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EUROPEAN CONVENTION ON THE EXERCISE OF CHILDREN'S RIGHTS

Strasbourg, 25.I.1996

Preamble

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Having regard to the United Nations Convention on the rights of the child and in particular Article 4 which requires States Parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the said Convention;

Noting the contents of Recommendation 1121 (1990) of the Parliamentary Assembly on the rights of the child;

Convinced that the rights and best interests of children should be promoted and to that end children should have the opportunity to exercise their rights, in particular in family proceedings affecting them;

Recognising that children should be provided with relevant information to enable such rights and best interests to be promoted and that due weight should be given to the views of children;

Recognising the importance of the parental role in protecting and promoting the rights and best interests of children and considering that, where necessary, States should also engage in such protection and promotion;

Considering, however, that in the event of conflict it is desirable for families to try to reach agreement before bringing the matter before a judicial authority,

Have agreed as follows:

Chapter I – Scope and object of the Convention and definitions**Article 1 – Scope and object of the Convention**

- 1 This Convention shall apply to children who have not reached the age of 18 years.
- 2 The object of the present Convention is, in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority.
- 3 For the purposes of this Convention proceedings before a judicial authority affecting children are family proceedings, in particular those involving the exercise of parental responsibilities such as residence and access to children.
- 4 Every State shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, specify at least three categories of family cases before a judicial authority to which this Convention is to apply.
- 5 Any Party may, by further declaration, specify additional categories of family cases to which this Convention is to apply or provide information concerning the application of Article 5, paragraph 2 of Article 9, paragraph 2 of Article 10 and Article 11.

- 6 Nothing in this Convention shall prevent Parties from applying rules more favourable to the promotion and the exercise of children's rights.

Article 2 – Definitions

For the purposes of this Convention:

- a the term “judicial authority” means a court or an administrative authority having equivalent powers;
- b the term “holders of parental responsibilities” means parents and other persons or bodies entitled to exercise some or all parental responsibilities;
- c the term “representative” means a person, such as a lawyer, or a body appointed to act before a judicial authority on behalf of a child;
- d the term “relevant information” means information which is appropriate to the age and understanding of the child, and which will be given to enable the child to exercise his or her rights fully unless the provision of such information were contrary to the welfare of the child.

Chapter II – Procedural measures to promote the exercise of children's rights

A. Procedural rights of a child

Article 3 – Right to be informed and to express his or her views in proceedings

A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request, the following rights:

- a to receive all relevant information;
- b to be consulted and express his or her views;
- c to be informed of the possible consequences of compliance with these views and the possible consequences of any decision.

Article 4 – Right to apply for the appointment of a special representative

- 1 Subject to Article 9, the child shall have the right to apply, in person or through other persons or bodies, for a special representative in proceedings before a judicial authority affecting the child where internal law precludes the holders of parental responsibilities from representing the child as a result of a conflict of interest with the latter.
- 2 States are free to limit the right in paragraph 1 to children who are considered by internal law to have sufficient understanding.

Article 5 – Other possible procedural rights

Parties shall consider granting children additional procedural rights in relation to proceedings before a judicial authority affecting them, in particular:

- a the right to apply to be assisted by an appropriate person of their choice in order to help them express their views;

- b the right to apply themselves, or through other persons or bodies, for the appointment of a separate representative, in appropriate cases a lawyer;
- c the right to appoint their own representative;
- d the right to exercise some or all of the rights of parties to such proceedings.

B. Role of judicial authorities

Article 6 – Decision-making process

In proceedings affecting a child, the judicial authority, before taking a decision, shall:

- a consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child and, where necessary, it shall obtain further information, in particular from the holders of parental responsibilities;
- b in a case where the child is considered by internal law as having sufficient understanding:
 - ensure that the child has received all relevant information;
 - consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;
 - allow the child to express his or her views;
- c give due weight to the views expressed by the child.

Article 7 – Duty to act speedily

In proceedings affecting a child the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced. In urgent cases the judicial authority shall have the power, where appropriate, to take decisions which are immediately enforceable.

Article 8 – Acting on own motion

In proceedings affecting a child the judicial authority shall have the power to act on its own motion in cases determined by internal law where the welfare of a child is in serious danger.

Article 9 – Appointment of a representative

- 1 In proceedings affecting a child where, by internal law, the holders of parental responsibilities are precluded from representing the child as a result of a conflict of interest between them and the child, the judicial authority shall have the power to appoint a special representative for the child in those proceedings.
- 2 Parties shall consider providing that, in proceedings affecting a child, the judicial authority shall have the power to appoint a separate representative, in appropriate cases a lawyer, to represent the child.

