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# Children's rights in family law procedures participation

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# CRC

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One of the pillars – participation

Opportunity of real participation

Information

Hearing the child's opinion

Giving weight to the opinion

Right – not obligation

Family law as an exemption



# CRC

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Art 17 child has a right to access to information

Art 13 freedom of expression

Art 12 (1) and (2)

- who is capable of forming his or her own views
- the right to express freely in every matters affecting the child
- views of the child should be given due weight in accordance with age and maturity



# CRC

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The child shall be provided the opportunity to be heard

No age is fixed but „evolving capacities” are taken into attention

Child-friendly or child focused manner



# General Comment No. 7 (2005)

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Implementing child rights in early childhood

critical period

vulnerability of young children is high

having particular interests

holders of all rights

do have right to have their views respected

should be practiced in the daily life at home



# General Comment No. 14 (2013)

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Right to have his or her best interests taken as a primary consideration  
right, principle and also a rule

Elements to be taken into account when assessing it:  
child's views

he or she can influence the determination  
of his or her best interests

full participation is provided if the child is  
young or in a vulnerable situation



# General Comment No. 12 (2009)

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The right of the child to be heard

Freely

without pressure – if he or she wishes  
not manipulated or under undue influence  
to express own views

Being given due weight

seriously considered  
child's capacities depend on several factors





# General Comment No. 12 (2009)

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Directly or indirectly

recommended – directly

representative

parent(!)

lawyer, social worker, other appropriate  
person

represents only the child



# General Comment No. 12 (2009)

## Steps for the implementation

1. preparation – a lot of matters
2. hearing – listen and seriously consider  
talking and not examination; confidentiality
3. assessment of capacity  
if reasonable – significant factor
4. feedback - outcome, how the views were  
considered
5. complaint procedure – how to access



# Guidelines of European Council

Guideline of the Committee of Ministers of the Council of Europe on child-friendly justice 2010

language which they understand

information to the child and not only representative

training for professionals

own legal council or representation

exceptional diligence to avoid of any risks of

court sessions to be adapted to a child

adverse consequences



# Emerging issues

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Many questions emerge

the basis of which is

- lack of knowledge
- doubt in the correctness

Attitude!

Change of attitude is needed

Independent holder of rights



# Questions

How is it possible to provide relevant information directly for the child?

Is it sure that the child will not be traumatized?

How is it possible to avoid traumatization?

Who helps the child?

Is it possible to distinguish the interest of the child and those of the parents?

How do we know whether the child was manipulated?

Is it worth hearing of a child?



# Viewpoints in Hungary

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Age has a crucial role

The interests of the child cannot be managed independently

Constant fear from the child being manipulated

Fear of using too much time

Usefulness

Why?

Important to discuss and think over



# Problems

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New Civil Code with family law from 2014

New Civil Procedural Code from 2018

Not enough attention

Child over 14 whose parents divorce

his or her opinion is crucial

no definite rule to hear the child

diverging opinions from the courts

2012: year of child-friendly justice

