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Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE)

Summary report on child consultations

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**INVOLVING CHILDREN IN THE WORK OF
CJ/ENF-ISE TO PROMOTE THE BEST INTERESTS OF THE CHILD
IN PARENTAL SEPARATION AND CARE PROCEEDINGS**

Child consultations
in Hungary, Portugal and Italy

Report
2022



"[The court] does not focus on the best interest of the child, but on the lesser of two evils." (child participant, Hungary)

"We expect that everyone knows their roles, why they are here, what will happen, how many times we will meet them." (child participant, Hungary)

"What needs not to be changed necessarily, should not be changed. Or only together." (child participant, Hungary)

"When I'm older, I will go to the court to say whom I want to stay with. Why can't I go [there to say it] now?" (child participant, Portugal)

"Well, I also want to stay with my father, I went to the court say it and they wrote it down and my mother was upset with us – why don't they [professionals at the court] keep secret?" (child participant, Portugal)

"I just want my mother to stay well." (child participant, Portugal)

„It is also necessary to make the child participate in everything that happens, communication is really important. Torn between the fact of having a family and friends' network, its own structure, points of reference and support, habits and life in their own city, going away we might find ourselves alone in a new city, different, unknown, maybe distant with a different language, we should change networks, communities, friends, school, routines, neighbourhoods to which we are linked." (child participant, Italy)

„We are often not informed about the consequences." (child participant, Italy)

Table of Contents

Background.....	5
Focus of the consultations.....	5
Methodology	6
Main findings.....	6
<i>On the best interests of children</i>	6
<i>On parental separation</i>	8
<i>On care proceedings</i>	9
<i>On legal proceedings</i>	10
Evaluation of the sessions.....	11
Recommendations for the Council of Europe.....	11
<i>On awareness-raising and capacity-building</i>	12
<i>On guiding member states' legislation and practice</i>	13
Annex 1. Summary of the child consultation groups and sessions	14

Summary report on child consultations

What makes children feel better and respected in parental separation and care proceedings? The Council of Europe is aiming to provide guidance on the best interests of the child in these contexts and invited children to share their views on this issue. A series of child consultations were held in Italy, Hungary and Portugal between May and July 2022, involving 59 children aged from 7 to 19 years old, including children who have experienced those contexts in their lives and therefore have a direct perception on what they feel or felt while living those situations. The report summarizes the main findings of the consultations and the recommendations that should be considered by the Council of Europe in drafting the legal instruments and designing their activities. Our findings add to the limited literature on children's views on parental separation and care proceedings and to even more limited consultation processes with children on those issues and contexts.

Background

The Council of Europe Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care Proceedings ([CJ/ENF-ISE](#)) has been entrusted by the Committee of Ministers of the Council of Europe to develop draft recommendation(s) and implementation tool(s) on the rights and the best interests of the child in parental separation and in care proceedings. This work aims to provide guidance in this area to member States and other stakeholders, in particular practitioners. In 2022, the Council of Europe initiated children's consultations to ensure that children's views are taken into account in their work. Consultations took place in 3 countries with the support of partner organisations. In Hungary, it was facilitated by Hıntalovon Child Rights Foundation, who also coordinated and supported this process in all countries as the Council of Europe's consultant. In Portugal, child consultations were implemented by the National Commission for the Promotion of the Rights and the Protection of Children and Young People (CNPDPJ), and in Italy, they were facilitated by the Authority for Children and Adolescents.

Focus of the consultations

- What aspects should adults take into account when considering the best interests of the child in parental separation/ care proceedings?
- What should be the role of children in parental separation/ care proceedings? How actively do they want to be involved?
- How should the judge take the child's opinion into account in divorce/ care proceedings?
- What information do children need in these contexts?
- Who could they turn to for help? Who are the trusted adults that can support children during their parents' divorce?

