



Opinion 186 (1995)¹

Draft European convention on the exercise of children's rights

Parliamentary Assembly

1. The Parliamentary Assembly has frequently dealt with the different aspects of children's welfare and their rights and has adopted a number of relevant texts in particular on child welfare and family policy; it is also examining a draft European convention on the exercise of children's rights.
2. The latest and most comprehensive Assembly text in this field is [Recommendation 1121 \(1990\)](#) on the rights of children. It was this recommendation that gave impetus to the Committee of Experts on Family Law (CJ-FA) in their work on a convention on the exercise of children's rights.
3. [Recommendation 1121 \(1990\)](#), drafted after the adoption of the 1989 United Nations Convention on the Rights of the Child, acknowledged the importance of this convention as the most complete international instrument on children's rights and called upon Council of Europe member states to ratify it.
4. However, the Assembly pointed out various gaps both in the substantive part and in the procedural mechanisms for the implementation of the United Nations convention. Consequently, the Assembly suggested a multi-faceted plan of action based on a thorough analysis of past accomplishments, failures and ongoing work.
5. The Assembly addressed several concrete proposals to the Committee of Ministers:
 - 5.1. it recommended that the Committee of Ministers instruct the competent steering committees to draw up an appropriate legal instrument of the Council of Europe to complete the United Nations Convention on the Rights of the Child and, in particular, to instruct the Steering Committee on Human Rights (CDDH) to consider the possibility of elaborating an additional protocol to the European Convention on Human Rights concerning the rights of the child (section B of [Recommendation 1121 \(1990\)](#));
 - 5.2. referring to the position of children in court, the Parliamentary Assembly voiced the view that children should be respected as individuals and should be granted the possibility to exercise an increasing number of rights independently, and even against opposing adults. To this end, the Assembly invited the Committee of Ministers to instruct the European Committee on Legal Co-operation (CDCJ), or another appropriate intergovernmental expert committee, to make a full study on the position of children in courts and on the acts a minor is entitled to accomplish before reaching the age of full legal capacity, with a view to arriving at a common European position (section D of [Recommendation 1121 \(1990\)](#));
 - 5.3. furthermore, the Assembly recommended that the Committee of Ministers convene a small group of highly competent independent experts to study how children may exercise the fundamental rights which have been granted to them by such international instruments as the European Convention on Human Rights and the European Social Charter (section E of [Recommendation 1121 \(1990\)](#)).

1. Assembly debate on 25 April 1995 (10th Sitting) (see [Doc. 7270](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Jaani). Text adopted by the Assembly on 25 April 1995 (10th Sitting).



6. The draft European convention on the exercise of children's rights has been prepared by the Committee of Experts on Family Law (CJ-FA). It takes up only some of the Assembly proposals. It concentrates on the procedural rights of children in family proceedings affecting them and the promotion of the exercise of these rights.

7. The Assembly is convinced that the draft convention will strengthen the position of children in court and will promote the exercise of their procedural rights.

8. However, the Assembly is concerned that the draft convention leaves a broad margin of discretion to the contracting states regarding the choice of applicable provisions. Considering that the main purpose of this convention is to arrive at a common European position on the exercise of children's rights, the Assembly believes that a certain minimum of the procedural rights of children should be accepted by all states signatories to the convention.

9. Consequently, the Assembly recommends that the Committee of Ministers make the following amendments with a view to improving the draft convention:

ii. Article 1 (Scope and object of the convention)

Change paragraph 4 as follows:

"Every state shall, at the time of signature or when depositing its instruments of ratification, acceptance, approval or accession by a declaration addressed to the Secretary General of the Council of Europe accept that the convention shall apply to family proceedings concerning residence of and access to children and shall specify at least three additional types of proceedings before a judicial authority to which the convention is to apply."²

iii. Article 11 (National bodies)

- in paragraph 2, sub-paragraph d, replace "seek the views of" by "consult";
- add a new sub-paragraph e reading as follows: "e. to intervene and, when necessary, take legal action on behalf of children";

iii. Article 15 (Establishment and functions of the Standing Committee)

Add before sub-paragraph a the following new sub-paragraph:

"request Parties to the convention to produce reports at regular intervals on the application of the convention;"

iv. Article 16 (Members)

- in paragraph 3, delete the second sub-paragraph;
- add the following new paragraph after paragraph 3: "The United Nations Committee on the Rights of the Child shall attend the meetings of the Standing Committee as an observer."

10. In addition, the Assembly suggests that the Committee of Ministers:

10.1. consider including a definition of the concept "having sufficient understanding" in Article 2 of the draft convention;

10.2. consider elaborating a selection procedure for the members of the Standing Committee guaranteeing that this committee consist of highly competent and independent experts and that its procedures be transparent;

10.3. insert in the draft convention a non-discrimination clause, in particular concerning sex discrimination.

11. The Assembly further recommends that the Committee of Ministers:

11.1. invite member states and non-member states which have participated in the elaboration of the convention according to the procedure provided for in Article 20 to sign and ratify the convention;

2. Assembly debate on 25 April 1995 (10th Sitting) (see [Doc. 7270](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Jaani).

11.2. instruct the Steering Committee for Human Rights (CDDH) to continue its work on examining the possibility of elaborating an additional protocol to the European Convention on Human Rights concerning the rights of the child;

11.3. instruct other relevant committees of the Council of Europe to continue their work in the field of children's rights.