial picture of the child's needs and best interests. It is worth recalling that the first proposal to include the right to be heard in the Convention (made by US officials in 1980) included the provision as part of article 3 – the best interests of the child. The right to be heard and children's best interests are often seen as being in competition, when in reality they are mutually dependent. Try asking yourself which you would be prepared to relinquish – the right to live in conditions conducive to your well-being or the right to be heard and respected. It's an impossible and meaningless choice – the right to express oneself to others is part of being a fully functioning human being. Yet children are victim to this lazy thinking each and every day. A construction of children's best interests, at the individual or macro level, without the involvement of children, categorically does not live up to the promise of the Convention.

55. In child protection procedures, the Parliamentary Assembly has emphasised the importance of "*Ensuring that children and young people have the opportunity to express their views and participate in planning and in actions to eliminate corporal punishment*" as well as "...access to confidential advice and counselling as well as advocacy to challenge violence against them".<sup>22</sup> In the UK (England and Wales), the 2004 Children Act requires that social workers give due consideration to the child's wishes and feelings when undertaking a child protection investigation (no minimum age) or a broader assessment of the child's needs. A similar provision has existed in Swedish law since 1998.

<sup>19</sup> Willow, C. (1999) It's not fair! Young people's reflections on children's rights, The Children's Society.

<sup>20</sup> Alderson, P. (2000) Young children's rights. Exploring beliefs, principles and practice. Jessica Kingsley Publishers

<sup>21</sup> [http://www.coe.int/t/transversalprojects/children/JusticeSpeeches/Yanghee\\_en.asp](http://www.coe.int/t/transversalprojects/children/JusticeSpeeches/Yanghee_en.asp)

<sup>22</sup> Council of Europe Doc. 10199 4 June 2004 Europe-wide ban on corporal punishment of children

## **XI. Juvenile justice**

56. Thomas Hammarberg, the Council of Europe Human Rights Commissioner, has this year urged member states to avoid criminalising children and to find alternatives to child imprisonment. He stresses that children should have a say in rehabilitation plans – *“this is not only a right, it is also more effective”*.<sup>23</sup>

57. Several years ago the Parliamentary Assembly urged: *“A shift in political will is needed to focus resources on the introduction of multidisciplinary measures at an early stage, providing children and young people with positive life experiences, restoring democratic and civil values, fostering creativity, solidarity, and positive community participation”*.<sup>24</sup>

58. The European Network of Ombudspersons for children (ENOC) issued a position statement on juvenile justice in 2003 recommending *“the concepts of “responsibility” and of “criminalisation” need to be separated”*. Some may misinterpret this proposal as a denial of agency and out of sorts with the considerable growth over the past decade in opportunities for children to shape and influence decisions. How can these children's champions argue for greater say and influence for children while trying to shield them from facing up to their responsibilities? But the clear and stated purpose of ENOC's proposal is to protect children from harmful processes, not to deny their capacity to make, understand and reflect on decisions. ENOC explains: *“We do believe that children should be held “responsible” for their actions in line with the concept of evolving capacities and our strong advocacy for respect for children's views in all aspects of their lives”*.

59. This approach is reflected in UN minimum standards relating to juvenile justice – see Annex A.

## **XII. Immigration**

60. Following its day of general discussion on the right to be heard, in 2006, the UN Committee issued a reminder to States Parties that: *“... special attention be given to the right of the child to be heard in immigration, asylum and refugee procedures...”*<sup>25</sup>

61. Sandy Ruxton's report for EURONET describes the ways in which the rights of children seeking asylum in EU member states are being curtailed *“against a background of growing public hostility”*. In relation to participation, his recommendations reflect the consistent calls made by the UN Committee – legal guardians to be appointed to separated children, skilled interpreters, equal access to education and child-friendly procedures.<sup>26</sup>

