Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1864 (2009)[1]

Promoting the participation by children in decisions affecting them

Parliamentary Assembly

1. The Parliamentary Assembly considers that the process of taking part in decisions that affect the lives of individuals and the communities in which they live is a means of constructing and gauging democracy in a given country; participation is a fundamental right of the citizen, and children are citizens.

2. Children's right to participation is recognised in the United Nations Convention on the Rights of the Child (Article 12) and in some Council of Europe instruments such as the European Convention on the Exercise of Children's Rights (ETS No. 160). The Assembly sees an urgent need to alert all those who live and work with children and who take decisions affecting them to the twofold requirement set out in Article 12 of the United Nations convention, which all member states have ratified.

3. Under the said Article 12, whenever a decision which affects a child is taken, his or her opinions, wishes and feelings must be ascertained, whatever his or her age, gender, religion, social status or situation. Article 12 establishes a general principle which is relevant for all children, including children with disabilities, and in the implementation of all the rights enshrined in the above-mentioned convention.

4. Whenever a decision which affects a child is taken, his or her opinions, wishes and feelings have to be duly taken into account, having due regard to his or her age and degree of maturity. Age and maturity must be considered together, and these two factors do not solely concern the child's intellectual capacity. The way in which children express their feelings, the development of their personality, their evolving capacities and their ability to confront various emotions and possibilities are just as important.

5. The Assembly calls on all decision makers to consider seriously the opinions, wishes and feelings of children, including very young children. The influence wielded by the child over the decision-making process will depend on his or her age and maturity. Participation should always be relevant and voluntary and be facilitated. Adults have a duty not to expose children to risks or to overburden them with responsibilities that they are not able to take on. Children have unique knowledge about their own lives, needs and concerns. The Assembly is convinced that their participation should be a major factor in any decisions directly affecting them.

6. 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.

7. Children must therefore be listened to and allowed to participate in decisions in all fields, especially in family life, health care, adoption issues and procedures, education, community life, access to justice and the administration of justice. Additional efforts are needed to ensure that children are allowed to express their opinions freely during judicial and administrative proceedings in a climate of respect, trust and mutual understanding. When promoting a meaningful participation by children, special attention should be paid to avoid putting them at risk in any way, and to avoid harming, pressurising, coercing or manipulating them; children should have access to child-friendly information, appropriate to their age and to their situation.

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1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 13 March 2009 (see Doc. 11615, report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Cliveti).

8. The Assembly invites the Committee of Ministers to urge governments of member states to:

8.1. examine their legislation, policies and practices with regard to children in all their decision-making processes in order to assess the extent to which children's opinions are heeded and taken seriously. The child's opinions and experiences should be central to this examination. Where the child's consent is required before a public authority can act, for example in the field of adoption or health care, the consequences of setting a minimum age limit should be examined and corrected, if necessary, taking the best interests of the child into consideration;

8.2. develop a national strategy setting out the actions to be taken by each member state to increase participation by children in decisions affecting them. The specific needs of children with disabilities, underprivileged children, very young children, children in prison or other hazardous environments and under-age migrants or asylum seekers should also be taken into account, and the right of all children to participation, should be promoted and guaranteed without discrimination;

8.3. provide the greatest possible legal protection for children's right to participation, including in their national constitutions, legislation on human rights and other relevant sectors (including education, administration of justice and immigration), taking into account the best interests of the child and the evolving capacities of the child. The right of the child to express opinions and to participation should be relevant, voluntary, adapted and facilitated. In general, there should be no minimum age for children to be entitled to express their opinions. Children should also be provided with child-friendly information, in regional languages, on issues relating to children's rights and their protection and on how they can access various services available to them;

8.4. implement these children's rights and ensure that all their public authorities and public services also implement them in all walks of life. There should be no exemptions for specific areas or professions. Children and young people should also be consulted on the quality of existing services and on how these services can become more accessible to all children.

9. The Assembly urges the Committee of Ministers to invite governments of member states to launch public education programmes for children and parents:

9.1. informing them of the right of children to express their opinions freely;

9.2. presenting the child as a human being with feelings, opinions, aspirations and rights;

9.3. including the development of child-friendly materials and services.

10. The Assembly invites the Committee of Ministers to ask governments of member states to:

10.1. ensure that civil codes and legislation on the rights, duties and responsibilities of parents highlight respect for the child's human dignity, feelings and opinions and comprise the obligation to take due account of the child's opinions in the light of the development of his or her capacities;

10.2. make available training on children's rights and participation for the benefit of all persons involved in decision-making processes, in particular judges, prosecutors, lawyers, educators and medical staff, and to develop the capacity of professionals working with children to consult and work with children of various age groups.

11. The Assembly considers that the continued existence of violence sanctioned by legislation in a variety of contexts, including the family circle, harms children as individuals and as a social group, and that the commitment to child participation necessitates the elimination of laws which denigrate children as human beings. It supports the Europe-wide initiative to eliminate corporal punishment of children launched within the Council of Europe programme "Building a Europe for and with children". The Assembly therefore strongly urges the Committee of Ministers to require governments of all member states to impose an explicit ban on corporal punishment and degrading treatment of children, even within the family, and also to address other forms of abuse and exploitation which prevent the child from participating and developing according to his or her potential.

12. The Assembly invites the Committee of Ministers to encourage the governments of member states to reconsider the age-related restrictions placed on voting rights in order to encourage young people's participation in political life.

13. The Assembly invites the Committee of Ministers to urge governments of member states to:

13.1. set up – with respect for their individual legal systems – the office of independent national, or even local, children's ombudsperson, with the responsibility of ensuring the promotion and protection of children's rights and empowered to deal with individual complaints and applications from children;

13.2. ensure that abandoned and/or disabled children placed in institutions also have access to an independent body responsible for defending their rights (an ombudsperson or at least a special magistrate) who would regularly monitor the safeguard of children's rights by the institutions.

14. The Assembly backs the initiative and conclusions of the Conference of European Ministers of Justice held in Lanzarote in October 2007 to the effect that participation by children in any judicial proceedings affecting them is an important element of a modern and fair justice system, and invites the Committee of Ministers, via its competent organs, to prepare European guidelines for child-friendly justice.

15. The Assembly welcomes the progress achieved within the programme "Building a Europe for and with children" and invites the Committee of Ministers to support and develop, in the member states and within the Council of Europe, the current project aimed at promoting children's participation, including the development of child-friendly information on the Organisation's instruments.

16. Lastly, the Assembly invites the Committee of Ministers to ask governments of member states to:

16.1. invest in the development and proper functioning of organisations directed by children and adolescents, ensuring that there are no obstacles to the self-promotion of children;

16.2. involve these organisations in the continued monitoring of the United Nations Convention on the Rights of the Child in all member states, as well as of the implementation of the relevant Council of Europe treaties and other commitments undertaken by member states for the realisation of the rights of the child.