Methodology

In total, 24 focus group consultations were held between May and July 2022 with the participation of 59 children, in groups of 3 to 8 person. Children were consulted face-to-face, in 60 to 90 minutes sessions using a variety of non-formal education tools and techniques. Each consultation was led by two experienced facilitators who used child-friendly language and heard the children in child-friendly environments (*i.e.*, in spaces where they felt comfortable and safe, while being provided privacy). Discussions focused on parental separation in Hungary and Italy and addressed care proceedings in Portugal. In the latter case, the methodology encompassed the visit of the facilitators to the facilities in which children are living or that children are attending, as a result of legal requirements involving their current situation and/or to allow them to be in their own spaces. For further details on the profile of the groups and on the arrangements of the sessions, please refer to Annex 1.

Consultations were designed and carried out based on the project's methodological guidelines, abiding the Child Safeguarding Policy of the partner organizations. They are in line with international standards and guidelines on child participation, including those set by the Council of Europe and, in the case of Portugal, also respecting the "Safeguarding Policy for the Promotion of the Rights and the Protection of Children and Young People", produced and approved by the National Commission for the Promotion of Rights and the Protection of Children and Young People, whose child-friendly version was distributed to children prior to the consultations held. The decisions regarding the methodology and focus of the sessions were based upon the presumption that these should constitute an opportunity for children to engage in meaningful participation, as well as to empower them on their rights enshrined in the United Nations Convention on the Rights of the Child. This approach led to a methodological heterogeneity and rich outcomes. Reports of the national consultations, produced by the partner organizations, contain detailed information about the sessions and the results.

Main findings

On the best interests of children

- Children mentioned a range of material, emotional and practical aspects which overlapped with those suggested by the Council of Europe, among others the need to regularly consult children on issues that affect their lives, ensure a healthy environment for the child; to guarantee child the freedom to make choices, to respect for their views.
- Children stressed that adults should think about the child's well-being and family in the first place. Among others, adults should try to understand children and the situation in which the child/young person is at the moment and pay attention to their actions and attitudes.
- Adults should hear the opinion of the child/young person attentively and respectfully, and do not assume that they (as adults) know what is best for them. Adults should not judge

- children, make the effort to be calmer and more patient and give more affection to children/young people and help them with overcoming the daily difficulties.
- Adults should not mind the rules and regulations more than they care if children/young people are ok.
 - Ensuring stability and trying to minimise changes in the children's life were important aspects of their best interests.
 - Maintaining a sibling relationship was found key, but this does not mean that there is no need to weigh in their interests individually.
 - Age played a role in evaluating which parent the child should be with, their supervision, but also in decisions on from whom and how they ask for help. Children highlighted that age and maturity are not the same.
 - Children agreed that no argument or proposal could be generalized. Individual assessment was considered very important.
 - Children expressed the wish that the consideration of children's best interests should not be about choosing the lesser of two evils, but really about knowing and striving for the best interests of the children.
 - In general, children could relate to their well-being rather than to their best interests. However, children could feel more comfortable regarding the decisions made by adults, namely in some occasions upon being empowered about their best interests and seeing them through a holistic and long-term view. In those occasions, children's discomfort was mostly due to the lack of dialogue with them in a language that they understand and to the need to adjust views that are more respectful of children's best interests, both in short and long-term.
 - Children highlighted that identifying the best interests of the children does not necessarily mean that they will be well, and it is important to pay particular attention to this difference (the best interests of children are not equal to their well-being).
 - Adults mistakenly believe they are protecting the best interests of the child when they are hiding the truth or try to give the impression that everything is ok when nothing is actually ok.
 - Children found important to make regulations for children with which adults comply themselves.
 - Children felt that it was important to achieve a real impact when they expressed their views. They need to be believed and should be taken seriously, as they feel very clearly when adults are not putting children in the first place or are not respecting or attentively hearing them.
 - Children need time to mentally get used to a new situation, to have their new situation very well explained to them by adults in a language that they can understand, time to put their own concerns and questions and to have them taken by adults as important, as well as clarified by the latter.
 - Adults should not forget that children/young people are not adults, but they are humans, have feelings and make mistakes, too.

