



Improving Justice in
Child Contact

LISTENING TO CHILDREN

November 2020

KEY MESSAGES

- Children want to be heard.
- Children want spaces within the judicial system to be child-friendly and to help them feel secure.
- Children want to understand decisions made in judicial procedures that concern them.
- The profile of competencies of the professionals interacting with children during the judicial procedures is of utmost importance.
- In this context, the role of [‘Super Listener’](#) is a crucial requisite.

IJCC Briefing: Portugal

Better justice to children in domestic violence situations: the IJCC project

[“Improving Justice in Child Contact: children affected by Domestic Violence”](#) (IJCC) (henceforth the IJCC project) is a partnership research project across five European countries from November 2018 to January 2021. Its principal goal is to promote the involvement of children in legal decisions about their rights to contact with their parents in families affected by domestic violence, while at the same time guaranteeing the children’s rights and the rights of victims to protection.

This project involves partners in Portugal, Bulgaria, Cyprus, Romania and Scotland. It is funded by the European Union’s Rights, Equality and Citizenship Programme (2014-2020).

In Portugal, the IJCC project was developed in partnership with the CESIS – the Centre for Studies for Social Intervention and UMAR – the Union of Women for Alternatives and Answers.

Listening to children – some brief legislative references

The United Nations Convention on the Rights of the Child (CRC),¹ in its article 12 (1), states that:

¹Available at: https://www.unicef.pt/media/2766/unicef_convenc-a-o_dos_direitos_da_crianca.pdf.

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.

And it adds, in Article 12 (2), that

To this end, children are granted the opportunity to be heard in legal and administrative cases relating to them, whether directly or through a representative or suitable body in accordance with the modalities provided for by the procedural rules set by national legislation.

All children deserve to be recognised in their dignity as human beings and to be involved in the decisions that concern them.

The European Charter of Fundamental Rights also states, in its article 24 (1) that

Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in



accordance with their age and maturity.

In line with the international guidelines, the Law on the Protection of Children and Young People, in its article 4, states that there is a compulsory requirement for children's statements to be heard in the definition of the measures for support and protection.²

This is acknowledged by the United Nations Committee on the Rights of the Child, in the Final Observations on the Fifth and Sixth Regular Reports of Portugal³ via Law no. 141/2015, of 8th September, which approves the General System for Civil Guardianship Proceedings, and undertakes the first amendment to Law no. 103/2009 of 11th September, which establishes the legal system for civil sponsorship. Here, the principal of listening to the child's statements is recognised as a guiding principle (article 4). In article 5, the law states, specifically in relation to listening to the child, that:

1 - The child has the right to be heard, with their opinion being taken into consideration by the judiciary authorities when determining what is in their best interest.

2 - For the purposes of what is outlined in the previous number, the judge is to support the act of listening to the child's statements, which may take place as part of a

legal process arranged specifically for this purpose.

3 - The child is to make statements only after having been given clear information on the significance and scope of these statements.

4 - The child's contribution relates to their specific situation, guaranteeing in any case the existence of suitable conditions for this purpose, namely:

a) The child is not to be subjected to a space or environment which is intimidating, hostile and unsuitable for their age, level of maturity and personal characteristics.

b) Legal professionals are to be involved who have suitable training.

5 - Bearing in mind compliance with all that is outlined in the previous number, it is preferred if official dress is not worn while the child is making statements.

(...)

7 - The taking of declarations is to conform to the following rules:

a) Declarations are to be taken in an informal and discrete environment (...)

² Law no. 147/99, of 1st September, amended by Law no. 26/2018, of 5th July. Available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2911&tabela=leis&ficha=1&pagina=1&so_miolo=.

³ Available at: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/PRT/CRC_C_PRT_CO_5-6_37295_E.pdf



the child must be assisted in the course of presentation by an official who is specially qualified to supervise them and who is appointed in advance for this purpose.