## **XIII. Children's access to justice**

62. In some member states, there is a minimum legal age below which children are prohibited from bringing complaints or seeking a remedy to human rights violations. In a recent conference on international justice for children, the Council of Europe human rights commissioner, Thomas Hammarberg, urged member states: *“... to guarantee children unrestricted access to use [human rights mechanisms]. For instance, they must ensure that there is no legal principle requiring parents' consent for such action (today, this is a real problem in several European countries, and others in all regions, where children cannot make individual applications to domestic courts, let alone to international mechanisms). Children should be able to apply at any age”*.<sup>27</sup>

### *i. International complaints mechanisms*

63. There is no special restriction on children using international human rights mechanisms to remedy human rights abuses. However, if these processes have not been made child-friendly, they will operate just as if they were only for adults.

<sup>23</sup> Hammarberg, T. (2007) It is wrong to punish child victims in Human rights in Europe; mission unaccomplished. Viewpoints by the Council of Europe Commissioner for Human Rights. Council of Europe

<sup>24</sup> Parliamentary Assembly Recommendation 1532 (2001)[1] A dynamic social policy for children and adolescents in towns and cities

<sup>25</sup> Committee on the Rights of the Child (2006) Day of general discussion on the right of the child to be heard

<sup>26</sup> Ruxton, S. (2005) What about us? Children's rights in the European Union Next steps. EURONET

<sup>27</sup> [https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH/Speech\(2007\)13&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBCFC2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH/Speech(2007)13&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBCFC2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

64. Only 14 countries<sup>28</sup> have accepted the Additional Protocol allowing for collective complaints under the European Social Charter and Revised Social Charter. Of the 43 complaints dealt with by the European Committee of Social Rights to date, none relates directly to children's participation rights (though several relate to children's rights in other ways – the right of children with disabilities to education, protection from all forms of corporal punishment and the right to housing and health care for example).

65. Thomas Hammarberg and Peter Newell have set out the action required by member states and international treaty bodies to enable children (and their advocates) to challenge human rights violations. These include:

- Inform children that these mechanisms exist: use child-friendly language and make the information widely available, including in schools and places of detention;
- Remove any obstacles, such as the need for parental consent, age requirements, time limits and the common condition that domestic remedies are exhausted;
- Where others are acting on behalf of children, confirm that the application is in the child's best interests and, where the child is able to give consent, ensure this is obtained;
- Allow groups of children and child and young people-led organisations to make complaints;
- Consider fast tracking cases affecting children “with an understanding of children’s sense of time and the urgency of remedying breaches of their rights while they still are in their childhood”;
- Guarantee the anonymity of child applicants;
- Provide training to decision-makers, judges, lawyers and support staff;
- Adjust the availability of legal aid to meet needs of children;
- Issue judgments in child-friendly language<sup>29</sup>.

ii. *Notable judgments of European Court of Human Rights*

66. There are still very few cases being brought to the European Court of Human Rights in which children are the applicants. The six cases below, five of which were brought by children, illustrate positive developments in the Court's interpretation of the rights and freedoms in the ECHR as applied to children.

67. Three judgments against the UK confirm the “effective participation” requirements of article 6. *T v UK* and *V v UK* (1999) concern two British children who at the age of 11 were convicted of murder and abduction.<sup>30</sup> The three-week trial was held in an adult courtroom and open to the public. The European Court of Human Rights found the UK to have breached the Convention in three main ways. One of these related to the mode of trial (the other two concerned the lack of review and interference by the executive in increasing the boys' minimum period of detention). The Court explained: “[I]t is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings”. The “considerable psychiatric evidence” of acute emotional distress, including that arising from public hostility, confirmed the boys were unable to effectively instruct their lawyers and participate in the proceedings.

68. The Lord Chief Justice (second highest judge in England and Wales) subsequently issued new rules on the trial of children in crown courts. These require adaptations such as a reduction in the court sitting period, the use of accessible language and frequent and regular breaks. Protecting children from hostile members of the public is also included.