- The children highlighted that it takes courage for professionals to admit that children are right and admitting a mistake would make professionals feel ashamed in front of their peers.
- Adults should recognize the effect their words and deeds have on the children and should not act later as if nothing has happened, because children expressed they feel clearly that they are disrespected when that happens.
- In case of care proceedings, the geographical distance of the place where the family resides to the residential care institution alongside with the job schedules of the relatives should be taken into account.
- The profile of professionals who work with children should be taken very seriously when a selection process is taking place, as services to be provided imply that they are trustable, respectful, calm, patient and open to engage in true dialogue with children, even when they have to be firm – firmness is needed and very well understood by children if children are explained the underlying reasons to that in a language that they understand, or when it is clearly felt by them that it is reasonable, adequate or fair.
- The level of comprehension of the professionals towards the children/young people should be assessed, too.

On parental separation

- For children, divorce or parental separation is primarily an emotional process, not a legal process. Children focus on the family's and their well-being, which is not restricted to the time and events of the legal process.
- Children often experience a compulsion to choose, but they want not to be put under pressure. Children highlighted that they (the children) shouldn't be burdened with the responsibility of decision. They are comfortable with different levels of involvement, which can vary not only individually but also over time. Children acknowledge that the court covers more ground regarding the divorce proceedings, it is not the intention that the child should make a decision. They do not think that their opinion would be equal to their best interests.
- The children felt that children's opinions are often uncertain, change and are subject to influence, but that if for any given reason they have a strong opinion regarding who they want to stay with, then it should definitely be given more weight, and the child's reasoning is also very important. Children found the review of the decision important.
- Children's participation in divorce proceedings evokes a lot of negative feelings in the children. Some of these come from their encounters with the justice system, child protection and official agencies, some from fear of their relationship with their parents and other important relationships, and to a lesser extent from their anxieties about the future. The process is generally perceived as difficult and unpleasant.
- The motivation of not trying to cause any trouble for the parent is a determining factor in the involvement/willingness to be involved for the children.
- It is also good to listen to the children regarding the placement of half siblings, as they also form part of the family.

- It is worth talking to children about the normativity of traditional and other family models, even if this does not directly reduce the stress around expressing opinions.
- Children wish to talk to someone about their situation and related questions and feelings due to their parents' divorce.
- Adults should not assume that children have a well-established opinion about their parents' divorce and how to organise their own lives. They need to be supported in forming their point of view and in paying attention to their emotions.
- Children prefer that their separated parents make shared choices about their life or at least make them transparent to avoid any conflicts.
- They would like to have someone around who provides them emotional security. Children do not feel that they have adults to turn to in a divorce proceeding (or do not know that there are adults available) who are specifically looking out for their feelings and well-being.
- How and to whom they turn to is children concluded that it was not so much the position as the attitude that that is important.
- Children would need a person who supports them and does not want to solve their problems, and certainly does not feel sorry for them. Not biased, capable of objectivity.
- Children are in general untrusting towards officials, including the support network itself.
- In general, it is difficult for children to ask for help from adults. They would like to have more control regarding when and how they can ask for help, moreover they emphasized the availability of reliable and foreseeable social support.
- They want a supporting expert whom they would get to know at the beginning and would be there throughout the process, accompanying and narrating it. A 'comfort person' – as they called– would function as an 'information hub for feelings'.