Generally, these legal documents recognise that all children deserve to have their dignity as human beings recognised and to be involved in matters that relate to them. The application of this right has been amply conceptualised as a right to participation, although the word has not been used by the CRC in Article 12 itself, as stated by the Committee on the Rights of the Child in its General Commentary no. 12 from June 2009.⁴ For the Committee, the term participation has evolved and is now used to describe an ongoing process which includes the exchange of information and dialogue between children and adults based on mutual respect. The Committee recognises that it can be difficult to realise this right in practice.

In the Final Observations on the Fifth and Sixth Regular Reports of Portugal, the United Nations Committee on the Rights of the Child recommends that Portugal:

(a) Extends the child's right to have their heard to all civil, administrative and criminal procedures and all administrative cases that affect the child;

(b) Ensures the effective and consistent implementation of the legislation and regulations that recognise the child's right to be heard in all legal procedures that directly or indirectly affect them, including through the creation of systems and/or procedures so that social workers, health professionals, educational professionals and courts respect this principle;

(c) Reinforces the measures that guarantee that professionals in the sectors of law, education, social services and health who deal with children systematically receive adequate training on the ways in which the child's opinion can be ascertained and their point of view can be taken into consideration in all decisions that affect children (CRC/C/PRT/CO/ 3- 4, paragraph 32 (c));

(d) Develops tools to consult children in the scope of the development of policies that affect them in order to systematise these consultations in a higher level of participation and inclusion.

About involving and listening to children

According to the UN Committee on the Rights of the Child (UNCRC),

⁴ See:

<https://www.citius.mj.pt/portal/article.aspx?ArticleId=11>.



participation is not merely a right but also a General Principle that should guide all interventions pertaining to children and all decisions that are made in relation to them. It is also a process that requires mechanisms specifically for its operationalisation.

Children should be recognised as experts on their own life.

According to Gerison Lansdown,⁵ participation cannot ignore the existence of power dynamics between children and adults, who, in general, have a concept of childhood that limits the full citizenship of younger people and that sees children and young people as merely being in the preparatory stages for adult life. Participation as a principle emphasises a new perspective on childhood and children in which children are recognised as: experts on their own lives with the skills to express their experiences and perspectives; having a range of communication skills; being agents of change in their own lives, the lives of those with whom they interact and their society.

Three fundamental aspects are important to the participation process:

1. Information. Without a right to information, the child cannot participate significantly. The right to

information, explained in article 17 of the CRC is, thus, directly related to article 12, which is part of its basis.

2. Listening to the child. Article 12 explicitly refers to the child's right to be heard, with this leading to a dialogue which requires specific skills of the professional and which allows the child to provide clarification on all the necessary questions. The child has a right to be heard; it must not be viewed as a responsibility.
3. Respect for their opinions. To comply completely with article 12 of the CRC, the process of informing and listening to the child must be consequential: in other words the child's opinion must be taken into account in the decision made. However, this does not necessarily mean that the child's point of view will be adopted simply and automatically; it means that their point of view must be given due weight in the decision to be taken. The child must be given the opportunity to understand why one option was chosen and another was not.

Involving children in the justice system: What the young experts of the IJCC project say

According to a study by the European Agency for Fundamental Rights (FRA),⁶

⁵ Lansdown, Gerison (2001). *Promoting Children's Participation in Democratic Decision-Making*, Florence, UNICEF/Innocenti Research Centre. Available at: <https://www.unicef-irc.org/publications/290->

[promoting-childrens-participation-in-democratic-decision-making.html](https://www.unicef-irc.org/publications/290-promoting-childrens-participation-in-democratic-decision-making.html)

⁶FRA (2017). *Child-friendly justice - Perspectives and experiences of children involved in judicial proceedings*



around 2.5 million children per year are involved in legal procedures throughout Europe. It is also clear that such procedures may be particularly stressful for children, giving rise to traumas if the system is not established in ways that are child-friendly.