69. The third case, *SC v UK* (2004), concerned an 11 year-old tried in an adult crown court for attempted robbery.<sup>31</sup> A consultant clinical psychologist had advised the judge that the boy had significant learning impairments, with a developmental age of between six and eight years. Yet the judge continued with the proceedings, and an application to a higher court to stop the trial failed. The boy was given a custodial sentence. The European Court agreed the boy's article 6 right to a fair trial had been breached and noted, “when the decision is taken to deal with a child... who risks not being able to participate effectively because of his young age and limited intellectual capacity, by way of criminal proceedings rather than some other form of disposal directed primarily at determining the child's best interests and those of the community, it is

<sup>28</sup> Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Slovenia and Sweden.

<sup>29</sup> [http://www.coe.int/t/transversalprojects/children/JusticeSpeeches/PeterNewell\\_en.asp](http://www.coe.int/t/transversalprojects/children/JusticeSpeeches/PeterNewell_en.asp)

<sup>30</sup> *T. v. The United Kingdom* (24724/94) 16 December 1999; and *Case of V. v. The United Kingdom* (24888/94) 16 December 1999

<sup>31</sup> *S.C. v. The United Kingdom* (60958/00) 10 December 2004

*essential that he be tried in a specialist tribunal which is able to give full consideration to and make proper allowance for the handicaps under which he labours, and adapt its procedure accordingly*".

70. The importance of the child's views in residence arrangements was emphasised in *Bronda v Italy* (1998).<sup>32</sup> Two grandparents claimed to the European Court that the refusal of the Italian courts to allow their granddaughter to live with them breached their rights under articles 8 and 13. The Court determined that the interference in the grandparents' right to private and family life was justified and legitimate, as *"the Court attaches special weight to the overriding interest of the child, who, now aged fourteen has always firmly indicated that she does not wish to leave her foster home. In the present case, S's interest outweighs that of her grandparents"*. In a later judgment, *Sahin v Germany* (2003), the Court observed: *"The human rights of children and the standards to which all states must aspire in realising these rights for all children are set out in the United Nations Convention on the Rights of the Child"*.<sup>33</sup>

71. The case concerned a father who had been denied access to his daughter. One of his complaints was that his daughter was not heard in the regional (appeal) court. The European Court noted that the child was aged between three and five years during the time of the different proceedings, and the regional court had commissioned a psychological expert to consider the child's best interests. The psychologist had several meetings with the child. In dismissing this aspect of the father's complaint, the Court asserted: *"It would be going too far to say that domestic courts are always required to hear a child in court on the issue of access to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned... Consulted on the question of hearing the child in court [the psychologist] plausibly explained that the very process of questioning entailed a risk for the child. Such a risk could not be avoided by special arrangements in court"*.

72. The right to an effective remedy, in article 13, includes the right of the child to be heard directly. The Court's judgment in *Aydin v Turkey* (1997) concerned a 17 year-old girl, a Turkish citizen of Kurdish origin, who had been removed from her home by village guards and a police officer. She was blindfolded with her father and sister-in-law and taken to the village police station where she was raped and subject to other forms of torture. The Court found a violation of articles 3 and 13 and declared: *"...where an individual has an arguable claim that he or she has been tortured by agents of the state, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure"*.<sup>34</sup>

### *iii. National human rights institutions*

73. National bodies protecting the rights of children are, clearly, much more accessible than international ones. The UN Committee's general comment on national independent human rights institutions for children stresses that they must be able to deal with individual complaints and petitions from children.<sup>35</sup> Of the 22 member states that have independent human rights institutions for children, 16 have established children's ombudspersons that can deal with individual complaints. The 2007 annual reports of the Children's Ombudsman in Croatia (child population: 873,000) and Lithuania (child population: 745,000) show that they each received more than 400 complaints in the preceding year.