On care proceedings

- Decisions regarding care proceedings should be informed about children's views on how children perceive and feel what could be child-friendly residential care contexts that is built upon the best interests of the child.
- Children highlighted that adults should listen to children's views on the rules that are created in residential care institutions and take them into account.
- Children put forward several ideas about the size, equipment of facilities and other aspects that influence their daily life, such as food and nutrition, health and hygiene, room arrangements, access to technologies, hobbies and sports. Children suggested that residential care institutions should have a maximum limit of 20 children, distributed by age range. They would like to receive healthy and varied meals, 5 meals a day and more flexibility and freedom in choosing food. Guarantee of privacy was also underlined.
- Children and young people would like to get enrolled in activities they enjoy, such as sport and, musical activities, videogames, and want to be allowed to spend time with their friends inside and outside the residential care facilities.
- The profile, attitude and behaviour of professionals working in residential care institutions matter a lot for children. In their opinion, the recruitment and selection process should privilege those who have the necessary relevant personal characteristics, are experienced

in working with children/young people and are qualified. Professionals should have knowledge about human rights and a realistic take on what they do. They should be willing to care about what is going with the children/young people and help them overcome their fears. They should not judge children by their previous or present acts, nor release their own frustrations onto children/young people.

- Children highlighted the importance of learning to manage their money from early age.
- Residential care facilities should keep up with the evolution of technologies. Internet access was found crucial, and the rules regarding the use of mobile phones and technologies were also sensitive topics, which helps them to feel like normal people, too.
- The institution should be such that children/young people would feel the same as being at home, with children/young people and the professionals as a family, according to their perspective of being in their own social space, with people who bonds with and cares about them as a person who is loved and protected, as expressed by the children irrespectively of having had that experience with all members of their family, just one of them, or just only with friends or neighbours.
- Children expressed their need to have more flexibility in keeping contact with their family, either by telephone, videocall or in-person visits, and to have more say in deciding on whether to go or talk with them or not, as they clearly understand when it is not possible in case their own safety is at risk and if this is explained to them in a language they understand.
- Children stressed that professionals should not forget that not all the families and relatives represent danger to the child/young person, therefore a case-by-case assessment is important.
- Autonomy was found very important regarding many issues, such as study time, going out, eating or managing their money.
- Children highlighted that respect should be a core value.

On legal proceedings

- Children found preparation for legal proceedings crucial, both practically and emotionally.
- Among others, children highlighted that they would like to know in advance what is about to happen, be informed, and be prepared for a scenario. They want to know what influence they have on certain events during the proceeding, how do the professionals use their opinions, and what their options are.
- Formal encounters can be emotionally upsetting for children, preventing them from paying attention to information, even if the professional has used child-friendly language.
- Hearings were compared school exams, where they feel like they and their families are judged. They need clear reassurance that their best interests are guiding every person or process.
- Children stressed the need to be sure whether telling the truth is harmful for them or not, because children may have been taught that it is better to keep quiet regarding family matters. Initiations to talk about a difficult situation should be valued.

- Children prefer to have more opportunities to gather information, receive them from different people. Parents are key in this process, but since they are not impartial, children see it favourably if there is a constant person, a professional, to accompany them through the process who also helps informing them.
- Children found the written paper leaflets useful to read later at their convenience and pace, and they highlighted that they can be overwhelmed by getting loads of information at the same time.
- The manner in which the judge informs the children about the decision and how the children find out about the judgement require special attention.
- Children demand seriousness, as well as consideration and awareness of their maturity.

Evaluation of the sessions

Children showed a great interest in expressing their views on parental separation and care proceedings. It was a general experience that children have never or very rarely spoken about these topics – not even with their friends – and that it felt liberating and encouraging to have the attention of adults. The discussions also illustrated the complexity of feelings children face in these contexts and showed that these are sensitive questions that shake children and young people emotionally – stressing the need to plan and implement these consultations with particular care. Children’s motivation and positive feedback confirm that child consultations are well appreciated, with several children and young people feeling empowered, important and motivated to participate in further consultations.

