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Promoting the participation by children in decisions affecting them

Reply to Recommendation[1]: Recommendation 1864 (2009)
Committee of Ministers

1. The Committee of Ministers has examined Parliamentary Assembly Recommendation 1864 (2009) on "Promoting the participation by children in decisions affecting them". It has communicated the recommendation to the governments of its member states and to the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC), the European Steering Committee for Youth (CDEJ), the Steering Committee for Education (CDED), the European Commission for the Efficiency of Justice (CEPEJ) and the Programme "Building a Europe for and with children". The opinions received are appended to this reply.

2. The Committee of Ministers agrees with the Parliamentary Assembly about the importance of promoting children's participation in decisions affecting them. It laid down the principle of children's participation in justice in the European Convention on the Exercise of Children's Rights (ETS No. 160) in 1996. Article 3 of the convention guarantees the rights for children "to receive all relevant information; to be consulted and express his or her views; [and] to be informed of the possible consequences of compliance with these views and the possible consequences of any decision." The Committee of Ministers encourages those member states which have not yet done so to sign and ratify this convention. It furthermore recalls its Recommendation No. R (97) 3 to member states on youth participation and the future of civil society and its Recommendation No. R (98) 8 to member states on children's participation in family and social life.

3. The programme "Building a Europe for and with children" was launched by the Committee of Ministers in 2006 as a response to mandate given by the Heads of State and Government of the Council of Europe at the Third Summit. In 2008, it was prolonged for three years as the Strategy on the Rights of the Child 2009-2011 (Stockholm Strategy) was adopted. Participation of children and their influence in society is one out of five strategic objectives of the Strategy, which provides, *inter alia,* that the Council of Europe should promote children's access to information concerning their rights and human rights education for children; promote awareness raising on the right of the child to participate in decision-making processes and facilitate exchange of experience and good practices (in relation to dialogue with decision-makers at all levels, to individual decisions that concern children, such as in courts, the social services, schools and health and medical care and to positive parenting and family policies).

4. The Committee of Ministers wishes to highlight the intergovernmental work presently carried out by the Council of Europe in the field of child-friendly justice. As a follow-up to the 28th Conference of the European Ministers of Justice (Lanzarote, October 2007) and as one of the core pillars of the Stockholm Strategy, European guidelines on child-friendly justice are being prepared. The terms of reference the Committee of Ministers has given to the Group elaborating these guidelines follow the same line of thought as the Assembly's recommendation by requesting the preparation of an instrument which – based on existing international, European and national standards as well as on the case law of the European Court of Human Rights – should guarantee children's effective access to justice and right to information, representation and participation in an adapted and meaningful manner. Under these guidelines, the place and voice of children

1. adopted at the 1069th meeting of the Ministers' Deputies (4 November 2009)

should be fully respected in all types and at all stages of proceedings involving or affecting them. In addition, in its working methods, the Group should ensure as far as possible the involvement of children and should take children's views into consideration. The Assembly's recommendation has been brought to the attention of the Group.

5. On the issue of child participation in the field of adoption of children, the Committee of Ministers draws attention to the European Convention on the Adoption of Children (revised) (CETS No. 202), which aims at harmonising the substantive law of the member states by setting minimum rules on adoption and updates the 1967 Council of Europe Convention on Adoption of Children. The revised convention reasserts in Article 4(1) that the principle of best interests of the child, as stipulated in the United Nations Convention on the Rights of the Child, requires the consent to adoption of a child considered by law as having sufficient understanding and in all cases when older than 14 (Article 5). It also stipulates that, as far as possible, the child should be consulted and his or her views and wishes should be taken into account having regard to his or her degree of maturity (Article 6). The Committee encourages those member states which have not yet signed and ratified the revised convention to do so as soon as possible.

6. The Committee of Ministers has recently established an Ad hoc Advisory Group on child and youth participation under the co-management structures of the Youth sector. The terms of reference of the Advisory Group foresee notably the implementation of national policy reviews focusing on child and youth participation, the elaboration of guidelines as well as the development of educational and training material.

7. The Committee of Ministers finally draws the Parliamentary Assembly's attention to the activities carried out in the education sector, which include policies to promote human rights education and children's participation in the democratic functioning of schools; training for educators on children's rights and participation and the development of child-friendly information on the Council of Europe's instruments. Within this context, a series of handbooks for teachers on education for democratic citizenship and human rights have been elaborated and translated into several languages. These handbooks, which have been disseminated to teachers, contain numerous references to the right of children to participate in decisions affecting them and are designed to foster their skills so that they can fully exercise this right.