## **XIV. Political participation**

74. It is increasingly common for government ministers to take advice from groups of children and young people – advisory boards and forums – and many member states have actively engaged children in the development of national children's plans, strategies and youth policies. International conferences dealing with childhood matters are no longer complete without children, and government delegations frequently include teenagers. Many have commented on the transformation in children's role and status in the decade between the first and second world conferences on children. In the first, in 1990, the children present were the relatives of speakers and dignitaries and their role was largely decorative and sentimental. By 2002, children were present as organisers, speakers, activists and partners in change.

75. In July 2007, Austria became the first member state to extend the right to vote to 16 and 17 year-olds. In all other countries children are prohibited from voting in national elections. A recent Parliamentary

<sup>32</sup> *Bronda v. Italy* (40/1997/824/1030) 9 June 1998

<sup>33</sup> *Sahin v. Germany* (30943/96) 8 July 2003

<sup>34</sup> *Aydin v. Turkey* (57/1996/676/866) 25 September 1997

<sup>35</sup> General comment No. 2 (2002) The role of independent national human rights institutions in the promotion and protection of the rights of the child



Assembly resolution on human rights and democracy in Europe recommends the “*Participatory rights of all citizens should be increased*”.<sup>36</sup> Children are not mentioned in the resolution. However, an earlier report, dealing with restrictions on the right to vote, deemed 18 to be an acceptable age for enfranchisement and 21 or even 25 as a suitable age for the right to stand as a political candidate.<sup>37</sup>

76. The UN Committee on the Rights of the Child has noted, “*that in certain contexts apparent inconsistencies arise, such as when children below the age of 18 are subject to military service yet are not eligible to vote*”.<sup>38</sup>

77. In October 2005, the European Court on Human Rights delivered judgment in the case of *Hirst v. the United Kingdom*. John Hirst, a 54-year-old British national, brought the case. As a convicted prisoner, Mr Hirst was banned from voting in Parliamentary and local elections. The European Court upheld his claim, saying that there had been a violation of article 3 of Protocol No. 1 (right to free elections) to the ECHR. The Court said that any restrictions on the right to vote must be legitimate and proportionate – blanket exclusions are unacceptable. There has not been a case brought by teenagers but similar arguments could clearly be made. The UN Committee has not yet made any recommendations relating to the right to vote but its general comment on the “general measures” that States Parties must undertake in order to fully implement the Convention stresses the importance of governments being in touch with – and acting upon – children's concerns and views: “*Given that few states as yet have reduced the voting age below 18, there is all the more reason to ensure respect for the views of unenfranchised children in government and parliament... It is important that governments develop a direct relationship with children, not simply one mediated through non-governmental organisations (NGOs) or human rights institutions. In the early years of the Convention, NGOs had played a notable role in pioneering participatory approaches with children, but it is in the interests of both governments and children to have appropriate direct contact*”.<sup>39</sup>

78. There are young people-led campaigns for lowering the voting age in Norway and the UK. This autumn the Children's Ombudsman for Norway, Reidar Hjermann, came out in support of votes at 16: “*We have ten years of compulsory school. It is the school system that will set us up to participate actively in our society. If the school does not prepare young people to elect politicians, it is not the young that have failed, but the school. Voting at 16 will coincide with the last year of compulsory school. The last year in school is indeed a fitting time to participate in the elections and forming of our society*”.<sup>40</sup>

79. Some member states have temporarily opened up Parliament to children, most notably in Portugal where the young people's parliament has had an annual sitting in Parliament since 1995. Gordon Brown, the UK's Prime Minister, has recently proposed a similar arrangement for the UK Youth Parliament. Most member states now have thriving local, regional and national youth councils, forums and children's self-advocacy organisations.

## **XV. Human rights monitoring**

80. The UN Committee expects member states to consult children in the preparation of initial and periodic reports. In addition, it is becoming increasingly common for children from member states to report their views and experiences directly to the UN Committee. In the UK, the Children's Rights Alliance for England has obtained a major Lottery grant to engage at least 12,000 children in the CRC reporting process. The project – called Get ready for Geneva – is directed by a children's steering group and children are leading focus groups, online surveys and media debates. A national competition will be held to assemble the youth delegation to attend the pre-sessional meeting in Geneva in 2008. Importantly, the project will continue after the UN Committee has issued its concluding observations – children will select their priorities and advocate for change.

