

## Research Article

# THE CHILD'S RIGHT TO BE HEARD DURING ADMINISTRATIVE AND JUDICIAL PROCEEDINGS: AN ANALYTICAL STUDY OF INTERNATIONAL AND COMPARATIVE LAW

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## ABSTRACT

**Background:** Early legal traditions treated children as passive and vulnerable individuals, with adults solely responsible for making decisions on their behalf. However, this attitude has gradually shifted, and children's rights are now widely recognised. This study addresses the child's right enshrined in Article 12 of the United Nations Convention on the Rights of the Child, to express opinions and to be heard in all matters affecting them, particularly in administrative and judicial proceedings. The study aims to bridge the gap between the theoretical framework and the practical application of this right by clarifying its concept and the nature of its enforcement during administrative and judicial proceedings involving the child, while also addressing the challenges of its practical implementation.

**Methods:** *The researchers adopted a comparative analytical methodology, analysing the Convention on the Rights of the Child and examining and comparing the national legislation of Finland, France, and Belgium that guarantees the child's right to be heard. The study also reviews the Committee on the Rights of the Child's general comments and the practices of various courts.*

**Results and conclusions:** *The study finds significant disparities in the implementation of the child's right to be heard across legal systems, with some courts reluctant to hear from children. It underscores the need for clear procedural mechanisms to guarantee that children's voices are considered and that they are informed of the procedure's outcomes.*

## 1 INTRODUCTION

Family problems in general—and issues related to children in particular—are increasing as societies evolve, family bonds weaken, and the generational gap in thinking grows. Undoubtedly, the past neglect of children and the failure to consider their opinions and perspectives have widened the gap between them and adults, whether parents or other caregivers and decision-makers. There is no minimum age for a child to exercise their rights; even infants can express their opinions through the means available to them, which develop and evolve as they grow. The development of children's abilities to express their opinions depends on their maturity as well as on the support and responsiveness of the adults around them.<sup>1</sup>

The child's right to express their opinion and to be heard is a firmly established legal principle at the international level, grounded in Article 12 of the Convention on the Rights of the Child (CRC), which was pioneering in obligating states to give the child's opinion "due weight."<sup>2</sup> Reflecting this international obligation, many European national legislations have incorporated this right into their constitutions and laws to ensure the child's active participation in administrative and judicial proceedings that affect their interests, thereby fostering self-confidence and serving the child's best interests.<sup>3</sup> The United Nations Committee on the Rights of the Child (hereinafter "the Committee") works through recommendations to ensure the optimal realisation of the child's right to be heard.

At the national level, many European countries have included the child's right to express an opinion in their constitutions and legislation, implementing their obligations under the

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1 Gerison Lansdown, *Can You Hear Me? The Right of Young Children to Participate in Decisions Affecting Them* (Working Paper in Early Childhood Development 36, Bernard van Leer Foundation 2005) 2.

2 Convention on the Rights of the Child (CRC) (adopted 20 November 1989 UNGA Res 44/25) 1577 UNTS 3, art 12.

3 David Archard and Suzanne Uniacke, 'The Child's Right to a Voice' (2020) 27 *Res Publica* 526-7 doi:10.1007/s11158-020-09491-z.

child rights conventions. However, the effective enforcement of this right, especially in judicial and administrative proceedings, remains contingent on enacting suitable laws and training judges and administrative staff to work with children. European legislation, such as that of France, Finland, and Belgium, has sought to institutionalise this, although its mechanisms of application vary.

The exercise of this right continues to face many obstacles, chief among them the traditional societal perception that questions the child's ability to determine their own best interest, the ambiguity and complexity of procedures and their consequences, which make them difficult for children to understand properly. On the other hand, a balance must be struck between the personal freedoms of parents, such as marriage or divorce, as enshrined in constitutions, and the principle of the "best interests of the child," which must remain the paramount consideration.<sup>4</sup>

In view of the above, **the central research question guiding this study is:** To what extent do legal and conceptual barriers in France, Finland, and Belgium limit the effective implementation of Article 12 of the Convention on the Rights of the Child, reducing the right of the child to be heard to a procedural formality rather than a substantive right?

The study explores this question across three national contexts:

How effectively have Finland, France, and Belgium implemented Article 12 to ensure children's participation in judicial and administrative decisions through mechanisms for hearing their views?

What is the impact of using age-based criteria (as in Finland and Belgium) compared to maturity-based criteria (as in France)?

What are the practical problems in implementing Article 12 of the CRC in the countries under study?

## 2 METHODOLOGY

To achieve the objectives, this study adopts a comparative analytical approach to examine how the child's right to be heard, as enshrined in Article 12 of the CRC, is interpreted and applied in administrative and judicial procedures across Finland, France, and Belgium.

The study relied on a diverse set of primary and secondary sources. Primary sources included recognised legal instruments such as the Convention on the Rights of the Child,

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4 Aliaa Zakaria and Alaa Abouahmed, 'Constitutional Protection of Egyptian Women's Rights in Personal Affairs' (2023) 9(1) *Cogent Social Sciences* 9. doi:10.1080/23311886.2023.2216997.

national legislation such as the French Civil Code<sup>5</sup> and the Finnish Child Welfare Act,<sup>6</sup> and landmark jurisprudence from domestic supreme courts and the European Court of Human Rights, most notably *C. v. Finland*.<sup>7</sup> These provided the formal legal framework and showed the practical application of the child's right to be heard. Secondary sources that provided the interpretive lens of critique included general Comments No. 12, No. 14, and No. 24 of the Committee on the Rights of the Child,<sup>8</sup> as well as Lundy's "*Voice*' Is Not Enough: Conceptualizing Article 12 of the United Nations Convention on the Rights of the Child"<sup>9</sup> and Lansdown's seminal research on young children's participation.<sup>10</sup> These works provided the analytical foundation for contextualising the challenges identified in the primary legislation.

Finland, France, and Belgium were selected as comparative case studies based on substantive criteria. Though all three states share a common foundational commitment as parties to key international conventions, they reflect distinct European legal traditions. The selection is particularly instructive, given their divergent approaches to implementing the child's right to be heard, ranging from the more age-defined criteria of Finland and Belgium to the flexibility grounded in the child's discernment in France. This strategic variation allows the analysis to scrutinise the distinct challenges and solutions arising from divergent legal contexts, thus enhancing the richness of the study's findings.

The comparisons between domestic and European Court of Human Rights case law are guided by specific criteria that focus on three interrelated elements: the procedural approach to hearing the child, the substantive weight given to the child's views, and the judicial balancing of Article 12 against Article 3 of the CRC. This structured approach goes beyond a merely theoretical debate to critically evaluate how courts operationalise these rights in practice.

5 Code Civil des Français (effective 21 March 1804) <[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006070721](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721)> accessed 26 September 2025.

6 Child Welfare Act 417/2007 (Finland) (adopted 13 April 2007) <<https://finlex.fi/en/legislation/translations/2007/eng/417>> accessed 26 September 2025.

7 *C v Finland* App no 18249/02 (ECtHR, 9 May 2006) <<https://hudoc.echr.coe.int/eng?i=001-75337>> accessed 26 September 2025.

8 UN Committee on the Rights of the Child, *General Comment No 12 (2009) The Right of the Child to be Heard* (CRC/C/GC/12, UN 2009) <<https://digitallibrary.un.org/record/671444?ln=en>> accessed 26 September 2025; UN Committee on the Rights of the Child, *General Comment No 14 (2013) On the Right of the Child to Have His or Her Best Interests Taken as Primary Consideration* (art 3, para 1) (CRC/C/GC/14, UN 2013) <<https://digitallibrary.un.org/record/778523?ln=en>> accessed 26 September 2025; UN Committee on the Rights of the Child, *General Comment No 24 (2019) On Children's Rights in the Child Justice System* (CRC/C/GC/24, UN 2019) <<https://digitallibrary.un.org/record/3899429?ln=en>> accessed 26 September 2025.

9 Laura Lundy, "'Voice' is Not Enough: Conceptualizing Article 12 of the United Nations Convention on the Rights of the Child" (2007) 33(6) *British Education Research Journal* 927. doi:10.1080/01411920701657033.

10 Lansdown (n 1).

### 3 THE NATURE OF ADMINISTRATIVE AND JUDICIAL PROCEEDINGS AFFECTING THE CHILD

According to the CRC, children have the right to be heard and to participate in any judicial or administrative proceedings that affect them. These proceedings can be addressed as follows:

#### 3.1. Administrative Proceedings

Administrative proceedings cover a broad range of cases, including immigration and asylum matters, as well as disciplinary actions in schools and other procedures. Article 22 of the CRC affirms the right of child asylum seekers to receive protection and the necessary assistance to ensure their enjoyment of rights in accordance with international law.<sup>11</sup> Similarly, Article 10 of the Convention emphasises the importance of family reunification.