C. Role of representatives**Article 10**

- 1 In the case of proceedings before a judicial authority affecting a child the representative shall, unless this would be manifestly contrary to the best interests of the child:
 - a provide all relevant information to the child, if the child is considered by internal law as having sufficient understanding;
 - b provide explanations to the child if the child is considered by internal law as having sufficient understanding, concerning the possible consequences of compliance with his or her views and the possible consequences of any action by the representative;
 - c determine the views of the child and present these views to the judicial authority.
- 2 Parties shall consider extending the provisions of paragraph 1 to the holders of parental responsibilities.

D. Extension of certain provisions**Article 11**

Parties shall consider extending the provisions of Articles 3, 4 and 9 to proceedings affecting children before other bodies and to matters affecting children which are not the subject of proceedings.

E. National bodies**Article 12**

- 1 Parties shall encourage, through bodies which perform, *inter alia*, the functions set out in paragraph 2, the promotion and the exercise of children's rights.
- 2 The functions are as follows:
 - a to make proposals to strengthen the law relating to the exercise of children's rights;
 - b to give opinions concerning draft legislation relating to the exercise of children's rights;
 - c to provide general information concerning the exercise of children's rights to the media, the public and persons and bodies dealing with questions relating to children;
 - d to seek the views of children and provide them with relevant information.

F. Other matters**Article 13 – Mediation or other processes to resolve disputes**

In order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, Parties shall encourage the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases to be determined by Parties.

Article 14 – Legal aid and advice

Where internal law provides for legal aid or advice for the representation of children in proceedings before a judicial authority affecting them, such provisions shall apply in relation to the matters covered by Articles 4 and 9.

Article 15 – Relations with other international instruments

This Convention shall not restrict the application of any other international instrument which deals with specific issues arising in the context of the protection of children and families, and to which a Party to this Convention is, or becomes, a Party.

Chapter III – Standing Committee**Article 16 – Establishment and functions of the Standing Committee**

- 1 A Standing Committee is set up for the purposes of this Convention.
- 2 The Standing Committee shall keep under review problems relating to this Convention. It may, in particular:
 - a consider any relevant questions concerning the interpretation or implementation of the Convention. The Standing Committee's conclusions concerning the implementation of the Convention may take the form of a recommendation; recommendations shall be adopted by a three-quarters majority of the votes cast;
 - b propose amendments to the Convention and examine those proposed in accordance with Article 20;
 - c provide advice and assistance to the national bodies having the functions under paragraph 2 of Article 12 and promote international co-operation between them.

Article 17 – Composition

- 1 Each Party may be represented on the Standing Committee by one or more delegates. Each Party shall have one vote.
- 2 Any State referred to in Article 21, which is not a Party to this Convention, may be represented in the Standing Committee by an observer. The same applies to any other State or to the European Community after having been invited to accede to the Convention in accordance with the provisions of Article 22.
- 3 Unless a Party has informed the Secretary General of its objection, at least one month before the meeting, the Standing Committee may invite the following to attend as observers at all its meetings or at one meeting or part of a meeting:
 - any State not referred to in paragraph 2 above;
 - the United Nations Committee on the Rights of the Child;
 - the European Community;
 - any international governmental body;
 - any international non-governmental body with one or more functions mentioned under paragraph 2 of Article 12;
 - any national governmental or non-governmental body with one or more functions mentioned under paragraph 2 of Article 12.

- 4 The Standing Committee may exchange information with relevant organisations dealing with the exercise of children's rights.

Article 18 – Meetings

- 1 At the end of the third year following the date of entry into force of this Convention and, on his or her own initiative, at any time after this date, the Secretary General of the Council of Europe shall invite the Standing Committee to meet.
- 2 Decisions may only be taken in the Standing Committee if at least one-half of the Parties are present.
- 3 Subject to Articles 16 and 20 the decisions of the Standing Committee shall be taken by a majority of the members present.
- 4 Subject to the provisions of this Convention the Standing Committee shall draw up its own rules of procedure and the rules of procedure of any working party it may set up to carry out all appropriate tasks under the Convention.

Article 19 – Reports of the Standing Committee

After each meeting, the Standing Committee shall forward to the Parties and the Committee of Ministers of the Council of Europe a report on its discussions and any decisions taken.

Chapter IV – Amendments to the Convention

Article 20

- 1 Any amendment to the articles of this Convention proposed by a Party or the Standing Committee shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her, at least two months before the next meeting of the Standing Committee, to the member States of the Council of Europe, any signatory, any Party, any State invited to sign this Convention in accordance with the provisions of Article 21 and any State or the European Community invited to accede to it in accordance with the provisions of Article 22.
- 2 Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Standing Committee which shall submit the text adopted by a three-quarters majority of the votes cast to the Committee of Ministers for approval. After its approval, this text shall be forwarded to the Parties for acceptance.
- 3 Any amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Chapter V – Final clauses

Article 21 – Signature, ratification and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe and the non-member States which have participated in its elaboration.