<sup>36</sup> Parliamentary Assembly Resolution 1547 (2007)1 State of human rights and democracy in Europe.

<sup>37</sup> Parliamentary Assembly Doc. 10553 of 18 May 2005 Abolition of restrictions on the right to vote Report.

<sup>38</sup> Committee on the Rights of the Child - Forty-third session 11-29 September 2006 day of general discussion on the right of the child to be heard.

<sup>39</sup> General measures GC: CRC/GC/2003/5.

<sup>40</sup> 28 August 2007 - CRINMAIL 910

## XVI. Conclusions and recommendations

81. At the launch conference of "Building a Europe for and with children" in Monaco, children called for "*sincere, equal and productive*"<sup>41</sup> participation. The intergovernmental conference on children in Europe and central Asia called for "*authentic mechanisms*"<sup>42</sup> to ensure children's effective participation in decisions concerning them. Debates about participation no longer invoke adults to simply listen to children; today's priority is that children are supported to engage in effective action and, above all, that what they do and say leads to positive change for children.

82. There is an urgent need to raise awareness among all those living and working with children, and making decisions that affect them, about the dual requirements of article 12:

- That every time a decision is being made that affects a child or children the views, wishes and feelings of that child or children must be sought, irrespective of the child's age or circumstances. There is no requirement in article 12 that the child's views must be communicated in a particular way – the provision is deliberately flexible in order to enable all children, including those with disabilities, to express themselves freely.

- That every time a decision is being made that affects a child or children the views, wishes and feelings of that child or children must be given due weight in accordance with the age and maturity of the child or children. Age and maturity must be considered together, and these two factors do not simply relate to the child's intellectual capacity. The expression of feelings, the child's developing personality, and his or her ability to cope with different emotions and possibilities, are equally important. All decision-makers must take seriously the views, wishes and feelings of all children, including the very youngest. The amount of influence that children have in any decision-making process will depend on their age and maturity. It will be extremely rare for a child who has expressed views, wishes or feelings not to have any influence at all. Over time, it will become more common for children's views, wishes and feelings to be a determining factor in decision-making that affects them directly.

83. Additional efforts are required to ensure that judicial and administrative proceedings enable children to express their views freely in an atmosphere of respect, trust and mutual understanding.

84. Each member state is urged to:

- Review its legislation, policy and practice in relation to children in all areas of decision-making to assess the extent to which children's views are heard and taken seriously. Children's own reflections and experiences shall be central to this review. Where children's consent is required before an action can be taken by a public authority, for example in adoption or health care, the effect of any minimum age requirements will be considered and rectified where necessary. A national plan of action will set out the actions to be taken by the member state in order to increase children's participation in all decisions concerning them. The particular needs of children with disabilities, young children, and those in detention or other hazardous environments will be addressed.

- Give the strongest legal protection to article 12, including in national constitutions and human rights and all relevant sectoral laws, including for example education, juvenile justice and immigration. There shall be no minimum age requirement attached to the child's right to express his or her view.

- Apply article 12 to all public authorities, all public services and all areas of life. There shall be no immunity for particular settings or professions.

- Undertake public education programmes aimed at parents and children about the child's rights to express their views freely. The programmes shall portray the child as a human being with feelings, views and aspirations and as the holder of rights. Negative media representations will be challenged.

- Ensure civil codes and legislation describing the rights, duties and responsibilities of parents stress the importance of respect for the child's human dignity, feelings and views and include the obligation on parents to give due weight at all times to the child's views in accordance with the child's evolving capacities.