Student participation is considered necessary in many educational matters, including the development of school policies, curriculum design,<sup>12</sup> teaching methods, teacher evaluations, and decisions related to disciplinary sanctions.

The Committee has emphasised the need to establish administrative procedures that reflect the obligations of Article 12 of the Convention and guarantee children's rights. This includes informing the child about the hearing session and ensuring that representation is provided by parents or other guardians.<sup>13</sup> In its General Comment No. 12, the Committee indicated that children are more likely to participate in administrative procedures than in judicial ones, as the former are more flexible and less formal.<sup>14</sup> By enumerating concrete examples, such as school disciplinary matters, denial of school certificates, applications for driver's licenses, and asylum applications filed by unaccompanied minors,<sup>15</sup> the Committee moves the concept of child participation beyond mere rhetoric, effectively bridging the gap between theory and practice.

Physical education provides an ideal context to honour students' right to be heard. Through targeted teaching methods, their opinions can actively shape lesson content, social organisation, and challenge levels. By co-creating games and participating in reflective

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11 Maya Khater, 'Refugee Children's Right to Education: Education of Syrian Refugee Children in Jordan: Reality and Prospects' (2023) 6(3) *Access to Justice in Eastern Europe* 116. doi:10.33327/AJEE-18-6.3-a000302.

12 Adam Fletcher, *Meaningful Student Involvement: Guide to Students as Partners in School Change* (2nd eds, SoundOut 2024) 12.

13 UN Committee on the Rights of the Child, *General Comment No 12* (n 8) para 65.

14 *ibid*, para 66.

15 *ibid*, para 67.

discussions, students are empowered to take a direct role in shaping their own learning, thereby ensuring their feedback has a tangible impact on future practice.<sup>16</sup>

### 3.2. Judicial Proceedings

Children, like all individuals, are entitled to the guarantees of a fair trial. They have the right to be tried before an independent and impartial judicial body, the right to defend themselves and be assisted by legal counsel, the right to be informed of the charges against them in a language they understand, the right to access evidence, and the presumption of innocence until proven guilty. Respecting the child's right to express opinions and be heard in judicial proceedings affecting them is one of the fundamental principles affirmed by the CRC. Article 12 of the Convention obligates States Parties to provide children the opportunity to express their views and be heard in judicial and administrative proceedings that affect them, whether they exercise this right personally or through a representative. Guaranteeing the child's right to be heard—just as for adults—is a cornerstone of a fair trial. Participation in such proceedings must not, however, cause any additional harm to the child.

In this regard, the Committee has issued several recommendations to ensure this right is implemented optimally. In its General Comment No. 12, the Committee recommended that judicial proceedings involving minors be "accessible and child-appropriate,"<sup>17</sup> which requires ensuring children understand the nature of the proceedings and can participate effectively. It also recommended providing a safe environment that respects the child's dignity<sup>18</sup> while considering the child's individual and social circumstances.<sup>19</sup> The Committee explained that enabling children to express their opinions effectively requires comprehensive support, including the provision of trained staff and the adaptation of the judicial environment to suit children, from courtroom design to the attire of judges and lawyers.<sup>20</sup> Furthermore, in General Comment No. 5, the Committee emphasised the need to establish effective procedures that uphold children's rights, including the provision of information and counselling.<sup>21</sup> In General Comment No. 24, the Committee stresses that children have the right to be heard directly at all stages of the justice process, from the outset. They also have the

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16 Grace Cardiff and others, 'Just Let Them Have a Say! Students' Perspective of Student Voice Pedagogies in Primary Physical Education' (2023) 42(4) *Irish Educational Studies* 665. doi:10.1080/03323315.2023.2255987.

17 UN Committee on the Rights of the Child, *General Comment No 12* (n 8) para 24.

18 *ibid*, para 23.

19 Julia Sloth-Nielsen and Michelle Oliel, *Constitutionalising Children's Rights and Domestic Courts of Member States of the Council of Europe* (Publication Series 7, Deutsches Kinderhilfswerk 2019) 14.

20 UN Committee on the Rights of the Child, *General Comment No 12* (n 8) para 34.

21 UN Committee on the Rights of the Child, *General Comment No 5* (2003) *General Measures of Implementation of the Convention on the Rights of the Child* (CRC/GC/2003/5, UN 2003) para 24 <<https://digitallibrary.un.org/record/513415?ln=en>> accessed 26 September 2025.

right to remain silent, without any negative consequences if they do not speak.<sup>22</sup> All of these recommendations aim to empower the child and ensure that they can freely and effectively express their views, which ultimately serves their best interests.

The child should be represented in court by a competent lawyer who understands their interests and psychological characteristics. Such representation requires applying the "best interests" standard in any decision concerning the child. The role of the representative is not limited to merely conveying the child's views verbatim to the court; rather, the attorney should first discuss with the child to understand their perspectives and reasoning, clarify the legal implications, explain which requests are likely to be accepted by the judge, and ultimately work toward proposing compromises that serve the child's interest and present them to the court. This process benefits the child and reinforces the sense that their voice is being heard.<sup>23</sup> The child's lawyer is crucial for coordinating testimony, motivating the child, and explaining the consequences of the proceedings. Building a trust-based relationship is essential to help the child feel safe enough to cooperate effectively, even if they are uncooperative with their parents.<sup>24</sup>

With regard to civil judicial proceedings such as divorce, separation from parents, adoption, or kafala (care under Islamic law), the Committee clarified in General Comment No. 12 that court rulings have a significant impact on the children of divorced or separated parents, as judges determine matters such as maintenance, custody, and access. Many national laws require judicial authorities to give utmost priority to "the best interests of the child" when deciding on the dissolution of a relationship.<sup>25</sup> The Committee recommended that laws concerning separation ensure the child's right to be heard by the decision-making authorities and emphasised that CRC requires assessing the child's capacity to express their views on a case-by-case basis, depending on their age and level of maturity.<sup>26</sup>

In cases where the child is separated from their parents or requires alternative care due to neglect or abuse, the Committee has recommended that States Parties ensure the child's right to express their views, and to institutionalise this principle through appropriate legislation and guidelines governing foster care and parental visitation decisions.<sup>27</sup> When a child is placed for adoption or kafala under Islamic law, the child's opinion and participation must be considered. The Committee urges States Parties to ensure that the child is informed, as much as possible, about the implications of adoption or kafala, and to guarantee their right to express their views, always giving primary

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22 UN Committee on the Rights of the Child, *General Comment No 24* (n 8) para 45.

23 Mark Henaghan, 'What Does a Child's Right to Be Heard in Legal Proceedings Really Mean? ABA Custody Standards Do Not Go Far Enough' (2008) 42(1) *Family Law Quarterly* 126.

24 *ibid*

25 UN Committee on the Rights of the Child, *General Comment No 12* (n 8) para 51.

26 *ibid*, para 52.

27 *ibid*, para 54.



consideration to the best interests of the child when taking such decisions, in line with the requirements of Article 12 of the Convention.<sup>28</sup>

Regarding the child's right to be heard in criminal judicial proceedings, every child must be entitled to freely express their views at every stage of the juvenile justice process. For a juvenile accused of violating criminal law, Article 12(2) of the CRC obliges States Parties to ensure this right throughout the trial, including the right to remain silent during the pre-trial phase. This right extends to being heard by the police, the public prosecutor, the investigating judge, and at every stage of the case up to final judgment.<sup>29</sup>

The child must be informed directly, and in a language they understand, about the nature of juvenile justice procedures and any measures the court may take. All procedures must be carried out in an environment that enables the child to participate freely and express their views without pressure or fear.<sup>30</sup> Hearings of children accused in criminal proceedings must be held behind closed doors, and any exceptions to this rule must be defined by law and remain strictly limited.<sup>31</sup>

As for child victims or witnesses, they must be given the full opportunity and empowerment to exercise their right to express their views and thoughts in their own way throughout the judicial process. Child victims or witnesses must be informed of the methods of interrogation, the protective measures in place, and the support mechanisms available to them when filing complaints and participating in trial proceedings.<sup>32</sup> The testimony of the child and their ability to provide an accurate account of the incident are extremely important, especially in cases where physical evidence is scarce, such as in sexual assault cases.<sup>33</sup> It is observed that international legal instruments focused on protecting children as victims tend to be less detailed than those addressing suspects or offenders.<sup>34</sup> However, relevant instruments include the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, and the Council of Europe's Guidelines on Child-Friendly Justice (GCFJ).<sup>35</sup> It is worth noting that the CRC does not explicitly provide for the rights

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28 *ibid*, para 56.

29 *ibid*, para 58.