- 2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three States, including at least two member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
- 4 In respect of any signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 22 – Non-member States and the European Community

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, on its own initiative or following a proposal from the Standing Committee and after consultation of the Parties, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, as well as the European Community to accede to this Convention by a decision taken by the majority provided for in Article 20, sub-paragraph d of the Statute of the Council of Europe, and by the unanimous vote of the representatives of the contracting States entitled to sit on the Committee of Ministers.
- 2 In respect of any acceding State or the European Community, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 23 – Territorial application

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 24 – Reservations

No reservation may be made to the Convention.

Article 25 – Denunciation

- 1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notification by the Secretary General.

Article 26 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council, any signatory, any Party and any other State or the European Community which has been invited to accede to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 21 or 22;
- d any amendment adopted in accordance with Article 20 and the date on which such an amendment enters into force;
- e any declaration made under the provisions of Articles 1 and 23;
- f any denunciation made in pursuance of the provisions of Article 25;
- g any other act, notification or communication relating to this Convention.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 25th January 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.

Explanatory Report

In 1990, the Parliamentary Assembly, in its Recommendation 1121 (1990) on the rights of the child, invited the Committee of Ministers to draw up a legal instrument to supplement the United Nations Convention on the Rights of the Child.

After noting that Article 4 of the United Nations convention requires Parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the convention, the Council of Europe decided that these measures were of fundamental importance for the exercise of children's rights. Without such measures children would not be able to exercise many of their rights.

Shortly after the proposals made by the Parliamentary Assembly, the Committee of Experts on Family Law was given the task of considering the question of the rights of children, and of preparing a convention dealing with matters not already covered by the United Nations' convention. It resulted in the European Convention on the Exercise of Children's Rights which was opened for signature in Strasbourg on 25 January 1996.

I. Introduction

1. In 1990, the Parliamentary Assembly of the Council of Europe ⁽¹⁾ adopted Recommendation 1121 on the rights of children. The text placed emphasis on the need to provide special assistance, protection and care for children and pointed out that this responsibility lies primarily with the parents, although obligations are also imposed on society and the State.

2. In this connection, the Assembly welcomed the adoption of the United Nations Convention on the Rights of the Child in 1989, and recommended that the Committee of Ministers invite member States to do whatever they could to promote the rapid ratification and implementation of the United Nations Convention. The Assembly also recommended that the Committee of Ministers, among other things, instruct the competent steering committees to examine the possibility of drawing up an appropriate legal instrument of the Council of Europe in order to supplement the United Nations Convention on the Rights of the Child.

3. In 1988, The European Ministers of Justice, at their 16th Conference, (Lisbon, June 1988), in Resolution No 2 on the supremacy of the interests of the child in the field of private law, recommended the Committee of Ministers of the Council of Europe to instruct the European Committee on legal co-operation (CDCJ) to pay special attention, in the framework of its activity relating to family law, to the best interests of the child. The Ministers agreed that consideration should be given to matters such as improving and accelerating general court procedures where the interests of the child are at stake, hearing the child and the proper representation of the child.

4. In 1990, the Committee of Experts on Family Law (CJ-FA) considered the advisability of the preparation of a draft European Convention on the exercise of children's rights. The CJ-FA stressed that any overlap with the United Nations Convention should be avoided. Emphasis was placed on the fact that the two texts were complementary, in that Article 4 of the United Nations Convention provides that States Parties to the Convention shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention. It was considered that the European Convention would help the Council of Europe member States and other States which are Parties to the United Nations Convention to conform to the said Article 4.

5. The draft Convention and its Explanatory Report were approved by the Committee of Experts on Family Law (CJ-FA) at its 27th meeting from 7 to 10 November 1994.

6. The draft Convention was then submitted by the European Committee on Legal Co-operation (CDCJ) to the Committee of Ministers which approved the text and decided to open it for signature on 25 January 1996.

II. Commentary on the provisions of the Convention

General observations

7. The present Convention facilitates the exercise of the substantive rights of children by strengthening and creating procedural rights which can be exercised by children themselves or through other persons or bodies. Emphasis is placed on the idea of promoting children's rights as the term "promotion" is broader than "protection."

8. The Convention deals with family proceedings affecting children which take place before judicial authorities, i.e. courts or administrative authorities having judicial powers. Nevertheless, it recognises the prime importance of the parental role. In the event of conflict, it is desirable for families to try first to reach an agreement themselves before bringing the matter before a judicial authority. However, the State has a role to play, not only in cases where parents fail to exercise their responsibilities in a proper manner, but also because children live in a society which has given them certain rights and therefore they should be entitled to exercise these rights. Furthermore procedural rights may also be protected by other persons or bodies such as a youth protection body.

9. Children already have in some cases the opportunity to exercise their rights before a national court or other judicial authorities. They may exercise these rights not only before such authorities but also before the European Court of Human Rights and may themselves lodge a complaint under the European Convention on Human Rights against a Party to this Convention on Human Rights.

Chapter 1 – Scope and object of the Convention and definitions

Article 1 – Scope and object of the Convention

10. This article defines the scope of the Convention which applies to all children who have not reached the age of 18 years.