Recommendations for the Council of Europe

Child participants expressed that could be taken as recommendations to the Council of Europe:

- Organise consultation sessions involving several children/young people more regularly, including those in vulnerable contexts. There shall be interest in hearing and taking into account the opinion of children/young people regarding their life, covering the multiple areas that affect their interests.
- Take measures that lead to faster but yet sustainable changes, for instance encourage steps that entitle the rights for stakeholders to make the necessary changes at the institutional level with a higher degree of autonomy and according to their responsibilities to promote and protect children’s rights.
- Raise awareness on children’s rights through specific communication activities to children, parents and professionals.
- Professionals working in the areas of separation and of residential care (lawyers, social workers, psychologists and above all judges) should be provided with continuous training on the rights and listening to children and young people. Children consider training mandatory.

- Pay more attention to cultural diversity, that can cause conflicts for the separating and new families.
- Provide support to families in resolving their conflicts.
 - o Support children struggling with the separation of parents to orient themselves on the new family and/or residential structure, in case it is applicable to the best interests of the child and within the framework of the UNCRC.
 - o Increase access to professionals who can be contacted free of charge, with special regard to those who provide psychological support and help them manage the separation.

Following the evaluation of the children's consultations, we, as consultants and partners of the Council of Europe in this project, recommend considering the following steps or measures, in addition to children's ideas.

On awareness-raising and capacity-building

- Create separate manuals for professionals on children's key messages. Use "children's mouths" summaries of what they want, how they can help them, by target group. Besides practical information, highlight children's feelings when they encounter professionals.
- Collect existing child-friendly materials to one platform. Consider that general information about child-friendly justice also promote children's well-being and children's rights in parental separation or care proceedings.
- Produce targeted child-friendly materials in various topics:
 - o about their most important rights, namely around divorce and care proceedings, separately
 - o tips what to keep in mind when they express their views in a legal procedure and in residential care contexts
 - o timeline that outlines the major phases of the procedure, and describes what will happen to them (who, what, when, where)
 - o vocabulary that explains unfamiliar expressions, also if they are common among public but used differently
 - o ideas that help them orient themselves on the new family or residential care structure
- Provide guidance to adults on child-friendly language and on how to use child-friendly materials. Develop tools that can be used on their own but point out that they primarily support a discussion between a child and an adult.
- Develop materials that explain what child participation means, namely how children may feel comfortable, safe and have a meaningful experience in this context (highlighting that it is not black or white, what makes the process safe and meaningful, and avoids putting too much burden on children).
- Identify approaches and share good practices how to promote children's participation about parental separation and care proceedings in various levels (institutional, local, national and international)
- Make user-friendly summaries from the legal instrument, which are easy-to-understand and attractive also for practitioners with various background (e.g. social workers, and professionals with non-legal background).
- Produce awareness-raising materials for parents, too.

- Create awareness-raising materials about the principle of “best interests of the child”, and define its relation to (and difference from) well-being and participation.
- Produce materials that describe children’s needs. They are more universal, therefore they are easier to adopt in all member states, too.
- Contribute to the discourse on children’s independent legal representation.
- Use a variety of forms and channels to disseminate your messages. Make online and print versions available as well, bearing in mind which platform fits your target audience best, along with materials produced with resource to other forms of expression, targeted at specific groups of disabled children.
- Continue organizing consultations with children, online events and webinars and developing training and e-learning materials.

On guiding member states’ legislation and practice

- Encourage the involvement of children at international, national, local and institutional level and the development of direct, anonymous feedback mechanisms that invites children to express their opinions about the procedure.
- Promote, develop and implement standards about trauma informed procedure and justice and childcare system.
- Promote integrated, multisectoral support and teamwork among professionals who help or contact children during parental separation and during residential care.
- Support access to services focused on children's emotional well-being. The justice system and the child residential care system should strengthen the ties with mental health support services.
- Guarantee access to preventive services, where families receive support, primarily of a mental and social along with that of legal nature.
- Support multisectoral trainings for professionals, which help to clarify competences and strengthen cooperation.
- Support access to materials on the functioning of the justice system and of the residential care system, including child-friendly justice.
- Encourage the development and use of independent legal representation of children in civil proceedings.
- Encourage steps that contribute to the normalization of different family structures.