30 *ibid*, para 60.

31 *ibid*, para 61.

32 *ibid*, para 64.

33 Council of Europe, 'Hearing of Children in Criminal Procedure According to Article 6 of the European Convention on Human Rights' (Council of Europe: Lisbon Network, 2008) <[https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/ECHR/Paper5\\_en.asp](https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/ECHR/Paper5_en.asp)> accessed 26 September 2025.

34 Wendy De Bondt and Heleen Lauwereys, 'Children's Rights and Child Participation in Criminal Proceedings' in Ricardo Pereira, Annegret Engel and Samuli Miettinen (eds), *The Governance of Criminal Justice in the European Union: Transnationalism, Localism and Public Participation in an Evolving Constitutional Order* (Edward Elgar 2020) 251-2. doi:10.4337/9781788977296.00019.

35 Committee of Ministers of the Council of Europe, *Guidelines on Child-Friendly Justice: adopted on 17 November 2010 and Explanatory Memorandum* (Building a Europe for and with Children, Council of Europe 2010) <<https://rm.coe.int/16804b2cf3>> accessed 26 September 2025.



of child victims, as Article 40 focuses on the rights of children accused or suspected of crimes. Nevertheless, Article 12 is worded in a general manner and thus encompasses all children appearing before courts, whether accused, suspected, or victimised.<sup>36</sup>

This study emphasises the imperative of protecting children's rights in judicial proceedings, regardless of their status (victim, suspect, or accused). However, priority is given to ensuring the rise of child victims in particular, as internationally guaranteed rights -such as the right to remain silent- acquire a crucial practical dimension when applied in the context of protecting those children.

## 4 THE CHILD'S RIGHT TO OPINION AND EXPRESSION IN INTERNATIONAL LAW AND RELATED ISSUES

The child's right to express their views in matters that affect them is a cornerstone of international human rights law. However, its practical implementation raises several substantive challenges. Therefore, this part of the study will address the legal framework governing this right by reviewing the key legal instruments that established it, focusing on core concepts and the difficulties surrounding its interpretation and application.

### 4.1. The Child's Right to Express Their Views in Matters Concerning Them

The right to opinion and expression has been enshrined in both binding and non-binding international instruments. Article 19 of the 1948 Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."<sup>37</sup> Similarly, Article 19(2) of the International Covenant on Civil and Political Rights affirms: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."<sup>38</sup>

Article 12 of the Convention on the Rights of the Child (1989) affirms the child's right to expression and participation in proceedings that affect them.<sup>39</sup> At the European level, Article 3 of the European Convention on the Exercise of Children's Rights (1996) affirms the child's right to receive information and to express their views in legal proceedings.<sup>40</sup>

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36 De Bondt and Lauwereys (n 34).

37 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217A) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 26 September 2025.

38 International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200A(XXI)) 999 UNTS 171.

39 CRC (n 2) art 12.

40 European Convention on the Exercise of Children's Rights (25 January 1996) ETS 160.

Article 12 of the CRC is considered the Convention's most prominent achievement. It established the child's right to effective participation in judicial and administrative proceedings that affect them, recognising children as independent rights-holders rather than passive recipients of care or sympathy. It reinforced a culture of empowering children and instilling in them the confidence to express their views and confront their challenges. All individuals under the age of eighteen are entitled to the rights in the Convention unless the majority is attained earlier according to national law. Article 12 states:

"A. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

B. For this purpose, the child shall, in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

Article 12(1) obligates States Parties to guarantee the child's right to form and freely express their views on all matters affecting them, taking into account the child's age and maturity. This is a distinct right that differs from the broader concept of freedom of expression. In *N.T.S v. Georgia*,<sup>41</sup> the ECtHR affirmed that the State must presume the child's ability to express their views, without requiring the child to prove such competence.<sup>42</sup> Children, like adults, are not compelled to express their views; they may speak or remain silent. Article 12(2) recognises the child's right to be represented in judicial and administrative proceedings by individuals other than their parents or by appropriate bodies, provided such representation complies with national procedural law. Importantly, the child's need for representation and advocacy in these settings does not exclude the necessity for support in other contexts. For example, a child may require practical assistance to express their opinion—such as technical support or interpretation services.

From the wording of Article 12, it is clear that the exercise of these rights is conditional upon the child reaching a certain level of maturity. This distinguishes Article 12 from other rights in the CRC, which children enjoy at all times without restriction or condition.<sup>43</sup> According to the Committee, "even the youngest children are entitled to express their views, which should be 'given due weight in accordance with the age and maturity of the child.'"<sup>44</sup>

41 *N Ts and Others v Georgia* App no 71776/12 (ECtHR, 2 February 2016) para 20 <<https://hudoc.echr.coe.int/eng?i=001-160313>> accessed 26 September 2025.

42 Mariam Saneblidze, 'The Child's Right to Be Heard in Civil Proceedings' (2024) 10(29) *Law and World* 153. doi:10.36475/10.1.12.

43 Nawal Daim, 'Freedom of Opinion and Expression in the Convention on the Rights of the Child and its Impact on Domestic Legislation' (2018) 3(1) *Mediterranean Journal of Law and Economics* 151.

44 UN Committee on the Rights of the Child, *General Comment No 7 (2005) Implementing Child Rights in Early Childhood* (CRC/C/GC/7/Rev.1, UN 2006) para 14 <<https://digitallibrary.un.org/record/584854?ln=en>> accessed 26 September 2025; UN Committee on the Rights of the Child, *General Comment No 12* (n 8); UN Committee on the Rights of the Child, *General Comment No 14* (n 8) para 54.

Lundy argues that fulfilling Article 12 demands more than just "hearing" Children; it requires adults to listen authentically—to be listened to, not simply heard—and to give due weight to their perspectives. She critiques "tokenistic participation," in which children's views are heard but lack influence, emphasising that due weight requires that children's perspectives genuinely impact decision-making, leading to real change rather than merely superficial consultation.<sup>45</sup> According to a report by leading children's rights specialists, including Lundy, effective and meaningful child participation must be transparent, voluntary, respectful, inclusive, safe, and accountable, with feedback given to demonstrate how children's input influenced outcomes.<sup>46</sup> The authors outline seven required building blocks to achieve this, such as embedding participation in law, strengthening children's agency, creating inclusive spaces, and undertaking robust follow-up.

Given the indivisibility of the rights set out in the CRC,<sup>47</sup> the provisions of Article 12 must not be interpreted in isolation. They must be read in light of the Convention as a whole and alongside other human rights instruments. For instance, implementing Articles 12 and 19 of the Universal Declaration of Human Rights may occasionally appear to be in tension with other provisions of the CRC, such as Article 3 (on the best interests of the child) and Article 5 (on the responsibilities of parents and caregivers).<sup>48</sup>

Articles 3 and 12 are closely interlinked. The proper implementation of Article 3 (best interests of the child) cannot be achieved without meeting the requirements of Article 12. Under Article 3, the best interests of the child must be a primary consideration in all decisions affecting the child—including decisions about their right to express views and be heard. The term "concerning" must be understood broadly. The obligation applies to all decisions and measures that affect the child, directly or indirectly, whether they are health or education policies specifically targeting children or broader environmental or housing decisions that may impact them. When a measure has significant effects on children, more detailed procedures must be adopted to safeguard their best interests.<sup>49</sup>

Article 12 must also be interpreted alongside Article 5 of the CRC, which affirms the right of adults to provide appropriate guidance to the child in accordance with the child's evolving capacities. Accordingly, the adult's role in guidance should gradually diminish as the child matures, and this support may cease once the child achieves a sufficient level of maturity.<sup>50</sup>

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45 Lundy (n 9) 939.

46 Laura Forde and others, *The Right of Children to Participate in Public Decision-Making Processes* (Save the Children International 2020) 10-23.

47 UN Committee on the Rights of the Child, *General Comment No 14* (n 8).

48 Jenna Gillett-Swan and Jonathon Sargeant, 'Assuring Children's Human Right to Freedom of Opinion and Expression in Education' (2018) 20(1) *International Journal of Speech-Language Pathology* 121. doi:10.1080/17549507.2018.1385852.

49 UN Committee on the Rights of the Child, *General Comment No 14* (n 8).

50 Lundy (n 9) 939.

## 4.2. Interpretation and Application of Article 12 in Practice: Challenges and Open Questions

Article 12(1) of the CRC states that the views of the child in matters affecting them must be given due weight depending on their age and maturity, thus requiring both criteria for the right to be exercised.<sup>51</sup> However, the article does not specify which children are considered capable of forming and expressing views. Should all children, even those below the age of discernment, be granted the opportunity to express their opinions in matters that concern them?