11. It may be recalled in this connection that the Committee of Ministers, in its Resolution (72) 29 on the lowering of the age of full legal capacity, had recommended in 1972 that States should, if they deemed it advisable, fix the age of majority at 18 years. Since then the age of 18 has become, in virtually all the member States of the Council of Europe, the officially accepted age of majority.

12. Where children have attained full legal capacity, or where they have legal capacity for certain purposes, although they have not reached the age of 18 (e.g. as a result of marriage or emancipation), they may still be helped by the Convention, where they are involved in proceedings contemplated in the Convention, by the provision of information and assistance with court procedures.

13. In a small number of countries, the age of majority is higher than 18 years. Although the Convention applies only to children aged under 18, persons of 18 or more, who have not reached the age of majority, may continue, up to the age of majority, to benefit from the provisions of the Convention.

14. Under paragraph 2 of this article, the object of the Convention is, in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights by informing children themselves and allowing them to express their views in proceedings affecting them before a judicial authority. Children's views may be determined

and presented to the court in various ways and by a number of different persons. It is for internal law to decide whether a child should be formally represented or formally participate, whether a party or not in the proceedings. Wherever possible views of children should be presented. In certain cases, this may be done through other persons or bodies, for example in the case of young children, by a welfare officer in a report.

15. Paragraph 3 shows clearly that the Convention deals with family proceedings. However States are free to apply it to other proceedings if they wish. The paragraph gives as examples of family proceedings, in particular those proceedings involving the exercise of parental responsibilities such as residence and access to children. Residence and access have been mentioned because of their importance in the life of a child.

16. States are required under paragraph 4 to make a declaration specifying the categories of family cases to which the Convention is to apply. States must choose at least 3 categories of such cases.

17. Examples of categories which may be specified by States to be family cases are:

- custody;
- residence;
- access;
- questions of parentage;
- legitimacy (declaration, contestation);
- adoption;
- legal guardianship;
- administration of property of children;
- care procedures;
- removal or restriction of parental responsibilities;
- protection from cruel and degrading treatment,
- medical treatment.

Other categories of family cases may also be specified by States to be family proceedings as the above list is not exhaustive. It is of course desirable for States, whenever possible, to specify more than three categories of cases to which the Convention is to apply.

18. For the purposes of the Convention it is not necessary that these proceedings are main proceedings. Ancillary proceedings, such as custody, residence or access matters in the context of divorce or separation of a child's parents, are also covered.

19. States may at a later stage make a further declaration to add to the list of categories of family cases to which the Convention is to apply in their State (Article 1, paragraph 5). States may also, where applicable, make further declarations in relation to Articles 5, 9, 10 and 11 in order to inform the Council of Europe about any extension in the scope of these articles.

20. Under paragraph 6 of this article, Parties may apply rules more favourable to children than those contained in the Convention. In other words, the text lays down a minimum standard for States to respect, but they may go further in promoting the exercise of children's rights.

21. In addition Resolution (72) 29 also recommends governments "to consider the advisability of granting to certain minors capacity to carry out everyday transactions and to act independently in other appropriate fields." This applies in particular to States where the age of majority still remains above 18 years.

22. The Convention does not deal directly with the duties of the holders of parental responsibilities who are not representatives within the meaning of the Convention (i.e. have not been appointed to act before a judicial authority on behalf of a child).). Nevertheless, even

if these persons are not appointed representatives, if their children are involved in proceedings they should help by:

- consulting the child in a manner appropriate to his or her understanding,
- providing all relevant information to the child to enable him or her to express views,
- providing explanations concerning the possible consequences of following the wishes of the child and of any decision by the judicial authority,
- taking due account of the views expressed by the child.

Article 2 – Definitions

a. judicial authority

23. In addition to courts, including the Attorney General's department where, in some States, it has judicial civil authority, any administrative authority with judicial powers in family proceedings is covered by the definition of the term "Judicial authority". Administrative authorities have been included as the powers which belong to courts are also, in some States, exercised by administrative authorities for certain types of family proceedings.

b. holders of parental responsibilities

24. The term "holders of parental responsibilities" refers not only to parents who are entitled to exercise some or all parental responsibilities but also to other persons or bodies, including local authorities, entitled to exercise some or all parental responsibilities. Foster parents or establishments in which children are placed could therefore be included in this definition, where appropriate. It should be noted that Committee of Ministers' Recommendation No R (84) 4 on parental responsibilities defines such responsibilities as a "collection of duties and powers which aim at ensuring the moral and material welfare of the child, in particular by taking care of the person of the child, by maintaining personal relationships with him and by providing for his education, his maintenance, his legal representation and the administration of his property". The explanatory memorandum (paragraph 6) to this Recommendation provides that the term "parental responsibilities" described the "modern concept according to which parents are, on a basis of equality between the parents and in consultation with their children, given the task to educate, legally represent, maintain, etc. their children. In order to do so they exercise powers to carry out duties in the interests of the child and not because of an authority which is conferred on them in their own interests."

c. representatives

25. Under the Convention, the term "representative" refers not only to an individual person, such as a lawyer, who has been specifically appointed to act before a judicial authority on behalf of a child but also to a body so appointed such as a child welfare authority.