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<sup>41</sup> [http://www.coe.int/t/transversalprojects/children/Participation/WhatChildrentoldus\\_en.asp](http://www.coe.int/t/transversalprojects/children/Participation/WhatChildrentoldus_en.asp)

<sup>42</sup> Chaudhuri, E. R. (2004) Cities fit for children in a world fit for children. Background paper prepared for Making Europe and central Asia fit for children second intergovernmental conference, 13-15 May 2004

- Consider the implementation of article 12 within a broader strategy for the implementation of the CRC, giving special attention to the eradication of child poverty and the removal of inequalities.
- Invest in the development and effective functioning of child and young people-led organisations, ensuring there are no legal barriers to children's self-advocacy. Involve these organisations in the ongoing monitoring of the implementation of the CRC across the member state.
- Recognise that the continuing existence of legally sanctioned violence in different settings, including in the family, harms children as individuals and as a social group. The commitment to children's participation requires the removal of laws that denigrate children as people.

## **Appendix: Children's participation and human rights obligations**

### **UN human rights instruments**

1. Rule 14.2 of the UN Beijing Rules (1985) require that juvenile justice proceedings, *"shall allow the [child] to participate therein and to express herself or himself freely"*.<sup>43</sup> The UN Riyadh Guidelines (1990) demand wider social change: *"Young persons should have an active role and partnership within society and should not be considered as mere objects of socialisation or control"*.<sup>44</sup>
2. The International Covenant on Civil and Political Rights (1966) applies to "everyone" - including children - and the Human Rights Committee has issued a general comment on the rights of the child (set out in article 24). In relation to children's involvement in decision-making, the Committee states: *"... every possible measure should be taken to foster the development of [children's] personality and to provide them with a level of education that will enable them to enjoy the rights recognised in the Covenant, particularly the right to freedom of opinion and expression"*.<sup>45</sup>
3. The Committee's general comment on political participation and voting, written almost a decade ago, does not challenge the universal exclusion (at that time) of children from the right to vote.<sup>46</sup>
4. There is provision for participation, though not specifically children's, in both the International Convention on the Elimination of all Forms of Racial Discrimination (1965) and the Convention on the Elimination of all Forms of Discrimination against Women (1979).
5. Much emphasis is given to involvement and inclusion in the UN Convention on the Rights of Persons with Disabilities, which is recently entered into force and has only been ratified by four Council of Europe member states (Croatia, Hungary, San Marino and Spain). Article 7 specifically applies to children with disabilities and establishes an obligation on States Parties to provide "disability and age-appropriate assistance" as a means of implementing participation rights.

### **Council of Europe human rights mechanisms**

6. At the regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms grants children (as well as adults) the right to a fair trial (article 6), the right to freedom of thought, conscience and religion (article 9), the right to freedom of expression (article 10) and the right to freedom of assembly and association (article 11). The right to respect for private and family life (article 8) has been interpreted by the European Court of Human Rights as imparting procedural rights in family proceedings, though the emphasis to date has been on parents' rights – no doubt reflecting the very few cases brought directly by children.
7. Only 12 member states have ratified the European Convention on the Exercise of Children's Rights, which grants children procedural rights especially in family proceedings. The first meeting of the Standing Committee, in June 2006, identified considerable problems in children's views being taken into account in judicial proceedings and in broader political decision-making.<sup>47</sup>
8. The European Social Charter (revised 1996) grants extensive participation rights in the workplace – the right to form organisations / trade unions (article 5), the right to collective bargaining (article 6), the right to information and consultation from employers (article 21) and the right to have a say in improving working conditions, as well as to organise social facilities (article 22). There is also the right to be consulted in collective redundancy procedures (article 29). Beyond the workplace, article 15 of the revised Charter protects the right of persons with disabilities – *"irrespective of age"* – to independence, social integration and participation in the life of the community. States Parties are required to introduce a range of measures to *"overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure"*.

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<sup>43</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985

<sup>44</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines). Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990

<sup>45</sup> General Comment No. 17: Rights of the child (Art. 24): 07/04/89. CCPR General Comment No. 17. (General Comments)

<sup>46</sup> General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25. (General Comments)

<sup>47</sup> Standing Committee on the European Convention on the Exercise of Children's Rights (T-ED) 1<sup>st</sup> meeting 8-9 June 2006, Strasbourg. Report to the Committee of Ministers.

