

Child-friendly justice

Past, presence and future

Prof. Dr. Ton Liefwaard | Chili, 14 January 2019



Universiteit
Leiden
The Netherlands

Content and objectives

Focus:

Child-friendly justice as a concept meant to enable a child to engage with and/or participate effectively in justice proceedings

Objective: Further exploration of added value for children at the domestic level

Outline:

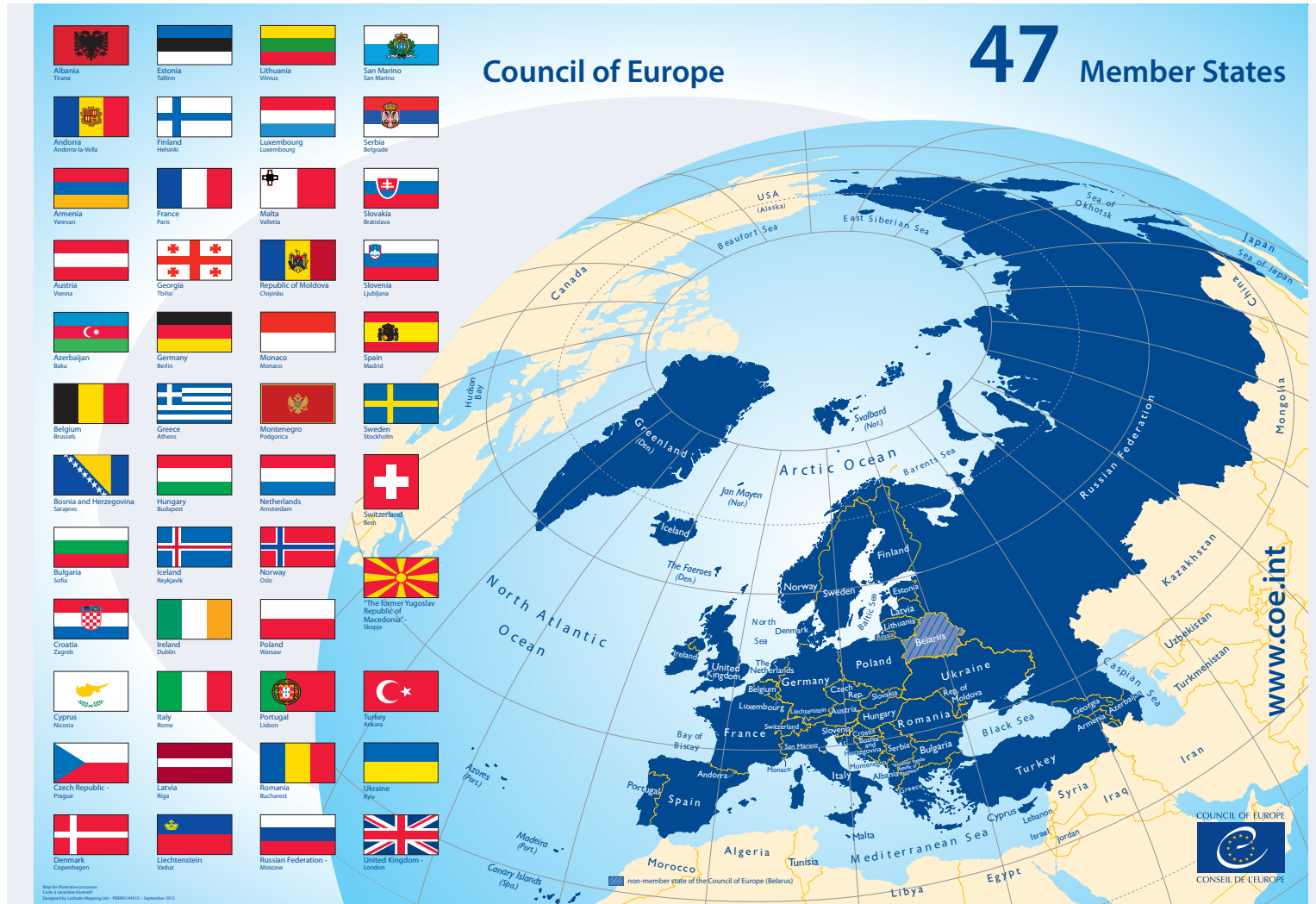
- I. Where does the concept come from?
- II. Guidelines on child-friendly justice (Council of Europe, 2010)
- III. Some reflections on Guidelines as instrument to further children's rights
- IV. Some reflections on content: protection – participation continuum
- V. Conclusions and discussion