26. The holders of parental responsibilities may also be considered to be the representatives of a child, within the meaning of Article 2, where they have been specifically appointed to act on his or her behalf before the judicial authority. Consequently, in such cases they will be required to comply with the provisions of Article 10 in relation to the duty of representatives to inform the child, to explain certain matters and to determine his or her views.

27. In those cases where the holders of parental responsibilities have not been specifically appointed, they do not fall within the meaning of the term "representative". However, in order to ensure that a child in these cases is also informed and account taken of his or her views, the judicial authority is given the task, under paragraph *b* of Article 6, to ensure that the child has received all relevant information.

d. relevant information

28. The Convention uses the term "relevant information" to make it clear that not all information necessarily has to be divulged to children, since some information might be harmful to children's welfare independently of their age and their capacity for understanding. In addition, once it has been decided to transmit information to children (e.g. written or oral according to the circumstances), that information must be adapted, in both form and content, to children's age and understanding.

Chapter II – Procedural measures to promote the exercise of children's rights

29. In addition to the procedural rights given to children in part A of Chapter II, parts B and C indicate the role to be played by the authorities and representatives in order to secure these procedural rights. The layout of Chapter II is thus based on this complementarity and balance between the procedural rights, on the one hand, and duties and responsibilities on the other.

A. Procedural rights of a child

Article 3 – Right to be informed and to express his or her views in proceedings

30. Under this article, children considered by internal law as having sufficient understanding are entitled to request relevant information, to be consulted and to express their views and to be informed of the possible consequences of compliance with their views or of any decision. These rights are not necessarily set out in the chronological order in which they may be exercised nor in their order of importance.

31. Article 3 provides for the exercise of a number of procedural rights which should be given to children unless, as regards one or more of these rights, a child is not considered as having sufficient understanding. The exercise of one of these procedural rights does not exclude the exercise of the other rights for example even if a child does not request information it may still be necessary to inform the child and indicate the possible consequences of following his or her views or of any decision.

32. The provisions of Article 3 are to be considered in the light of the other articles of the Convention relevant to this Article, such as Articles 6 and 10 .

33. This text therefore represents a step forward in the recognition of children's rights in family proceedings concerning them. Children are no longer merely the subject of such proceedings, they may also participate. Even if they are not given the status of parties to the proceedings, they possess a number of rights which they may exercise. In this connection, the right to request relevant information and the right to be consulted gives the child. concerned an effective opportunity to express his or her own views. It is particularly important that children should receive all relevant information before decisions are taken concerning matters of great importance such as their residence.

34. A number of other international instruments have already considered the question of the right of children to receive information and to give their opinions in proceedings concerning them ⁽²⁾.

35. Article 3 of the Convention has not given the child the right to consent to or to veto a planned decision as it covers many different types of cases and it would not always be in the best interests of a child to be given such a right in the case of certain decisions. It is however open to States to provide more favourable rules under Article 1, paragraph 6, and to grant a right to children to consent to or to veto a planned decision in certain cases, such as adoption ⁽³⁾.

36. It is left to States to define the criteria enabling them to evaluate whether or not children are capable of forming and expressing their own views and States are naturally free to make the age of children one of those criteria. Where internal law has not fixed a specific age in order to indicate the age at which children are considered to have sufficient understanding, the judicial or administrative authority will, according to the nature of the case, determine the level of understanding necessary for children to be considered as being capable of forming and expressing their own views.

37. Within the meaning of the Convention, internal law covers not only laws in the formal sense, texts of regulations and case-law, but also international instruments when they are incorporated into the domestic legal system.

Article 4 – The right to apply for the appointment of a special representative

38. When there is a conflict of interest between a child and the holders of parental responsibilities these persons may be precluded by internal law from, representing the child. It is for internal law to determine the circumstances when a conflict of interest is deemed to arise.

39. In such a case the right to apply for the appointment of a special representative may be exercised by the child in person or through other persons or bodies. However States may restrict this right to children they consider to have sufficient understanding. The right to apply for the appointment of a special representative under this article is subject to Article 9 as the judicial authority may already have appointed, or may wish itself to appoint, a special representative (e.g. where internal law requires the *ex officio* appointment of a representative by a judicial authority in the case of a conflict of interest).

40. This article applies to family proceedings taking place before the judicial authorities of a Party. Such proceedings will already have been specified as a category of family cases by the Party under paragraph 4 of Article 1. This article will apply to proceedings where the child, according to internal law, must be represented. Such an appointment may be for a specific duration or for limited purposes.