8. The Committee of Ministers will continue to keep the Assembly informed about developments as regards child participation and, in particular, about the progress with the implementation of the programme "Building a Europe for and with children", including the elaboration of guidelines on child-friendly justice and guidelines on national integrated strategies for the protection of children from violence. The latter guidelines, to be adopted in November 2009, are based on the principle of child participation. They call for children's meaningful participation – according to their evolving capacity and with their informed consent – in the planning, implementation and evaluation of national, regional and local violence prevention policies and programmes.

Appendix 1 to the reply

Opinion of the Bureau of the European Committee on Legal Co-operation (CDCJ-BU)

1. On 13 March 2009, the Standing Committee acting on behalf of the Parliamentary Assembly adopted Recommendation 1864 (2009) "Promoting the participation by children in decisions affecting them" (hereafter "the recommendation"). During their 1052nd meeting on 25 March 2009, the Ministers' Deputies decided to transmit the recommendation to the European Committee on Legal Co-operation (CDCJ) for information and possible comments by 30 June 2009.

2. The Bureau of the CDCJ takes note of the recommendation and decides to comment in the present opinion on issues relating to children's participation in justice as well as on aspects relating to adoption of children.

3. As regards children's participation in justice, the Bureau of the CDCJ welcomes the reference made in paragraph 2 of the recommendation to the European Convention on the Exercise of Children's Rights (ETS No. 160) and would like to explicitly recall that Article 3 guarantees the rights for children "to receive all relevant information; to be consulted and express his or her views; [and] to be informed of the possible consequences of compliance with these views and the possible consequences of any decision." It calls on the Committee of Ministers to encourage the signature and ratification of this convention.

4. Furthermore, the Bureau of the CDCJ wishes to underline the work currently carried out in the field of child-friendly justice. As a follow-up to the 28th Conference of the European Ministers of Justice (Lanzarote, October 2007), a Group of Specialists has been set up to prepare European guidelines on child-friendly justice. This activity is ranked as one of the major activities undertaken by the Committee of Ministers on children's rights and constitutes a core pillar of the Council of Europe's Strategy on the rights of the child for 2009-2011. It is therefore carried out in a way which is closely linked to the transversal Council of Europe programme "Building a Europe for and with children". Since the Lanzarote conference, Council of Europe experts' reports have been prepared and two high-level conferences have been organised in Stockholm (8-10 September 2008) and in Toledo (12-13 March 2009). They provide important and valuable input into the work of the Group of Specialists on child-friendly justice (CJ-S-CH) (hereafter "the Group"), which was launched in early 2009.

5. It should be noted that the terms of reference[2] of the Group follow the same lines as the recommendation by requesting the preparation of an instrument which – based on existing international, European and national standards as well as on the case law of the European Court of Human Rights –should guarantee children's effective access to justice and rights to information, representation and participation in an adapted and meaningful manner. Under these guidelines, the place and voice of children should be fully respected in all types and at all stages of proceedings involving or affecting them. In addition, in its working methods, the Group should ensure as far as possible the involvement of children and should take children's views into consideration.[3]

6. The Bureau of the CDCJ considers the recommendation to be particularly timely and has decided to bring it to the attention of the Group as it embarks on its task,[4] highlighting in particular recommendations relating to:

– the assessment of legislation, policies and practices vis-à-vis children in all decision-making processes, child's consent and consequence of setting a minimum age-limit (paragraph 8.1.);

– specific needs of vulnerable groups such as children with disabilities, underprivileged children, very young children, children in prisons or other hazardous environments and under-age migrants or asylum-seekers (paragraph 8.2.) and children placed in institutions (paragraph 13.2.);

– child-friendly information in regional languages (paragraph 8.3.);

– children's consultation on access to and quality of existing services (paragraph 8.4.);

– training of legal professionals on children's rights and participation at various ages (paragraph 10.2.);

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2. See paragraph 4.i.
3. See paragraph 6.i.
4. The Group of Specialists on child-friendly justice (CJ-S-CH) held its first meeting in Strasbourg on 16 and 17 April 2009.

– the role of ombudspersons for children and of other independent institutions in promoting and protecting children's rights, in particular in dealing with individual complaints and applications from children (paragraphs 13.1.).

7. Regarding references made in paragraphs 7 and 8.1. of the recommendation to the participation of children in the field of adoption of children, the Bureau of the CDCJ would like to draw attention to the European Convention on the Adoption of Children (revised) (CETS No. 202). This convention aims at harmonising the substantive law of the member states by setting minimum rules on adoption, updates the 1967 Council of Europe Convention on Adoption of Children in line with the case law of the European Court of Human Rights and takes into account social changes over the last 40 years.