European Union (EU) - 28 member states



Europe – Council of Europe



I. Concept of child-friendly justice

Firmly grounded in international children's rights and European case law

- Right to be heard – art. 12 CRC
- Case law European Court of Human Rights - 'effective participation' as element of fair trial
- General Comment No. 10 - UN Committee on the Rights of the Child

Part of the growing awareness of the significance of children's participatory rights



I. Concept of child-friendly justice (ctd.)

Related to other emerging concepts:

- 'child-sensitive approach'
- 'access to justice for children'
- 'justice for children'

Relevance:

- Children's participation as a principle
- Quality and impact/effectiveness of decision-making affecting children
- Children's sense of (procedural) justice
- Specific relevance in specific contexts – e.g. in relation to prevention of violence in institutions

II. Guidelines on child-friendly justice

Council of Europe *Guidelines on child-friendly justice* (2010)

- All justice proceedings (informal and formal)
- Before, during and after justice proceedings
- *‘accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity’*
- Key elements:
 - Information; <https://www.youtube.com/watch?v=kqT3xyRqXGo&feature=youtu.be>
 - accessibility of proceedings;
 - legal and other assistance;
 - right to be heard (incl. feedback);
 - avoiding undue delay;
 - safe and child-friendly environment;
 - language and;
 - role of parents/family.

III. Some reflections on the instrument

- Guidance for states (and practitioners) – legal relevance is increasing
 - * Drafting has been informed by input of children (Kilkelly 2010; Liefwaard & Kilkelly 2018)
 - * Emerging case law
- Vehicle for research; awareness-raising & training; further standard-setting & policy development – Council of Europe, European Union & UN
- ‘Export product’
 - Internat. Assoc. of Youth and Family Judges and Magistrates (2017)
 - Africa (2011) – ACERWC
- Interesting developments at national level
- Beyond ‘justice’



EU (!) Directive Procedural Safeguards Children

Applicable to national criminal justice systems + legally binding for EU member states

- Content (*inter alia*):
 - Right to information about rights (also for parents etc.)
 - Right to a lawyer (incl. police interrogations), individual assessment, medical examination
 - AV recording of police interrogations (i.e. mandatory in case of deprivation of liberty)
 - Deprivation of liberty as a last resort + rights of children deprived of liberty
 - Cases treated urgently
 - Privacy protection
 - Child and parents present during proceedings
 - Appropriate training of all professionals



IV. Some reflections on content

- Critical reflection on child as rights holder in domestic justice proceedings
 - Legal standing; best interests or child-directed representation; guardian ad litem;
 - More creativity is needed to empower and enable children
 - Inclusive role of parents and family
- Protection – Participation Continuum
 - Participation as an inherent element of child rights oriented justice proceedings
 - Legal empowerment of children is key
 - Not conclusive on difficult and delicate balance between protection and participation
 - * Protection > participation
 - * Protection to enable participation
 - * Most vulnerable children (?)

V. Conclusions and discussion

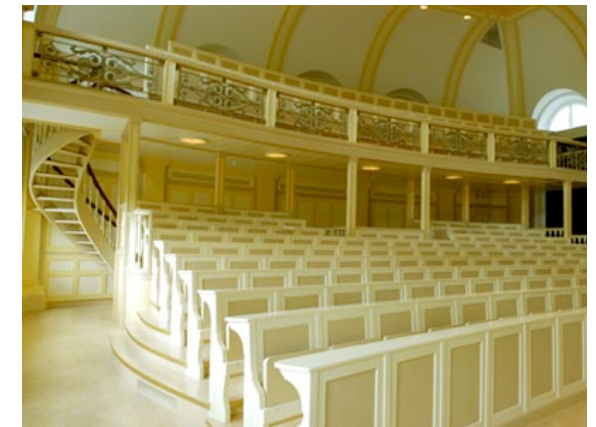
- Relevant concept at the heart of international children's rights
 - 'enabling children to engage with and participate in justice proceedings'
- Concept should be connected to other emerging areas:
 - Access to justice for children (incl. 3rd Optional Protocol)
 - Sustainable development agenda
- More *specific* knowledge and *specific* practical guidance needed
 - E.g. perceptions among professionals (see e.g. FRA 2015)
 - Specific contexts (e.g. refugee children, children & social media, biomedicine)
- More creativity is needed – more flexibility to accommodate children

Prof. Dr. Ton Liefwaard
Professor of Children's Rights &
UNICEF Chair in Children's Rights
Vice-Dean of Leiden Law School

E-mail: t.liefwaard@law.leidenuniv.nl
Twitter: @tonliefwaard



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