Article 5 – Other possible procedural rights

41. Unlike Article 4, States are not required under this article to give children specific rights. However they are required to consider whether it is advisable to grant them additional procedural rights. This requirement to consider may be checked by the Standing Committee (see Article 16). If States do grant additional procedural rights they should notify the Secretary General of the Council of Europe (see paragraph 5 of Article 1).

42. Additional procedural rights for children include the right to be assisted by a chosen person or to be represented by a separate representative who, acts only on behalf of the child. The right to appoint their own representative or the right to exercise some or all of the rights of parties to proceedings might be other possibilities. Even where a child has the right to choose a representative the judicial authority is not bound to accept an unsuitable person as the representative of the child.

B. Role of judicial authorities

Article 6 – Decision-making process

43. Paragraph *a* of this article requires a judicial authority in proceedings affecting a child to ensure that, before taking any decision, it has sufficient information at its disposal. The test is: has the judicial authority sufficient information to take a decision in the best interests of the child? Information should be obtained, for example, from the child, from the holders of

parental responsibilities, from the representative of the child or from any other person or body which is believed to have knowledge of the matter under consideration.

44. The judicial authority must also ensure that children of sufficient: understanding have been provided with all relevant information. This may be particularly important when the child does not have a representative, who is subject to the duties, of Article 10, and the judicial authority has reason to believe that the holders of parental responsibilities have not given this information to the child. If the child has not been provided with this information the judicial authority should, where appropriate, inform the child or arrange for the child to be informed.

45. The judicial authority is also under a duty to consult the child unless this is manifestly contrary to his or her best interests. It is for the judicial authority to decide whether it is in the best interests of the child to be consulted in person. Wherever possible the judicial authority will itself ascertain the child's view by consulting the child in person. However, the judicial authority may, for example, decide to request other persons, (e.g. a child welfare officer), or appropriate bodies to ascertain the views of the child and to communicate these views to the judicial authority.

46. Although the child will, if necessary, be consulted privately this does not mean that the consultation is necessarily confidential. Therefore parties to the proceedings may have access to relevant parts of this information if the internal law so provides.

47. The child should be consulted in a manner appropriate to his or her understanding. The way in which a child is to be consulted will depend upon the extent to which the child is capable of understanding the proceedings.

Article 7 – Duty to act speedily

48. The duty placed on the judicial authorities to act speedily in order to avoid unnecessary delay is explained by the fact that such delay could be harmful to the well-being of children and therefore contrary to their best interests.

49. In some cases the judicial authorities may not be able to act as speedily as they may wish. They may not, for example, have received sufficient information in order to take a final decision in the best interests of the child. In such cases it might be appropriate to make an interim order containing provisional measures.

50. In addition, Recommendation No R (91) 9, of the Committee of Ministers of the Council of Europe, on emergency measures in family matters contains principles addressed to member States indicating the steps to be taken to ensure that effective emergency measures are available to the courts and to other competent authorities dealing with family matters to protect children and other persons who are in need of special protection and assistance and whose interests are in serious danger. This Recommendation also provides that where international co-operation between the courts or other competent authorities is required "in cases where the return of a child is sought, courts and other competent authorities should ... give a decision whenever possible within six weeks of the receipt of the completed application by the requested authority ..." (paragraph 6 of Principle 4).

Article 8 – Acting on own motion

51. This article enables the judicial authority to act on its own motion, that is without having received a formal application where the welfare of a child is seriously in danger ⁽⁴⁾. As such an intervention represents an interference in family life, it must be strictly limited to cases determined by internal law.

Article 9 – Appointment of a representative

52. Paragraph 1 of Article 9 empowers the judicial authority to appoint a special representative for children, irrespective of their capacity for understanding in cases of a conflict of interest between a child and the holders of parental responsibilities. This power can be exercised in proceedings where, according to internal law, the child cannot be represented by the holders of parental responsibilities. See also Article 4 which, subject to Article 9, gives the child the right to apply for a special representative.

53. Furthermore, under paragraph 2 of this Article, the Parties to the Convention must examine the possibility of giving the judicial authorities a power to appoint, for the proceedings, a separate representative for the child, i.e. different from the representative of the holders of parental responsibilities, even when there is no conflict of interest between the child and the holders of parental responsibilities. The separate representative under paragraph 2 is not the same as the special representative under paragraph 1. A holder of parental responsibilities may also be a representative if he or she has been appointed to act before the judicial authority.

C. Role of representatives

Article 10

54. The functions of representatives are listed under paragraph 1 of Article 10. It is for internal law to decide whether the representatives appointed under Articles 4 and 9 should have any additional functions. This paragraph reflects the three rights mentioned in Article 3. Article 10 seeks to ensure that the representative of a child acts in an appropriate manner on behalf of the child, in particular, by providing information and explanations to the child, in determining the views of the child and presenting them to the judicial authority. The representative may be a person such as a lawyer or other person appointed to act before a judicial authority on behalf of a child - see paragraph c of Article 2 and the comments on this paragraph in this explanatory report.