The work developed in Portugal in the context of the [IJCC](#) project has enabled the formation and development of a group of young people, who in the course of their lives have been victims of domestic violence and who in these circumstances were involved in some way in legal or regulatory processes with regard to parental responsibilities. These young people, boys and girls, 'experts on their own lives', constituted what the project has named the Young Experts Group. Their suggestions are closely aligned with the results of the FRA study cited above:

- i. The children express their wish to be heard in legal cases; however, safer and more comfortable environments are needed.
- ii. Professionals with a certain skills background, capable of understanding the child in the situation they find them in, establishing an empathetic relationship, listening to the child and giving them the opportunity to express their points of view, are very much valued by children (see below [‘The Super Listener’](#)).
- iii. Children do not always feel sufficiently protected and often refer

to a lack of knowledge about what will happen to them and/or a lack of understanding about what will happen to them.

These are also matters that are emphasised in the Guidelines of the European Council on the adaptation of the legal system for children.⁷

About 2.5 million children, in every year, are involved in judicial procedures all over Europe.

Thus, everything points to the importance of physical spaces and training in personal and social skills for professionals - their behaviour is a key factor in determining a justice system that is 'child-friendly' (cf. FRA, 2017: 115).

as victims, witnesses or parties in nine EU Member States.

Available at:

<https://fra.europa.eu/en/publication/2017/child-friendly-justice-perspectives-and-experiences-children-involved-judicial>.

⁷ *Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice.*

Available at:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3.



Spaces

The organisation of spaces and working methods must promote a feeling of confidence and security.

The physical spaces should create an atmosphere of security.

The personal and professional competences of professionals are key for the promotion of children's participation.

Thus, specifically on the basis of the work done with the Young Experts Group, it is important to emphasise the following aspects:

- The importance of the children having the opportunity to be supported by their legal representative or an adult from their school who poses no risk to their best interest.
- The need for the children to be familiarised in good time with the court space, a process in which the support of the legal system's professionals is fundamental. The legal professionals must also make themselves known to the children.

- The need to have rooms within courts which are organised and decorated in a way which is better adapted for younger children and adolescents.
- The need to have special hearing rooms (within the hearing space and with equipment which makes the giving of testimony remotely possible) which take into account the child's best interest.
- The need to adapt the court environment, particularly eliminating the official dress of the magistrates and lawyers.
- The importance of using intelligible language and ensuring that the child effectively understands the decision made. Someone with skills in the area of child involvement must also explain to the child how their opinion was considered in the decision-making process.

The working methods should favour a feeling of trust and respect for children's views.

It should also be noted that the IJCC project in Portugal, in the context of its multi-sector forum⁸, outlined an Action Plan, structured in terms of sectors with a view to promote a better justice system for children in domestic violence

⁸ The multi-sector forum for the IJCC project in Portugal is composed of a broad and diverse group of interested parties, including bodies with national and local scopes, public services and organisations of civil society: gender equality bodies, victim support organisations (for

domestic violence), services for the protection and promotion of the children's rights, services from the social protection system, courts, the public ministry and police and security forces.



situations, in particular in relation to the visiting regime, which is a set of measures identified and agreed to by the member bodies. One of the proposed measures, in the field of Law, to respond to the problem defined as:

Insufficient child-friendly procedures and spaces is the Creation of a proposal for more suitable spaces for children's statements in civil courts, ensuring their protection, privacy and well-being, to be presented to the legal system.

The 'Super Listener'

In the context of the [IJCC](#) project and, more concretely, in the scope of the work undertaken in Portugal with children involved in the [Power Up/Power Down](#) methodology (see below) and later with the report by the Young Experts Group⁹, the importance of the profile of the professionals who interact with the children in the course of legal processes was emphasised. The professionals of the legal system, as well as the EMATs and ATTs (who are support teams to the courts) play a fundamental role in: the way the child receives information, understands it and knows how to play their part in proceedings; the way the child is heard and feels heard; and the respect shown for the opinions that they express.

