

Hearing a child with an interpreter: legal foundations

Respect, not overprotection

Child-friendly justice treats children with dignity, respect, care and fairness. It listens to children and takes their views seriously. Child-friendly justice is about fostering a responsible system solidly anchored in a professionalism that safeguards the good administration of justice and thereby inspires trust among all parties and actors involved in the proceedings.

The [Council of Europe Guidelines](#) define child-friendly justice as a system that “treats children with dignity, respect, care and fairness. It is accessible, understandable and reliable. It listens to children, takes their views seriously and makes sure that the interests of those who cannot express themselves (such as babies) are also protected”. Moreover, child-friendly justice is “age-sensitive, tailored to children’s needs and guarantees an individualised approach without stigmatising or labelling children. Child-friendly justice is about fostering a responsible system solidly anchored in a professionalism that safeguards the good administration of justice and thereby inspires trust among all parties and actors involved in the proceedings”. Respect for the child does not mean only protecting children’s rights but also guaranteeing dignity, taking a tailor-made approach towards the child, avoiding secondary victimisation, avoiding being overprotective and also not leaving children alone with the burden of decision-making.

Children should be:

- ✓ respected;
- ✓ provided with language assistance if they do not speak the language of the proceedings;
- ✓ informed;
- ✓ assisted by a trust person);
- ✓ allowed to choose their interpreter/lawyer/psychotherapist.

The right to information and expression

Children's rights to information and expression are granted by several international and transnational legal instruments such as the UN Convention on the Rights of the Child. The EU Directives applying to criminal proceedings and protecting children’s rights are: 800/2016 on procedural safeguards for children who are suspects or accused persons, 2013/48 and 2012/13 on the right to information, and 2010/64 on the right to interpretation and translation.

The UN Convention on the Rights of the Child states that children should be free to express their views in all matters affecting them (Article 12, section 1 UNCRC). For this provision to be implemented the child must have an opportunity to be heard in any judicial and administrative proceedings affecting him/her (Article 12, section 2 UNCRC). Recital 1 of [EU Directive 2016/800](#) states: “The purpose of this Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.” Recital 18 establishes that:

“This Directive should be implemented taking into account the provisions of [EU Directive 2012/13](#) and [2013/48](#). This Directive provides for further complementary safeguards with regard to information to be provided to children and to the holder of parental responsibility in order to take into account the specific needs and vulnerabilities of children.” EU Directive 2012/13 concerns the right to information in criminal proceedings while EU Directive 2013/48 deals with the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and with the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. [EU Directive 2010/64](#) grants suspected or accused persons unable to speak or understand the language of the criminal proceedings in which they are involved the right to interpretation and translation. This right applies also to children. In order to safeguard the child’s right to information and expression, it is advisable to make sure that the child:

- knows what is going on at all times during the proceedings;
- understands the aim of the proceedings;
- is aware of the role of all participants in the proceedings;
- is provided with language assistance by an interpreter and has the chance to choose a different interpreter from the one assigned to him/her.

Who is a trust person?

Child-friendly justice should enable children to feel safe. Being accompanied by a person whom they can trust can make them feel more comfortable in the proceedings. Since children are vulnerable, they should be assisted by a lawyer. An interpreter must never be confused as a trust person by a child. (S)he should be regarded as an impartial spokesperson for all participants.

The [Council of Europe Guidelines](#) on child-friendly justice state that “child-friendly working methods should enable children to feel safe. Being accompanied by a person whom they can trust can make them feel more comfortable in the proceedings”. The Guidelines also state that: “[The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#)” stipulates that a child may be accompanied by his or her legal representative or an adult of his or her choice, but that the person should be considered to be suitable. A reasoned decision can be taken against the presence of a given accompanying person”. In criminal proceedings, the right of the child to be assisted is enshrined in Recital (25) of [EU Directive 2016/800](#) on procedural safeguards for children who are suspects or accused persons, which states that: “Since children are vulnerable and not always able to fully understand and follow criminal proceedings, they should be assisted by a lawyer in the situations set out in this Directive. In those situations, Member States should arrange for the child to be assisted by a lawyer where the child or the holder of parental responsibility has not arranged such assistance. Member States should provide legal aid where this is necessary to ensure that the child is effectively assisted by a lawyer.” An interpreter must never be confused as a trust person by a child in an interview. (S)he should be regarded as an impartial spokesperson for all participants (Wadensjö 1995). Parents, relatives, friends and other minors should never act as interpreters, nor should the interpreter recruited for an interview belong to the same community as that in which the child lives.