55. These requirements must be carried out, unless they would be manifestly contrary to the best interests of the child. It may also be impossible to do, for example, owing to the very young age of the child. "Determining the views of the child" does not necessarily only mean speaking to the child and asking the child to express views verbally but also includes "observations" of the child by a representative or by, for example, an expert medical practitioner. However children are free to refuse to express their views. Furthermore representatives may give their own views on the best interests of children.

56. In a large number of cases, and in many jurisdictions, the law provides that the holders of parental responsibilities have the right to represent children in proceedings before the judicial authorities. In these cases, the holders of parental responsibilities may act in the name of the child without however having been specifically appointed to do so. When they act in such cases, the holders of parental responsibilities are not, under the Convention, bound by the duties which fall on the representatives as defined by paragraph c of Article 2. However the Parties to the Convention are required to examine the possibility of extending the duties of representatives under paragraph 1 to the holders of parental responsibilities even if they have not been specifically appointed to act.

D. Extension of certain provisions

Article 11

57. Article 11 places an obligation upon States to consider extending the provisions of Articles 3, 4 and 9 to proceedings before other bodies, such as proceedings before non-judicial administrative bodies and to matters affecting children which are not the subject of

proceedings. Matters affecting children which are not the subject of proceedings may, for example, cover the sale of the property of a child or his parents. In other words, although States are free to decide whether to adopt the measures in question and apply more favourable rules to the exercise of such rights, they are required to consider the possibility of an extension.

58. The Standing Committee established under the Convention will be able, under Article 16 which provides for consideration of questions relating to the implementation of the Convention, to check whether Parties have in fact satisfied the obligations under this article.

E. National bodies

Article 12

59. The main idea conveyed by this article is that machinery should exist in each State to promote the exercise of children's rights. The encouragement a State may provide to the bodies concerned could take the form, for example, of information about their existence, discussions with such bodies or even financial support.

60. Each State is free to select the appropriate formula, in the light of its specific circumstances. The bodies responsible for the operation of such machinery may be public or private and may co-operate with each other at both a national and international level (see also, Article 16). It may for example be possible to use existing bodies or it may be useful to establish a special body for this purpose such as the office of ombudsman.

61. Paragraph 2 sets out a non-exhaustive list of functions that have to be performed in the context of the national machinery established to promote the exercise of children's rights. The functions of national bodies do not necessarily have to be performed together or with the same degree of intensity. Such bodies could, for example, encourage the use of mediation or other processes to resolve disputes as indicated in Article 13. It matters little whether the functions are carried out by one or several public or private bodies. However, if no body performs them, steps should be taken, either to ensure that a public body takes responsibility for them, or to help a private body wishing to perform these functions. A State cannot force a private body to perform these functions.

62. Sub-paragraphs *a* and *b* of the second paragraph seek to improve the status of children through proposals and opinions designed to strengthen the law relating to the exercise of children's rights. Such proposals may be aimed for instance at bringing national legislation into conformity with international instruments. Where necessary, they may be inspired by surveys carried out among children, especially those with specific needs. These paragraphs do not deal with the question of whether national bodies may make direct proposals to Parliament. Where appropriate it is for internal law to give these bodies such powers.

63. Sub-paragraph *c* gives the bodies concerned the task of providing information. Such information is described as general in order to indicate that such bodies are not obliged to provide advice on particular cases.

64. Sub-paragraph *d* ensures that national bodies take steps to ascertain the views of children and to provide them with relevant information.

F. Other matters

Article 13 – Mediation or other processes to resolve disputes

65. In appropriate cases to be determined by internal law, it may be necessary to promote the friendly settlement of disputes concerning the exercise of children's rights. Mediation should be possible independently of any intervention by a judicial authority, before and during

proceedings, or even afterwards if a conflict arises while the decision taken by the judicial authority is being enforced. The other processes referred to in this article are informal processes to resolve disputes which enable the persons concerned to reach an agreement by negotiation.

66. Agreements resulting from mediation or other processes to resolve disputes should not be against the best interests of children. If these agreements are against the best interests of children it may be possible for the judicial authority referred to in paragraph *a* of Article 2 to act and take a decision.

67. It is clear, as indicated in the Convention and in paragraph 8 above, that, in the event of conflict, it is desirable for families to try to reach agreement before bringing the matter before a judicial authority.

Article 14 – Legal aid and advice

68. The purpose of this article is to enable children to enjoy the benefit of legal aid or advice when a legal representative has been appointed on their behalf (Articles 4 and 9), subject to the provisions of internal law and thus to avoid, in a number of cases, the question as to who bears responsibility, if necessary, for paying the fees of the representative. This does not preclude States, in appropriate cases, from recovering the costs of legal aid or advice from the parents, if their internal law so provides.

Article 15 – Relations with other international instruments

69. This article lays down the principle that the European Convention does not preclude the application of other international agreements in the field of the family and children which are binding on the Parties to the Convention. Therefore, for example, this Convention does not prevent the application of a treaty for the purposes of obtaining the return of a child who has been improperly removed or retained or the application of a treaty for the purposes of organising or implementing the child's right of access.