As for the maturity criterion, the article does not define what constitutes maturity or identify who should assess the child's capacity to express views.<sup>52</sup> Maturity is commonly understood as the child's ability to understand and evaluate specific outcomes. However, international and national law lack standardised criteria for determining maturity; it is assessed on a case-by-case basis. As for age, Article 12 does not specify a particular age either, leaving that to national legislation. For instance, in Bulgaria and Romania, children's views are considered from age ten; in Spain, the legal age for expressing views in certain matters is fourteen. In France, the required age varies depending on the type of proceedings—a child may be heard in family law matters starting at age seven. In all cases, national laws should not pose an obstacle to achieving the purpose of Article 12 of the CRC.<sup>53</sup> By analysing both criteria separately, it can be concluded that maturity is the primary condition for applying Article 12, rather than age. For example, the views of a rational and mature ten-year-old child may be considered, while those of an older but less mature child might not. It is recommended that the National law entrust the determination of maturity standards to the discretion of competent judges, ideally those specialising in children's issues.

It is worth noting that adults possess decision-making authority over their own affairs without being required to express or justify their views, except perhaps indirectly through voting.<sup>54</sup> In contrast, children do not enjoy the same level of authority. They are granted the right to express their views, but whether or not those views are given weight in decisions that affect them remains conditional.<sup>55</sup> Not all decisions concerning a person are equally significant. Some decisions are relatively minor—such as choices about clothing, food, or entertainment—while others are more complex and may involve the child's health,

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51 CRC (n 2) art 12(1).

52 Archard and Uniacke (n 3) 523.

53 FRA, *Child-Friendly Justice: Perspectives and Experiences of Professionals on Children's Participation in Civil and Criminal Judicial Proceedings in 10 EU Member States* (Publications Office of the EU 2015) 40; Saneblidze (n 42).

54 Lundy (n 9) 937.

55 Archard and Uniacke (n 3) 529.

finances, or legal status. These complex decisions require greater maturity, access to relevant information, and an ability to assess potential risks.<sup>56</sup>

One might assume that balancing a child's views with their best interests is a straightforward task. However, it often involves other overlapping considerations, such as the child's parents' views and cooperation and the adults around them. Adults may be reluctant to give due weight to a child's views for several reasons: doubt about the child's ability to participate meaningfully in decision-making, fear of losing authority or control, and concern that fully respecting the child's rights may require significant time and effort.<sup>57</sup> In reality, these doubts reflect a misunderstanding of the nature of the rights enshrined in Article 12. The goal is not to give children the same rights as adults, but rather to ensure they can express their views, be heard, and progressively assume responsibility as they develop and mature.<sup>58</sup>

Limited awareness of children's rights presents a significant obstacle to the effective implementation of Article 12. This, in turn, constitutes a violation of Article 42 of the CRC, which obliges states to actively disseminate the Convention's principles. Full implementation of the Convention's provisions cannot be achieved unless parents and caregivers are well-informed about their content.<sup>59</sup> Children's capacities are often limited by parents' and caregivers' lack of awareness and the failure to create an environment that supports the exercise of children's rights. Therefore, enhancing their awareness through targeted training programs is recommended to help children exercise their rights effectively.

Another practical challenge in applying Article 12 is the complexity of weighing multiple children's views, which arises in group settings, such as schools, where giving "due weight" to children's views becomes more complex. Often, teachers categorise children according to their own perceptions or criteria rather than using objective criteria such as maturity or ability to express themselves.<sup>60</sup>

Although Article 12 of the CRC is one of its most commonly referenced provisions, it is frequently misunderstood due to the abbreviated language often used to refer to it, such as "the child's voice," "the right to be heard," and "the right to participate." While such phrases facilitate easier reference to the article without quoting its full text, they may dilute its legal force, as they fail to capture the full scope of its content and requirements.<sup>61</sup>

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56    *ibid* 530.

57    Lundy (n 9) 929.

58    Lansdown (n 1) 8.

59    Lundy (n 9) 930.

60    Carol Robinson, 'Lost in Translation: The Reality of Implementing Children's Right to Be Heard' (2020) 8(s4) *Journal of the British Academy* 36. doi:10.5871/jba/008s4.029.

61    Lundy (n 9) 930.

There is also the possibility that a child's opinion may be taken into account and a decision subsequently made that negatively affects the child socially, psychologically, financially, or health-wise. In such cases, who bears responsibility? Could the child, upon reaching adulthood, initiate proceedings against the parents for decisions made based on their expressed opinion?

There is also the problem of Tokenistic Listening, which involves giving children a formal opportunity to express their opinions without taking them seriously and considering them in decision-making concerning the child. This makes children's participation merely a formality aimed at improving the public image. The Committee emphasised in its General Comment No. 12 that this type of participation does not fulfil the spirit of Article 12 of the CRC. Children's opinions must be listened to seriously, considered of intrinsic value, and properly valued, ensuring that these opinions actually influence policies and practices. Finally, feedback must be provided, explaining how their contributions were addressed, whether they were adopted or not, and explaining the reasons.<sup>62</sup> Another key problem is that many countries lack mechanisms to give children feedback on how their views are perceived. Influenced decisions. This undermines the purpose of participation, reducing it to a mere formality.

Moreover, if a child's opinion does not alter the final decision, the child may question whether their voice was truly taken into account. An appropriate response should make it clear that their perspective was an important part of the process, even if it was not the only determining factor.<sup>63</sup> Most importantly, the child should be informed how their opinion contributed to the outcome, thus validating their participation regardless of the final decision.

### 4.3. The Best Interests of the Child as a Limitation on the Exercise of Their Rights

The principle of the "best interests of the child" is set out in Article 3(1) of the CRC, which provides: "In all actions concerning children, whether undertaken by public or private social welfare institutions, a court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."<sup>64</sup>

Under this principle, States Parties are required—when faced with multiple interpretations of legal provisions—to adopt the interpretation that best serves the child's interests. This requires a prior evaluation of the positive or negative consequences of any decision, and a comprehensive analysis of the child's family situation, taking into account a wide range of factors, including psychological, emotional, medical, and financial considerations. The

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62 UN Committee on the Rights of the Child, *General Comment No 12* (n 8) para 45.

63 Archard and Uniacke (n 3) 533-4.

64 CRC (n 2) art 3(1).

ECtHR affirmed this in *Neulinger and Shuruk v. Switzerland*,<sup>65</sup> where the court set out two criteria for assessing whether the best interests of the child were properly considered:

1. Ensuring the child's development in a healthy environment, free from harmful actions by either parent; and
2. Preserving the child's relationship with their family, unless it can be demonstrated that the family environment is unsuitable.<sup>66</sup>

In *Maumousseau and Washington v. France*, the Court was satisfied that the local French court had conducted a thorough examination of the child's family situation and assessed the interests of all parties fairly and reasonably, with a focus on the child's best interests.<sup>67</sup>

This principle imposes a dual obligation on the State: to justify every child-related decision<sup>68</sup> and to broaden its application to all proceedings affecting the child. The "best interests of the child" is a flexible principle that must be adapted to each case. When making decisions involving the child, factors such as the child's opinion, maturity, vulnerabilities, and rights to health, education, and family ties must be taken into account.<sup>69</sup> However, a major challenge lies in the selective consideration of the child's views. For instance, they may be heard in custody cases, but disregarded in medical decisions deemed contrary to their best interests.

The Committee, in its General Comment No. 14 (2013), stated that determining a child's best interest requires respect for the child's right to express their views and giving due weight to such views<sup>70</sup>—the best interests of the child and the right to be heard—are fundamental to the CRC and must be applied together to ensure neither is limited at the expense of the other.<sup>71</sup> Accordingly, the child's right to express their opinion may be limited when necessary to protect their best interests, for example, if exercising that right poses a threat to the child's "open future," contradicts developmental needs, or irreparably limits future choices.<sup>72</sup>

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65 *Neulinger and Shuruk v Switzerland* App no 41615/07 (ECtHR, 6 July 2010) para 139 <<https://hudoc.echr.coe.int/eng?i=001-99817>> accessed 26 September 2025.

66 Charlotte Mol and Thalia Kruger, 'International Child Abduction and the Best Interests of the Child: An Analysis of Judicial Reasoning in Two Jurisdictions' (2018) 14(3) *Journal of Private International Law* 434. doi:10.1080/17441048.2018.1525074.

67 *Maumousseau and Washington v France* App no 39388/05 (ECtHR, 6 December 2007) para 74 <<https://hudoc.echr.coe.int/eng?i=001-83823>> accessed 26 September 2025.

68 UN Committee on the Rights of the Child, *General Comment No 14* (n 8) para 20.

69 Alexander Weihrauch, 'The Principle of the Best Interest of the Child' (*Humanium*, 2 March 2021) <<https://www.humanium.org/en/the-principle-of-the-best-interest-of-the-child/>> accessed 26 September 2025.

