

6 - Children's right to effective participation

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Under Article 12 **CRC**, State Parties should ensure that the child who is capable of forming his or her views should express those views freely in all matters affecting the child. Under the second paragraph, children should be provided with the opportunity to be heard in any judicial and administrative proceeding affecting them, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law. Article 12 CRC is one of the four fundamental principles of the Convention as a whole and underpins all the other provisions of the Convention.

There is a direct link between the right to be heard and participation in judicial proceedings in that the entire process should be adjusted to ensure that children are heard in an appropriate manner so as to ensure that their participation is effective. Rule 14.2 of the, United Nations Standard Minimum Rules on the Administration of Juvenile Justice (the [Beijing Rules](#)) provides that proceedings shall be conducted “in an atmosphere of understanding which shall allow the juvenile to participate therein.” Also, the right to be heard and effective participation are discussed under two separate headings of [General Comment no. 24](#). In paragraph 45 of this General Comment, the CRC Committee specifies that children have the right to be heard directly in proceedings, not only through a representative and that they have the right to remain silent without this resulting in any adverse consequences for the child (See also Factsheet no. 7 – Children’s right to legal assistance). Paragraphs 58-61 of [General Comment no. 12](#) on the right of the child to be heard address directly the topic of child offenders. The Committee explains that children have the right to be heard directly throughout the criminal proceedings, from the investigation to the disposition phase. The right to be heard directly can only become meaningful if it is understood in the wider context of participation: where the child is informed in a manner suitable to their age and maturity about the charges, the criminal justice process and the possible measures taken by the court ([General Comment no. 12](#), § 60).

Laura Lundy has developed a model of child participation combining four different elements which together ensure that children’s voices are expressed in an authentic way without fear of reprisals or rebuke. Under this model the successful implementation of Article 12 requires the convergence of four elements: (1) space (children must be given the opportunity to express a view); (2) Voice (children must be facilitated to express their views); (3) audience (children must be listened to) and (4) influence (the view must be acted upon, as appropriate).

The elements of the Lundy participation model are equally relevant to children suspects or accused of having infringed criminal law and, as will be shown below, play an important role in case law as well as legislation in this field. Effective participation of children in the criminal justice field entails that the punitive goals of the criminal justice process do not overshadow the fact that the suspects or accused are children and should thus be provided with the necessary accommodations to participate effectively in the proceedings.

Effective participation of children in the criminal justice field encompasses many of the elements which have been discussed in Factsheet no 5 concerning Fair trial guarantees for children. On the basis of international legislation and case law, some particular aspects have been considered to be at the core of effective participation which is part and parcel of the right to a fair trial. These aspects are presented in more detail below.

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1. Public proceedings

One modification to the right to a fair trial for children suspected or accused of having infringed criminal law concerns the publicity requirement. Article 6 of the **ECHR** provides that “everyone is entitled to a fair and *public* hearing.” The interpretation of the publicity requirement was put forth before the ECtHR as early as 1998 in the landmark case of *T v. the United Kingdom* (no. 24724/94, judgment of 16 December 1999). The key question for the Court was whether “procedures which are generally considered to safeguard the rights of adults on trial, such as publicity, should be abrogated in respect of children in order to promote their understanding and participation.”

The case of *T v United Kingdom* concerned the highly mediatized trial of two boys (T and V) on charges of murder. At the age of 10, T and V abducted, battered to death and left on the railway tracks a 2-year-old boy.

They were subsequently arrested and stood trial for murder. The trial took place in public for over three weeks. The domestic court had made certain modifications such as allowing the suspects to see the courtroom in advance, shortening hearing times and permitting the presence of their parents and social workers. The remaining aspects of the proceedings unfolded in similar circumstances as for adult suspects. In particular, the case had attracted extensive media and public interest, it had been held in public; the child suspects had been placed on a raised dock to oversee the entire room; the judges had been wearing wigs, etc.

These aspects, and in particular the fact that the case unfolded under public scrutiny led the Court to find a violation of Article 6 (1) ECHR. The Court considered that the applicants did not participate effectively in the proceedings and that it was highly unlikely that they could have felt sufficiently uninhibited to properly give instruction to their lawyers or otherwise organize their defence.

Article 15 of the **Procedural Safeguards Directive** also provides that Member States are to protect children’s privacy during proceedings. Protection of privacy is ensured either through legislation providing that most court hearings involving children are to be held in private or by allowing judges to decide on the absence of the public.

