

Effective Implementation of the Right to Participation and Information for Children Deprived of Liberty

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Legal position of children deprived of liberty

Article 37 (c) CRC:

Children deprived of their liberty are entitled to be treated with *humanity and respect for their inherent dignity*, and in a manner that takes into account their needs as a child.

- Child recognised as *rights-holder* entitled to all rights under CRC
- Full implementation of art. 3 CRC – best interests of child ‘a primary consideration’
- Respect for right to be heard (art. 12 CRC)
- Effective remedies (*access to justice*)

Right to participation in juvenile justice

- **Article 12 CRC**

Art. 12 (1) CRC: the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child

Art. 12 (2) CRC: be provided the opportunity to be heard in any judicial and administrative proceedings

- **Article 40 CRC**

Art. 40 (1) CRC: treat the child in a manner consistent with the promotion of the child's sense of dignity and worth and promote the reintegration of the child in juvenile justice

Art. 40 (3) CRC: separate juvenile justice system

- **Beijing Rules (1985)**

The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely (rule 14.2).

Participation and information: international context

- **UN Committee on the Rights of the Child:** General Comments no. 10 (2007) and no. 12 (2009)
 - Information as prerequisite for participation
- **Havana Rules (1990)**
 - ‘House rules’ and written description of rights and obligations (rule 24)
 - Understanding the right to complain (rule 25)
- **CPT-standards – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, Rev. 2015)**
 - Information on rights in police custody (para. 98)
 - Complaints procedures should be simple, effective and child-friendly, particularly regarding the language used (para. 131)

Participation and information: European context

- **European Rules for juvenile offenders subject to sanctions or measures (ERJO, 2008)**
 - Active participation in activities (rule 50)
- **Directive on the right to information in criminal proceedings (2012/13/EU)**
 - Information on procedural rights (art. 3)
- **Directive on procedural safeguards for children suspected or accused in criminal proceedings (2016/800/EU)**
 - Right to information (art. 4)
 - Right to be present at trial and to participate effectively in the trial, including by giving the opportunity to be heard and to express their views (art. 16)

The importance of participation and information

- Procedural justice: the perceived fairness of procedures (Tyler, 2006)
 - Poor adaptation to imprisonment can cause risky situations, feelings of stress, anxiety and fear
 - Creating a safe environment
- Children value being heard directly in cases that affect them (see Cashmore & Parkinson, 2007; Kilkelly, 2010; De Winter, 2000)
- Children need appropriate information, feel safe and comfortable and respected by professionals (FRA, 2017; Van der Laan & Eichelsheim, 2013)
 - Too much information and difficult to understand
 - Information and guidance from peers
 - Information on remedies and complaints mechanisms lacks

Directions for the future

- Improving understanding of rights through child-friendly language
- Reduced levels of violence through fair treatment
- Effective ways of access to justice



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