70 UN Committee on the Rights of the Child, *General Comment No 14* (n 8) para 43.

71 Saneblidze (n 42).

72 Lundy (n 9) 938.



## 5 THE NATIONAL IMPLEMENTATION OF THE CHILD'S RIGHT TO BE HEARD: A COMPARATIVE LEGISLATIVE AND JUDICIAL PERSPECTIVE

National legislation plays a pivotal role in enshrining Article 12 of the CRC and ensuring the child's right to express opinions in judicial and administrative proceedings concerning them. Among the most notable legislative examples are those of Finland, France, and Belgium, which will be discussed in turn.

Finland ratified the CRC on 20 June 1991. According to Article 95(1) of the Finnish Constitution,<sup>73</sup> international treaties become legally binding and enforceable through parliamentary legislation once ratified. Section 12 of the Constitution guarantees everyone the right to freedom of expression and the right to impart and receive information. The details of this right are regulated by law, including restrictions intended to protect children from harmful visual content. Section 21 of the Constitution guarantees the components of a fair trial, ensuring that everyone has the right to have their case handled appropriately by a legally competent, independent court without undue delay. It also emphasises that provisions related to public hearings and the right to be heard are to be regulated by law.<sup>74</sup>

Article 20 of the Child Welfare Act affirms that children aged 12 and above must be given an opportunity to express their views on matters concerning their care. Their views and wishes must be taken into account in a manner appropriate to their age and level of development, provided it does not cause them harm.<sup>75</sup> Article 21 further affirms the child's right, from the age of 12, to be heard independently in matters related to their care, reinforcing their participation in decisions that concern them.<sup>76</sup> Article 15 of the Child Custody and Right of Access Act states that the child's right to be heard in custody matters is conditional, not absolute. It requires the child's explicit consent and applies only when necessary to resolve the dispute and where the hearing would not cause the child harm.<sup>77</sup> Article 39 of the same law stipulates that the Court of Appeal must ascertain the child's opinion before deciding on the enforcement of a foreign custody decision, provided it is assumed that the child has reached an adequate level of maturity.<sup>78</sup> The legislation establishes a nuanced approach to the child's right to be heard, transitioning from a mandatory right in welfare matters to a conditional one in custody disputes. This hierarchy particularly applies the "best interest" principle by tailoring the child's level of participation to the specific case.

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73 Constitution of Republic of Finland 731/1999 (effective 1 March 2000) <<https://www.finlex.fi/en/legislation/translations/1999/eng/731>> accessed 26 September 2025.

74 Council of Europe, *Hearing of Children* (n 33).

75 Child Welfare Act 417/2007 (n 6) s 20.

76 *ibid*, s 21.

77 Act on Child Custody and Right of Access 361/1983 (Finland) (effective 1 January 1984) s 15 <<https://finlex.fi/en/legislation/translations/1983/eng/361>> accessed 26 September 2025.

78 *ibid*, s 39.

The Finnish Criminal Investigations Act allows a child complainant or witness to provide testimony via video recording, without setting a minimum age to benefit from this procedure.<sup>79</sup> The Act also permits interrogation by a qualified expert trained in interviewing children and allows such interviews to be conducted in alternative locations, such as the child's home or any safe and supportive environment.<sup>80</sup> Additionally, the law grants the accused the right to question the child indirectly, either by being present in a separate room during the interview or by viewing the recorded video afterwards. According to the Code of Judicial Procedure, video recordings made in accordance with the Criminal Investigations Act may be admitted as evidence at trial, provided that the accused has been granted the opportunity to ask questions.<sup>81</sup> This demonstrates that Finnish law seeks to maintain a delicate balance—it aims to protect vulnerable witnesses, such as children, from the trauma of in-court testimony, while simultaneously safeguarding the defendant's right to a fair trial by granting them the opportunity to cross-examine witnesses during the recorded interview.

Chapter 2, Section 1 (107/1998) of the Criminal Procedure Act (No. 689/1997) provides that a defence counsel must be appointed for a suspect under 18 years of age, unless it is clearly unnecessary.<sup>82</sup> This means that, while it is finished, Low acknowledges the need for legal assistance for minors in criminal cases, it does not grant an absolute right to counsel for all children in every judicial proceeding.

The amended Code of Judicial Procedure also outlines the conditions under which children can be heard as parties to a case. Interrogation of children under the age of fifteen is left to the court's discretion, while children under ten are generally not heard. Any interrogation must be conducted in a manner that avoids causing suffering or harm to the child's development. This may include questioning without the accused present or without visual contact, and the court may involve experts such as child psychologists. Minors aged fifteen have the right to be heard independently in matters concerning their person, in addition to their legal guardian or custodian.<sup>83</sup>

In short, age 12 is the threshold for “the right to participate and be heard” in social and welfare matters. In contrast, age 15 is the threshold for “competence and independence” in more serious judicial and procedural matters. It is worth noting that the presence of psychiatrists in court proceedings is crucial, as their reports determine

79 *Criminal Investigation Act* 805/2011 (Finland) (effective 1 January 2014) ch 6, s 11 <<https://finlex.fi/en/legislation/translations/2011/eng/805>> accessed 26 September 2025.

80 *ibid*, ch 4, s 7.

81 *Code of Judicial Procedure* 4/1734 (Finland) (amended up to Act 812/2019) ch 17, s 24 <<https://finlex.fi/en/legislation/translations/1734/eng/4-000>> accessed 26 September 2025.

82 *Criminal Procedure Act* 689/1997 (Finland) (effective 1 October 1997) ch 2, s 1 <<https://www.finlex.fi/en/legislation/translations/1997/eng/689>> accessed 26 September 2025.

83 *Code of Judicial Procedure* 4/1734 (n 81) s ch 12 s 1.

the feasibility of a child's testimony and help ensure a balance between the plaintiff's rights and the child's best interests.

In its 2023 concluding observations on Finland, the Committee welcomed the integration of the best interests of the child into various laws but expressed concern about the inconsistent application of this principle.<sup>84</sup> Regarding respect for children's opinions, the Committee noted that children's views are not always taken into account and that the law allows formal hearings only for those over 12 years old. The Committee, therefore, recommended guaranteeing the right of all children to express their views in matters affecting them and amending the laws to ensure children are heard regardless of age.<sup>85</sup>

The ECtHR addressed these issues in *C. v. Finland*.<sup>86</sup> The plaintiff filed a complaint against the Finnish Supreme Court's decision to award custody of his children to the deceased mother's partner, surnamed "L." The plaintiff argued that the Supreme Court gave unreasonable weight to the children's opinions and age, relying on their desire to live with "L" and overturning two lower court decisions granting custody to the father. He claimed that the court applied the age criterion automatically without considering maturity, and that experts should have examined the children to assess the reliability of their wishes before their opinions could be relied upon in the decision. The ECtHR has held that courts must listen to children's wishes and opinions, and that it is detrimental to the child's interests to force them to submit to a position they resist. Although the Court did not explicitly mention Article 12 of the CRC, it referred to the same principle contained in Article.

However, the Court noted that the Supreme Court gave exclusive weight to the children's views, without taking into account the children's rights, thus giving the children an unconditional right of veto, and that this decision was made without an oral conference session or sufficient analysis of the effects of the decision on the children's well-being and their relationship with their father.<sup>87</sup>

The court recognised that the child's best interests are paramount, but the children's views should not be considered decisive in custody proceedings. A broader assessment of the child's best interests, including emotional stability and continuity of care, must be made.<sup>88</sup> Accordingly, the Court found that Finland had violated Article 8 of the ECHR by failing to ensure the father's right to contact his children and by failing to balance the father's interests against those of the children, and awarded compensation to the plaintiff father.

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84 UN Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Reports of Finland* (CRC/C/FIN/CO/5-6, 2 June 2023) para 17 <<https://www.ohchr.org/en/documents/concluding-observations/crcfinco5-6-concluding-observations-combined-fifth-and-sixth>> accessed 26 September 2025.

85 *ibid*, para 19.

86 *C v Finland* (n 7) para 57.

87 *ibid*, para 58.

88 *ibid*

In its ruling of 16 June 2017, the Supreme Administrative Court of Finland affirmed that listening to children during asylum procedures is a fundamental right.<sup>89</sup> The verdict was based on Section 6(2) of the Finnish Aliens Act and the CRC. The case concerned an Iraqi man and his son who had applied for asylum in Finland on the grounds of religious persecution. The Court overturned the decisions of the lower administrative court and the Immigration Service and remanded the case for reassessment. The two cases reveal a consistent trend in Finnish jurisprudence affirming the child's right to express his opinion to the court, without granting it decisive authority.