8. It takes into account the provisions of the United Nations Convention on the Rights of the Child of 1989 and the European Convention on the exercise of children's rights (ETS No. 160). In particular, the revised Convention reasserts in Article 4(1) the principle of best interests of the child as stipulated in the United Nations Convention on the Rights of the Child, requires the consent to adoption of the child considered by law as having sufficient understanding and in all cases when older than 14 (Article 5) and stipulates that, as far as possible, the child should be consulted and his or her views and wishes should be taken into account having regard to his or her degree of maturity (Article 6).

9. The Bureau of the CDCJ would like to recall that the Council of Europe member states are strongly encouraged to sign and subsequently ratify the revised convention as soon as possible, and to participate in the two-day conference which will be organised in co-operation with the European Commission on the topic of the best interests of the child in adoption proceedings to take place in Strasbourg on 26 and 27 November 2009. To date, nine Council of Europe member states[5] have signed the revised Convention on Adoption of Children.

5. Armenia, Belgium, Denmark, Finland, Iceland, Norway, Romania, Ukraine and United Kingdom.

Appendix 2 to the reply

Comments by the Bureau of the European Steering Committee for Youth (CDEJ)

The Bureau of the CDEJ welcomes the recommendation, especially in view of the recent establishment of an Ad hoc Advisory Group on child and youth participation, whose first meeting will be held at the end of 2009. The programme of this Group foresees notably the implementation of national child and youth policy reviews focusing on child and youth participation as well as the development of educational and training material.

However, the recommendation does not invite the governments to provide support and subsidies for creating children and young people's influencing and hearing systems which function in accordance with the various needs of different age groups. More operational systems are needed so that children can have more say in their own everyday life.

The Assembly notes that the debate on participation is geared not merely to ensuring that adults listen to children, but that they take into consideration and act upon the views and opinions expressed by children: the emphasis nowadays is on the fact that children are supposed to be capable of effective action. It is necessary to ensure that whatever they say or do leads to changes which are positive for them. This is perhaps too strong as it is not possible to guarantee that adults are aware of everything the children say or do and then act towards positive changes for children.

Appendix 3 to the reply

Opinion of the Bureau of the Steering Committee for Education (CDED)

The Bureau of the CDED:

Having taken note with great interest of Parliamentary Assembly Recommendation 1864 (2009) on "Promoting the participation by children in decisions affecting them";

Reaffirms the importance of the measures proposed for developing public education programmes for parents and children, as mentioned in paragraph 9 of the recommendation;

Points out that children are a special target group of its intergovernmental programme of activities in the field of formal education and that, in this context, it devises specific policies to promote human rights education and children's participation in the democratic functioning of schools;

Recalls that several issues relating to children's rights were discussed by the Ministers of Education of member states at the 22nd session of the Council of Europe Standing Conference of Ministers of Education (Istanbul, Turkey, 4-5 May 2007);

Endorses the proposal set out in paragraph 10.2. concerning training for educators on children's rights and participation and points out that the CDED has recently, in the context of its "Learning and living democracy" project, published a handbook for teachers, describing the competences required for teaching democracy and human rights;

Underlines the fact that democratic participation cannot be taught without putting it into practice in the everyday life of the school, through the democratic governance of the school;

Points out, in this context, that, in 2007, as part of its "Learning and living democracy" project, the CDED prepared a guidebook entitled "The Democratic Governance of Schools", which is designed to promote school governance based on the principles of democracy and human rights. It has been translated into eleven languages and is particularly appreciated by education professionals, particularly heads of schools, who consider it a valuable instrument on the democratic governance of schools. The member states of the Council of Europe and some of its observer states have expressed great interest in this publication. It might therefore be a good idea to prepare other methodological guidelines on this matter for specific target groups, or to adapt this instrument to specific contexts and situations;

Also points out that, within the context of the "Learning and living democracy" project, the CDED has commissioned a series of handbooks for teachers on education for democratic citizenship and human rights and that these handbooks have been translated into several languages and disseminated to teachers. They contain numerous references to the right of children to participate in decisions affecting them and are designed to foster their skills so that they can fully exercise this right. One of the handbooks focuses on the rights of children, including their right to participate in decisions affecting them. Within the same project, specific co-operation links have been established with the transversal project "Building a Europe for and with children";

Fully endorses the recommendations set out in paragraph 15 concerning the development of child-friendly information on the Council of Europe's instruments. The CDED has just proposed a new innovatory project for 2010-2014, which will be aimed at all secondary school pupils in Europe and will concern the "Learning democracy and human rights in school and out-of-school throughout life" project. The main aim of the project will be to draw the attention of young Europeans and their teachers and heads of school to the work done by the European Court of Human Rights and other European human rights mechanisms and help them to understand the ways in which it is linked to national law and its repercussions for European societies. The project will also be aimed at strengthening the ability of staff in the education sector to implement the principles of the European system of human rights protection in a practical manner.