**European Union**

9. Article 24(1) of the EU Charter of Fundamental Rights (2000), applying to over half of Council of Europe member states, affirms that: *“Children... may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.”*
10. Article 26 confirms the rights of people with disabilities to “participation in the life of the community”.

*Reporting committee:* Social, Health and Family Affairs Committee

*Reference to committee:* Doc. 10988, Reference No. 3268 of 2 October 2006

*Draft recommendation* unanimously adopted by the committee on 16 May 2008

*Members of the committee:* Mrs Christine **McCafferty** (Chairperson), Mr Denis Jacquat (1<sup>st</sup> Vice-Chairperson), Mrs Minodora **Cliveti** (2<sup>nd</sup> Vice-Chairperson), Mrs Darinka **Stantcheva** (3<sup>rd</sup> Vice-Chairperson), Mr Konstantinos Aivaliotis, Mr Farkhad Akhmedov (Alternate: Mrs Svetlana **Goryacheva**), Mr Vicenç Alay Ferrer, Mrs Sirpa Asko-Seljavaara, Mr Jorodd Asphjell, Mr Lokman **Ayva**, Mr Zigmantas Balčytis, Mr Miguel Barceló Pérez, Mr Andris Berzinš, Mr Jaime Blanco García, Mr Roland Blum, Mrs Olena Bondarenko, Mrs Monika Brüning, Mrs Boženna Bukiewicz, Mrs Karmela Caparin, Mr Igor Chernyshenko, Mr Imre Czinege, Mrs Helen D'Amato, Mr Karl Donabauer, Mrs Daniela Filipiová, Mr Ilja Filipović, Mr André Flahaut, Mr Paul Flynn, Mrs Pernille Frahm, Mrs Doris Frommelt, Mr Renato Galeazzi, Mr Henk van Gerven, Mrs Sophia Giannaka, Mr Stepan Glăvan, Mr Marcel **Glesener**, Mr Luc Goutry, Mrs Claude Greff, Mr Michael Hancock, Mrs Olha **Herasym'yuk**, Mr Vahe Hovhannisyan, Mr Ali Huseynov, Mr Fazail Ibrahimli, Mrs Evguenia Jivkova, Mrs Marietta Karamanli, Mr András Kelemen, Mr Peter Kelly, Baroness Knight of Collingtree, Mr Haluk Koç, Mr Andrija Mandić, Mr Michal Marcinkiewics, Mr Bernard **Marquet**, Mr Ruzhdi Matoshi, Mrs Liliane **Maury Pasquier**, Mr Donato Mosella, Mr Felix Müri, Mrs Maia Nadiradzé, Mrs Carina Ohlsson, Mr Peter Omtzigt, Mrs Lajla Pernaska, Mrs Marietta de Pourbaix-Lundin, Mr Cezar Florin Preda (Alternate: Mr Laurențiu **Mironescu**), Mrs Adoración Quesada Bravo, Mrs Vjerica Radeta, Mr Walter Riester, Mr Andrea Rigoni, Mr Ricardo **Rodrigues**, Mrs Maria de Belém **Roseira**, Mr Alessandro Rossi, Mrs Marlene Rupprecht, Mr Indrek Saar, Mr Fidias Sariķas, Mr Andreas Schieder, Mr Ellert B. Schram, Mr Gianpaolo Silvestri, Mrs Anna Sobecka, Mrs Michaela Šojdrová, Mr Oleg Tulea, Mr Alexander Ulrich, Mr Mustafa Ünal, Mr Milan Urbáni, Mrs Nataša Vučković, Mr Dmitry Vyatkin, Mr Victor Yanukovych, Mrs Barbara Žgajner-Tavš, Mr Vladimir Zhidkikh

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the committee: Mr Géza Mezei, Mrs Christine Meunier, Mr Laurent Pfaadt