On a practical level, to strengthen safeguards for children in Finland, the project "Barnahus in Finland – Ensuring child-friendly justice through the effective operation of the Barnahus-units in Finland" was launched in 2019.<sup>90</sup> This project presents a multidisciplinary, child-friendly model aimed at strengthening child safeguards in judicial proceedings and stopping child abuse through a coordinated and effective response that reduces psychological trauma during investigations and judicial proceedings.

In France, the amended Constitution (2008) enshrines the right to freedom of opinion and expression under Article 11, recognising it as one of the most valuable human rights, which may only be restricted in exceptional circumstances defined by law. According to Article 55 of the Constitution, once ratified (as with the CRC in 1990), international treaties take precedence over domestic law and are automatically integrated into the legal system. However, the direct enforceability of these provisions before French courts depends on the judiciary's recognition of their "self-executing" nature.<sup>91</sup> The highest French courts—including the Council of State and the Court of Cassation—have affirmed the direct applicability of certain CRC provisions, such as Article 3(1) and Article 12, enabling individuals to invoke them directly in legal proceedings.<sup>92</sup>

In the context of family law, the French Civil Code allows for hearing the views of a legally capable minor when it serves their best interests. The minor may be heard alone, with a lawyer, or with a person of their choosing—unless this choice is not in the child's best interest, in which case the judge may appoint another person.<sup>93</sup> The law also permits

89 Decision KHO:2017:81 (Supreme Administrative Court of Finland, 16 June 2017) <<https://www.asylumlawdatabase.eu/en/content/finland-supreme-administrative-court-rules-children%E2%80%99s-right-be-heard-during-asylum-procedure>> accessed 26 September 2025.

90 European Commission, 'Ensure Child-Friendly Justice Through Effective Operation of the Barnahus Units in Finland' (*European Commission: Reform Support*, 9 January 2025) <[https://reform-support.ec.europa.eu/what-we-do/public-administration-and-governance/ensure-child-friendly-justice-through-effective-operation-barnahus-units-finland\\_en](https://reform-support.ec.europa.eu/what-we-do/public-administration-and-governance/ensure-child-friendly-justice-through-effective-operation-barnahus-units-finland_en)> accessed 10 November 2025.

91 Constitution of the French Republic (4 October 1958, amended 2008) <[https://www.constituteproject.org/constitution/France\\_2008](https://www.constituteproject.org/constitution/France_2008)> accessed 26 September 2025.

92 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations of the Committee on the Rights of the Child: France* (CRC/C/FRA/4, 21 February 2008) para 35 <<https://docs.un.org/CRC/C/FRA/CO/4/>> accessed 26 September 2025.

93 Code civil des Français (n 5) art 388-1.

children to be represented by a dedicated legal representative in civil, criminal, and administrative proceedings. Moreover, Article 388-2 of the Civil Code allows for the appointment of a special representative in family law matters when there is a conflict of interest between the child and their parents.<sup>94</sup>

Pursuant to Article 388 of the French Civil Code, authorities must presume the child's capacity to form personal views, which necessitates listening to the child to assess their maturity. If the child is found capable of discernment, a child's attorney or an ad hoc legal representative is appointed to represent and protect their interests during judicial proceedings.

Articles 338-1 to 338-12 of the French Code of Civil Procedure (CPC) establish the procedural mechanism for hearing a minor in court. The child must be informed—by the holder of parental authority or their guardian—of their right to be heard in proceedings that concern them, as well as their right to legal counsel.<sup>95</sup> The child may request a hearing at any stage of the proceedings, including for the first time on appeal.<sup>96</sup> Article 338-4 requires that any refusal to hear the child must be substantiated by a reasoned decision, and the child and parties must be notified of this refusal. It is worth noting that a child is not considered a party to the proceedings; therefore, this process should not be confused with criminal proceedings involving a minor in which the minor is alleged to have committed unlawful acts.

Under the French Code of Criminal Procedure, when a minor is heard freely under Article 61-1, or when procedures under Article 61-3 are carried out, the judicial police officer must inform the child's legal representative or appointed guardian by any available means.<sup>97</sup> Article L11-1 of the Code of Juvenile Criminal Justice stipulates that a minor may be held criminally responsible if they are capable of discernment, which is presumed for those aged 13 or older, provided they understand their actions and intend to commit them.<sup>98</sup>

In a case of first impression, the Court of Appeal of Aix-en-Provence refused to hear the testimony of two minor children in a custody dispute without stating reasons. The court assigned permanent residence to the father, in contravention of Article 388-1 of the Civil Code and Article 338-4 of the Civil Procedure Code. The first provision grants the child the right to be heard; the second mandates that any refusal be explained. The Court of

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94 *ibid*, arts 388-1-2, 388-2.

95 Code de procédure civile (France) (amended 2025) art 338-1 <[https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000020664476](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000020664476)> accessed 26 September 2025.

96 *ibid*, art 338-2.

97 Code de procédure pénale (France) (effective 2 March 1959 (France métropolitaine), 1 March 1962 (DOM-TOM)) arts 61-1, 61-3 <[https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000042915707](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042915707)> accessed 26 September 2025.

98 *Code de la justice pénale des mineurs* (France) (effective 30 September 2021) art L11-1 <[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000039086952](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000039086952)> accessed 26 September 2025.

Cassation overturned the decision, affirming a key principle:<sup>99</sup> when a minor capable of discernment requests to be heard in a matter concerning them, the judge is obligated to do so, and any refusal must be justified.

In a similar context, the Court of Cassation ruled that a judge's refusal to hear a child cannot be based solely on age; it must rely on an objective assessment of the child's capacity for discernment, and any denial must be supported by a detailed legal justification—especially when the request originates from the child.<sup>100</sup>

The Court of Cassation also overturned an appellate court decision due to a breach of the principle of adversarial proceedings, as the mother had not been notified of the child's hearing transcript referenced in the ruling.<sup>101</sup> The decision relied on Articles 16(1) and 338-12 of the Code of Civil Procedure, which require drafting a hearing report and notifying all parties. The court emphasised the importance of respecting procedural safeguards to ensure the rights of all parties, particularly in matters involving children.<sup>102</sup> Despite French courts' recognition of the CRC and its direct applicability to certain provisions,<sup>103</sup> judicial application remains inconsistent. Court decisions have varied and sometimes contradicted the Convention, often lacking clear reasoning when applying—or overlooking—certain provisions.<sup>104</sup>

French courts have shown greater attention to Article 3 of the CRC. The Constitutional Council, Court of Cassation, and Council of State have all applied the best interests of the child principle, and the Committee has commended France for this in its annual report.<sup>105</sup> The Council of State has also affirmed the direct effect of Article 3(1), annulling decisions that contravened it.<sup>106</sup> Furthermore, the Conseil d'État (France's Supreme Administrative Court) ruled that a child may appear before a judge in emergencies to protect their fundamental rights—even if they lack full legal capacity to initiate proceedings.<sup>107</sup>

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99 Appeal No 21-24.296 (Court of Cassation, First Civil Chamber (France), 17 January 2024) <<https://www.legifrance.gouv.fr/juri/id/JURITEXT000049052988>> accessed 26 September 2025.

100 Appeal No 18-26.707 (Court of Cassation, First Civil Chamber (France), 14 April 2021) <<https://www.legifrance.gouv.fr/juri/id/JURITEXT000043473530>> accessed 26 September 2025.

101 Appeal No 21-19.362 (Court of Cassation, First Civil Chamber (France), 12 July 2023) <<https://www.legifrance.gouv.fr/juri/id/JURITEXT000047852569>> accessed 26 September 2025.

102 Laurence Gareil-Sutter, 'Audition de l'enfant: le juge doit s'assurer du respect du contradictoire!' (*Dalloz Actualité*, 12 September 2023) <<https://www.dalloz-actualite.fr/flash/audition-de-l-enfant-juge-doit-s-assurer-du-respect-du-contradictoire>> accessed 26 September 2025.

103 Sloth-Nielsen and Oliel (n 19) 28.

104 *ibid*

105 UN Committee on the Rights of the Child, *Concluding Observations on the Fifth Periodic Report of France* (CRC/C/FRA/CO/5, 23 February 2016) <<https://digitallibrary.un.org/record/834948>> accessed 26 September 2025.

106 Sloth-Nielsen and Oliel (n 19) 34.

107 App No 375956 (Council of State, Judge of Interim Relief (France), 12 March 2014) <<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000028721828>> accessed 26 September 2025.