For this purpose, the [IJCC](#) project has adopted the '[Super Listener](#)' character, developed as part of the [Power Up/Power Down](#)¹⁰ project. In this participatory project, children who have experienced domestic violence situations said what they wanted adults who were 'super listeners' and made them feel safe, supported and respected when expressing their opinions.

In Portugal, this character, translated as 'Super Ouvinte',¹¹ was used as a resource in work with children who were participating in implementing the [Power Up/Power Down](#) methodology and relied on the contribution of the Young Experts Group.¹²

The '[Super Listener](#)' profile was also verified by the Multi-sector Forum as essential to promote a child-friendly legal system, with the following measures being required in the Action Plan:

- *Dissemination of the '[Super Listener](#)' character as a new professional profile to be integrated into the legal system for listening to children.*
- *Dissemination of the '[Super Listener](#)' character as a new professional profile to be integrated into ATTs and EMATs.*

⁹ For additional information about the methodology and respective implementation, please see

<http://ijcc.umarfeminismos.org/>.

¹⁰ Previously developed in Scotland with the help of Scottish Women's Aid and the Children and Young People's Commissioner Scotland.

¹¹ You may access these materials in Portuguese at: https://www.ed.ac.uk/files/atoms/files/mh-ijcc-super-listener-postcard-portuguese_0.pdf.

https://www.ed.ac.uk/files/atoms/files/mh-ijcc-super-listener-a1-poster-portuguese_0.pdf.

¹² The resource, originally conceived in Scotland, has been translated into eight languages in the form of a postcard and a poster and is used in the different national contexts covered by the IJCC project. If you would like to access these materials in the different languages of the IJCC project, you can do this at:

<https://blogs.ed.ac.uk/ijcc/resources/>



Desired and respected by children and respecting them, the '[Super Listener](#)' character is associated with the following attributes:

Are you a Super Listener?

kind.....

knows what they are doing.....

remains calm under pressure.....

uses hands to communicate.....

casual clothes.....

believes children.....

caring and friendly.....



.....eyes to see the problems

.....mouth to communicate

.....knows about children's rights

.....respectful

.....non-judgemental

.....will talk to grown-ups for you

.....can make you laugh

.....do what they promised

www.ed.ac.uk/education/ijcc










The proposal to adopt the '[Super Listener](#)' character by the [IJCC](#) project arises in the context of sharing good practices between European countries, specifically the proposal to find ways to adjust and overcome matters related to listening to children in different national contexts.

One of the key principles of the [IJCC](#) project is thus that the skills of the '[Super Listener](#)' character could be considered and integrated accordingly into the functioning of the legal system of our country, contributing to better justice for children in domestic violence situations.

This text was validated by the IJCC Young Experts Group in Portugal.



ABOUT IJCC

Improving Justice in Child Contact (IJCC) aims to improve children and young people's participation in decision-making around child contact for families affected by domestic violence.

- By 'child contact' we mean communication (such as phone calls or spending time) between a child and a parent who are not regularly living together.
- By 'participation' we refer to children's human rights under the United Nations Convention on the Rights of the Child (UNCRC). Children have a range of participation rights, including the right to express their views freely in matters that affect them and for those views to be considered seriously.

Improving Justice in Child Contact is a project across five European countries (Bulgaria, Cyprus, Portugal, Romania and Scotland) running from November 2018 to January 2021. Each country is exploring models for children and young people to participate and working with stakeholders to eliminate the barriers for, and enhance the mechanisms that support, children and young people's participation.

More information is available on our website.

www.ed.ac.uk/education/ijcc

Our Young Advisers

Improving Justice in Child Contact is advised by a group of young experts, called Yello!, who have previous experience of participation work. The young people are aged between 12 and 18 and have experience of domestic violence.



SUPPORT

If you are looking for advice or information about domestic violence, help is available. Women Against Violence Europe have information on specialist services across Europe at www.wave-network.org/find-help

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