In order to enable a child to feel safe in criminal proceedings:

- give the child a chance to choose a trusted person that (s)he wants to represent him/her;
- make sure you create an atmosphere in which mutual trust can be established.

In other proceedings – such as civil and asylum proceedings - although there is no general rule about the presence of a trusted person during an interview with a child, the decision to interview the child on his/her own or in the presence of parents or a trusted person should be based on the following criteria:

- the child's age;
- his/her willingness to be heard;
- his/her family situation;
- his/her social/religious/ethnic background;
- his/her specific, current situation and past experience (for instance if the child has suffered abuse and by whom).

Language matters

Child rights can be implemented and exercised only when a child is able to communicate in a language that (s)he speaks and understands. Although this can present a challenge in terms of finding an interpreter for languages of lesser diffusion or for dialects, an effort should always be made to ensure effective communication.

Children's language and cognitive abilities are only loosely related to (apparent) age and vary in relation to personal history and education. Child rights have come a long way since the adoption of the [UN Convention on the Rights of the Child of 1989](#). Yet, most of these rights can be implemented and exercised only when a child is able to communicate in a language that (s)he speaks and understands. In some countries there is more than one official language as well as a number of minority languages and/or dialects which may not be official but are spoken by ethnic minorities. The child may not speak one of the official languages or a minority language; (s)he may speak a dialect and have poor command of any other language. Although this can present a challenge in terms of finding an interpreter, an effort should always be made to ensure effective communication with the child. Moreover, language choice may also have psychological implications (Costa et al. 2015). For instance, using his/her 'own' language can make the child feel more at ease and allows the child to better express himself/herself. However, it may also bring up past negative or traumatising experiences or events. Using a foreign language may be a sign of autonomy or empowerment and may allow distancing from painful recollections but a child's (very) limited knowledge of the foreign language may also affect the interview. In order to give the issue of language due merit, allow the child to choose the language that (s)he prefers to use during the interview, but consider resorting to the help of a (stand-by) interpreter if language issues arise during the interview (Monteoliva 2017; Monteoliva 2020). Before starting the interview, it is also necessary to check if the child understands and is understood by the interpreter.

Communicating via an interpreter

You are no doubt aware that communicating via an interpreter is different. However, the interpreter should never be seen as an obstacle, rather as a means to making communication possible. It is important to discuss this during the briefing.

You are no doubt aware that communicating via an interpreter is different from communicating in a single language. However, the interpreter should never be seen as an obstacle, rather as a means to making communication possible. If instead the interpreter does not facilitate communication, (s)he is probably not a professional.

First of all, you need to feel comfortable with the seating arrangement: everybody must be able to see and hear each other well. In the case of sign language, being able to see the interpreter is crucial for a deaf child. Moreover, for you as an interviewer, it is important to create rapport with the child. Be aware of non-verbal communication and act accordingly: for this reason also, it is important to be able to see each other. Since communicating via an interpreter is a multi-party communication, unlike an ordinary conversation, remain conscious of the fact that all participants “co-construct” meaning. The interpreter is neither a machine nor an encyclopaedia: (s)he will flag when the meaning of what is said is hampered by linguistic issues (e.g. technical, complex, or taboo language), cultural issues (e.g. not speaking, keeping the head down, different concepts of time, taboo subjects), or register (e.g. formal vs. informal). Anything to reach the final goal should be negotiable, namely co-construction of meaning, i.e. the understanding of what has been said for all parties present. This does not mean that the interpreter interferes, rather that (s)he participates in the dialogue, which has become a triologue or a multi-party communication. As such, metacommunication (talking about the communication and how to optimise it) is necessary. This also helps to clearly define the role boundaries of the interpreter.