In *Maumousseau and Washington v. France*, the ECtHR held that the French authorities had complied with the standards of the CRC regarding the child's right to express views in matters affecting them. The court emphasised that the child's right to be heard is a fundamental element in assessing compliance with Article 8 of the ECHR. However, it didn't find a violation in this case, noting that the child, being only three years old, had not yet reached the age of discernment necessary to express an independent and reliable opinion.<sup>108</sup>

To enhance the process of hearing children practically, "Melani rooms" have been set up in police stations and hospitals. Designed like friendly playrooms with toys and child-sized furniture. These spaces are meant to create a safe, supportive environment for children to express themselves freely. Interviews are audio- and video-recorded in the room, and the presence of the camera is explained to the child in a simplified manner. Interviews are conducted by plainclothes officers using simple language, while the session is monitored from behind one-way glass. Interviews in these rooms are audio- and video-recorded, and the camera's presence is explained to the child in simple terms. Plainclothes officers conduct their sessions using simple language, while others monitor from behind one-way glass. These rooms, established in several French provinces, play a crucial role in the judicial system by ensuring that children's testimonies are collected in a manner that preserves their dignity and protects them from psychological harm.<sup>109</sup>

Belgium ratified the CRC on 16 December 1991, granting it a higher legal status than domestic legislation and initiating several legislative reforms to align with its provisions. Thus, the protection of children's rights in Belgium is grounded in the CRC, the Belgian Constitution, the Judicial Code, and the 1965 Youth Protection Act, as amended.

Article 19 of the Belgian Constitution guarantees fundamental freedoms, including the right of individuals—regardless of age—to freely express their opinions in all matters, unless such expression constitutes a criminal offence. Article 22bis, introduced in 2000, focuses specifically on the child's right to have their opinion considered in all matters that affect them, following their age and maturity. It also emphasises that the child's best interests must be the primary consideration in all decisions affecting them.<sup>110</sup> This Constitutional provision is groundbreaking as it elevates the principles of Articles 12 and 3 of the CRC to the highest level of national law. However, the child's right, as specified in Article 12, is not absolute; the court balances it against other constitutional principles such as legal certainty and the right to a fair trial.

108 *Maumousseau and Washington v France* (n 67).

109 Ministère de l'Intérieur, 'Salle Mélanie à Montauban: un lieu bienveillant pour l'écoute des très jeunes victimes' (*Ministère de l'Intérieur: Ma Sécurité*, 26 May 2025) <<https://www.masecurite.interieur.gouv.fr/fr/actualites/salle-melanie-montauban-lieu-bienveillant-ecoute-tres-jeunes-victimes>> accessed 26 September 2025.

110 Constitution of Belgium (effective 21 February 1831) <<https://mjp.univ-perp.fr/constit/be1831.htm>> accessed 26 September 2025.



Article 56B of the 1965 Youth Protection Act establishes the specific right of the child to be heard before the juvenile court.<sup>111</sup> The court is obliged to summon the child if the child is at least 12 years old when making decisions concerning parental responsibilities, residence, or the management of the child's property. It is imperative that the juvenile judge personally hear the child before rendering any decision, unless the child refuses to appear or is prevented from doing so by health conditions.<sup>112</sup>

In the same context, Article 1004 §1 of the Belgian Judicial Code states that every minor has the right to be heard by a judge in matters that concern them, such as custody and adoption.<sup>113</sup> However, certain financial matters—like maintenance obligations that do not directly affect the child's assets—are exceptions, and the judge may refuse to hear the child. The purpose of this provision is to allow minors to share their concerns with the court to ensure that decisions serve their best interests. Article 1004 §2 allows minors under the age of twelve to be heard upon request by the child, a party, the public prosecutor, or the judge, provided it serves the child's interests. Article 1004 §6 requires the judge to consider the child's views in light of their age, maturity, and any external influence exerted on them. However, children under fifteen may not testify under oath and may only be heard for informational purposes.<sup>114</sup>

Children have the right to legal representation during hearings or before the juvenile court. Moreover, the child is heard alone unless the judge determines that their best interests require the presence of an accompanying adult.<sup>115</sup> This trusted adult cannot be a member of the immediate family, except for siblings.<sup>116</sup>

Moreover, being heard in proceedings that affect a child's rights does not automatically confer party status.<sup>117</sup> In exceptional cases where the child becomes a party to the proceedings, a lawyer may be appointed to represent them. In the event of a conflict of interest with the parents, a temporary guardian can be appointed to protect the child's rights.<sup>118</sup>

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111 Law of Belgium 'On the Protection of Young People' (adopted 8 April 1965) art 56B <<https://www.uppl.be/wp-content/uploads/2019/01/Loi-Protection-de-la-jeunesse-08-AVRIL-1965.pdf>> accessed 26 September 2025.

112 *ibid*, art 52ter.

113 *Belgian Judicial Code* (adopted 10 October 1967) art 1004 §1 <[https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=1967101002](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1967101002)> accessed 26 September 2025.

114 *ibid*, art 931.

115 Nathalie Meurens, *Study on Children's Involvement in Judicial Proceedings – Contextual Overview for the Criminal Justice Phase – Belgium* (European Union 2013) 15.

116 'Legislation Regarding the Right of Minors to be Heard: An Overview' (*Keyser Advocaten*, 18 April 2024) <<https://www.keyseradvocaten.be/en/legislation-regarding-the-right-of-minors-to-be-heard-an-overview/>> accessed 27 September 2025.

117 *Belgian Judicial Code* (n 113) art 1004 §6.

118 Larissa De Wulf and Carolyn Vanthienen, *Family Laws and Regulations: Belgium* (3rd edn, ICLG 2025) <<https://iclg.com/practice-areas/family-laws-and-regulations/belgium>> accessed 26 September 2025.

Belgium has established some mechanisms to protect child victims and witnesses, such as audiovisual recordings. However, these measures are limited and rely heavily on expert evaluations. In its 2010 Concluding Observations, the Committee noted that Belgium<sup>119</sup> had not implemented previous recommendations regarding this right. Children reported that their views were not given sufficient attention, and the Committee found that juvenile judges did not effectively apply the child's right to be heard in residence and visitation cases following parental divorce.<sup>120</sup> The Committee also noted that although the best interests of the child principle had been incorporated into Belgian law, it was not consistently reflected across all child-related legislation.<sup>121</sup>

In terms of case law, it is generally left to the discretion of domestic judges to determine whether a provision of the CRC has direct effect, leading to inconsistent application. The Council of State (Belgium's highest administrative court) tends to reject the direct effect of the convention's provisions, while lower courts are more flexible. The Court of Cassation has recognised the direct effect of certain CRC articles.<sup>122</sup> Regarding children's voluntary involvement in parental proceedings, the Court of Cassation ruled that the CRC does not grant children the right to participate in proceedings that do not directly affect their interests.<sup>123</sup> However, it did affirm their right—under Article 9 of the CRC—to express their views in matters concerning them, even though this right does not extend to financial claims, such as requests to limit a parent's right to personal contact.<sup>124</sup>

Among the complaints filed against Belgium before the CRC Committee regarding enforcement of Article 12, a prominent case is *Y.B. and N.S. v. Belgium*, submitted on behalf of the Moroccan child C.E., who had been left by her mother at birth.<sup>125</sup> The Committee found that the Belgian courts had violated Articles 3 and 12 of the Convention by failing to provide the child an opportunity to express her views in humanitarian visa proceedings. The Committee emphasised that her young age (five years) was not a valid justification for

119 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: Belgium* (CRC/C/BEL/CO/3-4, 18 June 2010) para 37 <<https://digitallibrary.un.org/record/684938>> accessed 26 September 2025.

120 *ibid*

121 *ibid*, para 33.

122 Wouter Vandenhoe, 'Belgium: The Convention of the Rights of the Child in Belgian Case Law' in Ton Liefwaard and Jaap Doek (eds), *Litigating the Rights of the Child: The UN Convention on the Rights of the Child in Domestic and International Jurisprudence* (Springer 2014) 108. doi:10.1007/978-94-017-9445-9\_7.

123 Court of Cassation (Belgium), 15 September 2010 (2011-2012) 75 *Rechtskundig Weekblad*.

124 Vandenhoe (n 122) 110.

125 Gamze Erdem Türkelli and Wouter Vandenhoe, 'The Refusal of a Humanitarian Visa to a Child Who Was Entrusted to a Belgian-Moroccan Couple in the Context of a Kafala: Communication 12/2017 CE v Belgium' (*Leiden Children's Rights Observatory*, 27 September 2018) <<https://www.childrensrightsobservatory.org/case-notes/casenote2018-3>> accessed 26 September 2025.

ignoring her voice in a matter that clearly affected her familial and educational future.<sup>126</sup> The case shows Belgian courts' reluctance to hear children due to welfare concerns, underscoring the need for case-by-case assessments to protect their interests. In fact, hearing children under 12 raises questions about its efficacy: Is it reasonable to consider the opinion of a child who may not grasp the complexity of crucial matters? Do they truly possess the capacity to determine their own interests? These enquiries challenge the logic of involving this age group in the decision-making process.