The CRC Committee has also dealt with Children’s right to hearings behind closed doors in [General Comment no. 24](#). This right is considered one minimum guarantee for children. The Committee has added that exceptions should be clearly provided for by law and only allowed in exceptional circumstances. Further, the identity of the child should not be revealed and court files and records of children are to be kept confidential to third parties other than those directly involved in the adjudication of proceedings. The Committee has also recommended that case law reports be kept anonymous. The aim of all these requirements is to ensure that children are provided with a real chance for rehabilitation and reintegration into society (see [General Comment no. 24](#), §§ 66-71).

2. The right to follow proceedings

The ECtHR has expanded on the substance of effective participation for children in criminal proceedings in *S.C. v The United Kingdom* (no. 60958/00)

The case of [S.C. v The United Kingdom](#) concerns the trial of an 11 year-old boy for attempted robbery. At the hearing the boy had been accompanied by a social worker, he had not been required to sit in the dock, the judges were not wearing wigs and the court took frequent breaks.

The Court however found that the right to effective participation includes the right to follow proceedings which in the Court's view does not entail that a child should understand every evidentiary aspect or point of law. The Court has emphasized that effective participation entails that the accused has a broad understanding of the nature of the trial process, of what is at stake for him or her, including the significance of any penalty which may be imposed. Overall, the accused should be able to understand the 'general thrust of what is said in court'.

In the instant case, the ECtHR relied on the evidence administered domestically which attested that the boy had a learning difficulty and that he did not comprehend the situation he was in, nor that he was facing a custodial sentence. For these reasons, the Court found a violation of Article 6 (1) ECHR – the right to a fair trial taking into account that the applicant could not have participated effectively in the proceedings.

3. Right to adapted / child-friendly proceedings

Both notions of effective participation and children's right to a fair trial imply that the proceedings are adapted to them or that they are held in a child-friendly manner. These guarantees are meant to benefit of children and not as a waiver or authorization for the state to remove certain guarantees of the criminal justice process which exist for adults (ECtHR, *Blokhin v Russia*, ECSR, *International Commission of Jurists v Czech Republic*). However, there is no list of exhaustive criteria which need to be met for ensuring that the proceedings are child friendly. It is important to acknowledge that children are different and legal systems should be allowed enough flexibility to adapt proceedings to the individual child. The aim is to ensure that the child suspect / accused is able to follow the process, instruct the lawyer, give evidence and make any other appropriate decisions.

Under Article 13 (2) of the Procedural Safeguards Directive, Member States are to ensure that children's treatment protects their dignity, it is appropriate to their age, maturity and level of understanding and takes into account any special needs, including any communication difficulties, that they may have.

The list below includes an overview of aspects to take into account in ensuring the full respect of the children's right to adapted proceedings:

- The setting should be child sensitive and not intimidating (ECtHR, *T v UK*, CoE [Child Friendly Justice Guidelines](#), § 54)
- The language should be child friendly (from the moment of information about the charge, until the end of the proceedings, including the pronouncement of the judgment) (General

Comment no 24, § 47; [Child Friendly Justice Guidelines](#), § 56)

- The child should be accompanied by the holder of parental responsibility / responsible adult throughout the process (Panovits v Cyprus; Procedural Safeguards Directive);
- Interviews / police questioning should be audio-recorded (CoE [Child Friendly Justice Guidelines](#), § 59; Procedural Safeguards Directive)
- Court sessions should be adjusted to the child's attention span (T v UK, CoE [Child Friendly Justice Guidelines](#), § 61)
- Court sessions should be kept behind closed doors (T v UK, CoE [Child Friendly Justice Guidelines](#), Procedural Safeguards Directive, [General Comment no. 24](#))
- The child's identity should be protected (Procedural Safeguards Directive, [General Comment no. 24](#))
- Criminal proceedings involving children should be treated urgently (Article 13 (1) of the Procedural Safeguards Directive, Article 6 ECtHR)

Further reading

Academic Literature:

Forde, L. (2018). Realising the Right of the Child to Participate in the Criminal Process. *Youth Justice*, 18(3), 265-284.

Owusu-Bempah, A. (2018). The interpretation and application of the right to effective participation. *The International Journal of Evidence & Proof*, 22(4), 321-341.

Reports

EU Fundamental Rights Agency: [Child-friendly justice Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States](#);