Annex 1. Summary of the child consultation groups and sessions

On the Group		On the sessions				
Group	Brief description	Number of sessions	Date	Place	Format	Duration
Hungary A	<ul style="list-style-type: none"> 4 girls, two of whom had divorced parents and two of whom had a closer experience of the issue through close friends and relatives Age: 14 to 19 From Budapest or its agglomeration 	5	May and June 2022	Facilities of the Hintalovon Foundation	<ul style="list-style-type: none"> In-person two facilitators, with the assistance of Hintalovon's lawyer and psychologist 	90 minutes each session
B	<ul style="list-style-type: none"> Child Rights Ambassadors of Hintalovon 2 boys and 6 girls Age: 16 to 18 From Budapest and the countryside 	1	June 2022	Facilities of the Hintalovon Foundation	<ul style="list-style-type: none"> In-person two facilitators, with the assistance of Hintalovon's lawyer and psychologist 	Ca. 60. minutes
Italy	<ul style="list-style-type: none"> 5 children, only one has experience of parental separation Age: 15 to 17 Italian 	6	May and July 2022	In a classroom of the headquarter of the Authority (AGIA)	<ul style="list-style-type: none"> In-person Facilitated by 2 officials of the Authority for Children and Adolescents, one with legal background and the other with social background 	Ca. 60. Minutes each session
Portugal A	<ul style="list-style-type: none"> 2 girls + 6 boys admitted to an educational guardianship center as a result of the application of a guardianship measure of internment Age: 15 to 17 	2	July 18 and 20, 2022	Facilities of an educational guardianship center	<ul style="list-style-type: none"> In-person Facilitated by the CNPDPCJ 	Ca. 90 minutes each session

	<ul style="list-style-type: none"> • Countries of origin: Portuguese, Angolan, Romanian 					
B	<ul style="list-style-type: none"> • 8 boys admitted to an educational guardianship center as a result of the application of a guardianship measure of internment • Age: 16 to 19 • Nationality: all Portuguese, some of which having Kenya and Ivory Coast as country of origin 	2	July 19 and 21, 2022	Facilities of an educational guardianship center	<ul style="list-style-type: none"> • In-person • Facilitated by the CNPDPCJ 	Ca. 90 minutes each session
C	<ul style="list-style-type: none"> • 8 boys admitted to an educational guardianship center as a result of the application of a guardianship measure of internment, 4 of which in a closed regime and 2 in a semi-open regime • Age: 15 to 18 • Nationality: all Portuguese 	2	July 22, 2022	Facilities of an educational guardianship center	<ul style="list-style-type: none"> • In-person • Facilitated by the CNPDPCJ 	Ca. 90 minutes each session
D	<ul style="list-style-type: none"> • 2 girls + 1 boy admitted to a residential care institution with a view to family reintegration • Age: 8 to 12 • Nationality: all Portuguese 	2	July 22 and 25, 2022	Facilities of the residential care institution	<ul style="list-style-type: none"> • In-person • Facilitated by the partner organisation in cooperation with the local Commission for the Protection of Children and Young People regarding the adaptation of the CNPDPCJ script 	Ca. 90 minutes (first session) Ca. 60 minutes (second session)

E	<ul style="list-style-type: none"> ● 4 girls + 3 boys admitted to a residential care institution ● Age: 12 to 16 ● Nationality: all Portuguese 	1	July 25, 2022	Facilities of the residential care institution	<ul style="list-style-type: none"> ● In-person ● Facilitated by the CNPDPCJ 	Ca. 120 minutes
F	<ul style="list-style-type: none"> ● 5 girls + 3 boys ● Age: 7 to 10 ● Countries of origin: Portugal, Angola 	3	July 19, 25 and 27, 2022	Facilities of the reception center attended by the children and (some of) their relatives	<ul style="list-style-type: none"> ● In-person ● Facilitated by the partner organisation 	Ca. 90 minutes each session