At the practical level, a comprehensive assessment of child-friendly justice was launched as part of a joint EU-Council of Europe project to align the judicial system with child-friendly justice standards. Belgium actively participated in this project by using the Council of Europe's Child-Friendly Justice Assessment Tool. Belgium reviewed progress made in ensuring that children's voices are heard in judicial proceedings at a panel discussion held in Strasbourg in November 2024, bringing together representatives from countries, experts, and policymakers. Reaffirming its commitment to a fairer and more humane judicial system for children.<sup>127</sup>

As observed from the above analysis of national laws, the legislation of France, Finland, and Belgium shares the same international legal framework for the child's right to be heard. Still, the legislative mechanisms, as well as judicial applications and guarantees of legal representation, differ among them, although they all originated from the same basic principles.

With regard to the right of the child to be heard, the above overview of the legislative frameworks in France, Finland, and Belgium shows that each has distinct mechanisms for implementing this right. Since all three countries ratified the CRC within a very short period and enshrined this right into their constitutions, Finnish and Belgian law place the age limit condition (commonly twelve years of age) on the exercise of the right, whereas French law has adopted the criterion of "capacity of discernment," a more flexible rule, whereby this capacity is assumed from the age of thirteen years onward.

These legislative differences are clearly reflected in judicial practice. French courts, particularly the Supreme Court, emphasise the mandatory nature of hearing the child and overturn decisions that disregard this right. Finnish courts are criticised for failing to

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126 UN Committee on the Rights of the Child, *Views Adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Concerning Communication No 12/2017* (CRC/C/79/D/12/2017, 5 November 2018) paras 8.8, 8.9 <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Download.aspx?symbolNo=CRC%2FC%2F79%2FD%2F12%2F2017&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolNo=CRC%2FC%2F79%2FD%2F12%2F2017&Lang=en)> accessed 26 September 2025.

127 Council of Europe, 'Promoting Child-Friendly Justice in Belgium, Poland and Slovenia: Round Table Discussion with the Participation of Children and Youths' (*Council of Europe: Children's Rights*, 26 November 2024) <<https://www.coe.int/en/web/children/-/promoting-child-friendly-justice-in-belgium-poland-and-slovenia-roundtable-discussion-at-the-council-of-europe>> accessed 26 September 2025.

properly balance child protection with fair trial guarantees. Meanwhile, in Belgium, practices vary considerably from case to case, raising serious concerns for the Committee regarding the inconsistent application of this right.

A similarly clear divergence is evident regarding the child's right to legal representation; the three systems differ. French and Belgian law explicitly guarantee this right through legal provisions that obligate the judge to inform the child of their right or appoint a lawyer for them, especially in protection cases. Finnish law, on the contrary, regulates this right more restrictively, as the appointment of a lawyer for a defendant under the age of eighteen is conditional on it not being "clearly unnecessary." Consequently, it is a discretionary right, rather than a general legal obligation, as in France and Belgium.

## 6 CHILD PARTICIPATION IN EUROPE: GAPS IN PRACTICE BETWEEN LEGAL PROMISES AND EVERYDAY REALITIES

The 2017 report by the European Union Agency for Fundamental Rights was based on a field study involving 392 children and 570 judicial and social professionals across ten EU Member States. The report focused on the right to be heard and to participate effectively and clearly showed the gap between the legal framework and real practice. For example, the report also revealed that hearings of children in France were conducted without standardised rules. In contrast, it highlighted a positive action: the creation of contact points in a number of French cities where children can access specialised lawyers.<sup>128</sup> In Finland, the report indicated that standards and guidelines were more developed, making the hearing procedures more child-friendly.<sup>129</sup> Overall, the report's findings, gathered through field interviews, showed that judicial practices with children relied heavily on professionals' individual skills rather than on standardised institutional procedures.

The 2023 UNICEF report, informed by empirical data from UNICEF U-Report polls and partner surveys, has provided insight into adolescent participation across Europe and Central Asia, defining the core adolescent population as those aged 10 to 19. Such findings indicate a chasm exists in this right between its recognition and actual practice. For instance, a U-Report poll of 7,685 adolescents aged 15-19 in six countries found that 61% had experienced or witnessed discrimination in schools, while their opinions are often systematically disregarded due to social norms and legal obstacles.<sup>130</sup> The report highlighted the U-Report initiative as a positive digital tool developed to support youth consultation, yet concluded that meaningful participation for adolescents is achieved

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128 FRA, *Child-Friendly Justice – Perspectives and Experiences of Children and Professionals: Summary* (Publications Office of the EU 2017) 7.

129 *ibid* 5.

130 UNICEF, *Situation of Children in Europe and Central Asia* (UNICEF Regional Office for Europe and Central Asia 2023) 56.

when the possibility of providing opportunities can be institutionalised rather than merely an ad hoc arrangement.<sup>131</sup>

## 7 CONCLUSION

The right of the child to freely express their views is enshrined in both international and national instruments. Article 12 of the CRC explicitly outlines the child's right to be heard in judicial and administrative proceedings affecting them. This right has been adopted in the legal frameworks of France, Belgium, and Finland. Each of these countries has enacted legislation and made amendments to give domestic effect to the CRC. The comparative analysis reveals a shared legislative intent to uphold this right, yet significant variation persists in its actual implementation.

This study concluded that a complete implementation of Article 12 required the provision of a legal and procedural framework to facilitate the child's efficient participation in proceedings affecting them. The study identified a gap between the age and maturity criteria, resulting in unequal enforcement across countries. In some countries, the courts either systematically ignored the children's opinions or didn't clearly explain the reasons for refusing them. Such practices undermined public confidence in the judiciary as a whole and ran contrary to the standards adopted by the ECtHR.

Based on these findings, the study recommends moving beyond rigid age thresholds and instead adopting individualised assessments of the child's maturity and capacity for discernment. It further advocates the development of specialised, mandatory training programs for lawyers, police officers, social workers, and educators, aimed at fostering trust and enhancing communication with children, to safeguard their best interests.

The study also recommends establishing clear procedural safeguards requiring judges to inform the child how their views were considered, and to provide clear justification when refusing to hear them. This approach enhances transparency and ensures the continuous protection of the child's best interests within judicial and administrative proceedings. Furthermore, the study recommends that the European Union guide Member States toward legal harmonisation to address disparities in European national laws regarding Article 12 of the CRC, through the adoption of common guidelines, targeted training, best-practice exchanges, and enhanced monitoring mechanisms to ensure consistent adherence to international child rights standards.

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131    *ibid* 45.

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## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

### ПРАВО ДИТИНИ БУТИ ПОЧУТОЮ ПІД ЧАС АДМІНІСТРАТИВНОГО ТА СУДОВОГО ПРОВАДЖЕННЯ: АНАЛІТИЧНЕ ДОСЛІДЖЕННЯ МІЖНАРОДНОГО ТА ПОРІВНЯЛЬНОГО ПРАВА

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#### АНОТАЦІЯ

**Вступ.** Раніше в правових традиціях розглядали дітей як пасивних та вразливих осіб, а дорослі несли повну відповідальність за ухвалення рішень від їхнього імені. Однак ця позиція поступово змінилася, і зараз права дітей широко визнані. Це дослідження розглядає право дитини, закріплене у статті 12 Конвенції Організації Об'єднаних Націй про права дитини, висловлювати думку та бути почутою з усіх питань, що її стосуються, зокрема в адміністративних та судових провадженнях. Дослідження має на меті подолати розрив між теоретичною базою та практичним застосуванням цього права шляхом уточнення його змісту та характеру його забезпечення під час адміністративних та судових проваджень, що стосуються дитини, а також вирішення проблем практичної реалізації цього права.

**Методи.** Дослідники застосували порівняльно-аналітичну методологію, проаналізувавши Конвенцію про права дитини та вивчивши й порівнявши національне законодавство Фінляндії, Франції та Бельгії, яке гарантує право дитини бути почутою. У статті також розглядаються загальні коментарі Комітету з прав дитини та практика різних судів.

**Результати та висновки.** Дослідження виявляє значні розбіжності у реалізації права дитини бути почутою в різних правових системах, причому деякі суди неохоче заслуховують дітей. Воно підкреслює необхідність чітких процесуальних механізмів, які гарантують, що думки дітей будуть враховані та що вони будуть поінформовані про результати процедури.

**Ключові слова.** Конвенція ООН про права дитини; Загальна декларація прав людини; Комітет з прав дитини; Найкращі інтереси дитини; Стаття 12 Конвенції про права дитини; Свобода вираження поглядів.