Chapter III – Standing Committee

Articles 16, 17 and 18 – Establishment and functions of the Standing Committee/Composition/Meetings

70. It was felt that it would be easier to achieve the objectives of the Convention and to adapt it, if the representatives of the Parties had the possibility of meeting in order to, evaluate the application of the Convention and propose measures which they considered likely to improve its operation.

71. Furthermore, in order to guarantee the largest possible participation in the discussion and in view of the wish to open the Convention to accession by the largest possible number of States, it was thought necessary, subject to certain conditions, for States not members of the Council of Europe to be invited to participate in the discussions or, where appropriate, any national or international governmental or non-governmental body (e.g. ombudsman).

72. The main rules concerning the working methods of the Standing Committee are laid down by the Convention and will be completed by its rules of procedure.

73. The function of the Standing Committee is to monitor the problems raised by the Convention.

74. In this connection, it may give opinions on any relevant questions concerning either the interpretation or the implementation of the Convention.

75. Subject to the required majority (i.e. a three-quarters majority of the votes cast), the Standing Committee may adopt recommendations on the implementation of the Convention. While such recommendations have no immediate legal effect, they will exert considerable moral authority.

76. The Standing Committee will in addition be able to seek information from Parties to ascertain whether they have satisfied the obligations under Article 5, paragraph 2 of Article 9, paragraph 2 of Article 10 and Article 11 to consider the question of the desirability of extending the provisions of these articles to proceedings before other bodies or to additional matters or to consider granting additional procedural rights. In addition Parties may inform the Standing Committee of the application of any rules more favourable to the promotion and exercise of children's rights under paragraph 6 of Article 1.

77. The Standing Committee also has the task of proposing to the Committee of Ministers of the Council of Europe that certain States be invited to accede to the Convention (Article 22, paragraph 1), as well as proposing amendments to the Convention (Article 20, paragraph 1).

Article 19 – Reports of the Standing Committee

78. The reports of the Standing Committee to the Committee of Ministers may include further information to assist States when applying the provisions of the Convention (e.g. matters relating to the interpretation of the Convention).

Chapter IV – Amendments to the Convention

Article 20

79. Amendments to the articles of the Convention may be proposed by the Parties or by the Standing Committee. They shall be communicated to all member States of the Council of Europe, to any Signatory, to any Party and to any State or the European Community invited to sign or accede to the Convention.

80. The Standing Committee is required to examine any proposed amendment and decide, by the required majority, to submit the text to the Committee of Ministers. Following approval by the Committee of Ministers, amendments shall be forwarded to the Parties for acceptance.

Chapter V – Final clauses

Article 21 – Signature, ratification and entry into force

81. The Convention is open for signature not only by the member States of the Council of Europe but also by the following non-member States which have participated in its elaboration. Albania, Croatia, Holy See and Russia.

Article 22 – Non-member States and the European Community

82. The Committee of Ministers may, on its own initiative or following a proposal by the Standing Committee and after consulting the Parties, invite any other non-member State or the European Community to accede to the Convention.

Article 23 – Territories

83. This provision applies essentially to overseas territories as it would be contrary to the philosophy of the Convention for a Party to exclude parts of its metropolitan territory from the application of this instrument.

Article 24 – Reservations

84. Under Article 24, reservations may not be made to the Convention. This implies that the Parties to the Convention are bound by all the provisions of the text and may not exclude the application of certain provisions.

Notes :

(1) Member States of the Council of Europe on 1.5.1995: Andorra, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom.

(2) Principle 3 of Recommendation No R (84) 4 of the Committee of Ministers of the Council of Europe on parental responsibilities provides: "when the competent authority is required to take a decision relating to the attribution or exercise of parental responsibilities and affecting the essential interests of the children, the latter should be consulted if their degree of maturity with regard to the decision so permits". Principle 7 of Recommendation No R (87) 6 on foster families provides that, before a decision is taken by the competent authority concerning the grant of certain parental responsibilities to foster parents, "the child should be consulted if his degree of maturity with regard to the decision so permits". Resolution (77) 33 of the Committee of Ministers of the Council of Europe on the placement of children recommends governments of member States to encourage the participation of children in the management of their placement and to give them the opportunity to discuss their situation progressively as they mature in understanding. (3) Article 9 of the European Convention on the adoption of children provides that the competent authority shall not grant an adoption until appropriate enquiries have been made concerning the adopter, the child and his family. This article also provides that the enquiries, to the extent appropriate in each case, shall concern, *inter alia*, the views of the child with respect to the proposed adoption. (4) Principle 4 of Recommendation No R (84) 4 on parental responsibilities provides that if when the persons having parental responsibilities exercise them in a way which is detrimental to the essential interests of the child, the competent authority should take of its own motion or on application, any appropriate measures".