



Children's Right to Access to Justice as the Realisation of Standards of Child-Friendly Justice: A Polish Approach

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The presentation covers child-friendly justice. Issues concerning problems specific to refugee minors are discussed. Finally Polish approach is presented. A series of booklets for judges, prosecutors, and for expert psychologists was issued covering needs of minors in civil and criminal cases.

Keywords: *child-friendly justice; best interest of the child; refugee minors.*

Право дитини на доступ до правосуддя як утілення стандартів правосуддя, дружнього до дитини: польський підхід

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Досліджено тему правосуддя, дружнього до дитини. Порушено проблемні питання, з якими стикаються неповнолітні біженці. Обґрунтовано польський підхід до розв'язання цієї проблеми, де видано низку буклетів для суддів, прокурорів та експертів-психологів, у яких висвітлено потреби неповнолітніх у цивільних і кримінальних справах.

Ключові слова: *правосуддя, дружнє до дитини; принцип найкращих інтересів дитини; неповнолітні біженці.*

It is widely recognised that millions of children across the world have their rights violated every day without proper access to any kind of remedy. This violation occurs in various forms: as a denial of access to health, education and social protection, experience of different forms of violence, abuse, exploitation, discrimination and exclusion. Adding to that are numerous crises that occur around the world, such as wars, natural disasters, climate change, displacement, poverty, inequalities and many more. Usually they affect children more than adults, what is

the result of their dependence on adults and inability to take care of themselves without any help.

Children were asked to comment on their access to justice by the Committee on the Rights of the Child [1]. According to their understanding the access to justice means that they have a possibility to refer their problem to someone, and this person will listen to them, treat the matter impartially and provide relief. They understood relief as an action that results in compensation of wrongs as well as prevents future harm. Children



defined fairness as both the way the matter is dealt with as much as the result.

As adults we have to be fully aware that children seldom inform us that their rights were violated and only few of them obtain an effective remedy. There are multiple reasons of that problem and those reasons are of various nature. Children may be not believed, the experiences they report may be assessed as less important, less harmful, sometimes also their rights are perceived as less essential, and their violations are easily justified (because of beliefs or social norms). All those reasons may result in children less willing to speak up, fearing repercussions, exclusion, or accusations. It concerns even more children in disadvantaged situations, like those coming from families with problem of violence, or those who have communication difficulties resulting from a challenged development or being a refugee [1, 4, 5, 7]. It must be also remembered that justice system was developed by adults and for adults. As a consequence, it is incomprehensible because of difficult language and terms used, complicated regulations and procedures, and it is less accessible for children from procedural point of view, age restrictions requiring assistance of adults, and a need of financial support. Children from disadvantaged environments often may have no knowledge that they can seek remedy, or no adult around them that is willing to assist them when seeking justice and redress [1].

Additional issues must be taken into consideration in relation to refu-

gee minors. Adjusting justice system to be child-friendly in such specific situations requires considering a further questions that are equally important in criminal and civil cases and concern both representatives of justice system as well as psychologists examining children. The most obvious are language issues that must be covered by providing an interpreter. It is highly advisable that the interpreter not only knows the child's mother tongue, but is also aware of cultural issues of the child's country of origin, everyday customs and social rules, specifics of verbal and emotional expression, upbringing rules that may affect children's attitude towards adults and their readiness to reveal their harmful experiences. All the abovementioned elements will be crucial for an adequate understanding of information provided by the refugee minor. Such situation put also additional requirements concerning competences of the representative of justice system, including expert psychologist. This person must be aware that communication with a child that fled war will require more time not only because of the help of interpreter, but also because this child may manifest more intense, unpredictable emotions, may require brakes, assistance of someone who gives them a sense of security. Both psychologists and representatives of justice system must be also aware of possible stereotypes and prejudices (cultural, ethnic) and actively avoid them to prevent the biased assessment of the refugee minor, the situation they describe and the provided information. An expert psychologist must be additionally aware that not all tests and



questionnaires are culturally adapted for children originating from a given country, and they must diagnose the child using only those methods that will provide them with accurate and reliable results [1, 2, 3, 4, 5, 6; 7]. All the outlined above issues require us, adults, to provide children with access to justice by creating avenues adapted for them.

To ensuring children's right to access to justice and to an effective remedy we should implement several principles and foundational elements, such as: lack of discrimination and partiality, having in mind the best interest of the child as the primary consideration in all actions that concern them, concentration of their right to life, survival and development, so taking into account any support they may require throughout the process and after, ensuring their right to be heard, respect the evolving capacities of the child, ensuring them access to fair, transparent, competent and impartial remedial mechanisms [1].

Having all the above issues in mind, Institute of Forensic Research in Krakow, Poland, in collaboration with the Ministry of Justice and UNICEF Refugee Response Office in Poland prepared a series of booklets for judges and prosecutors, as well as for expert psychologists, aiming at implementation of child-friendly justice in Poland. They cover both civil and criminal cases and take into account the situation of foreigners under 18 years of age. Those for representatives of justice concern:

- methodology of hearing the minor in civil and guardianship proceedings,
 - methodology of interrogating a minor (for the purposes of the proceedings pursuant to the Act on the Support and Rehabilitation of Minors),
 - methodology of interrogating accused who is under 18 years of age,
 - methodology of interviewing a minor victim in criminal trial – strengthening competences in the scope of conducting procedural activities with persons under 18 years of age.
- They are rooted in Polish legal system, but at the same time provide universal, child-friendly indications how to proceed with minors in civil proceedings, children who experienced various forms of violence or minors who committed an illegal act, having in mind development stage they achieved and possible cognitive, emotional and social limitations that have to be taken into consideration, as well as any possible challenges, including being a refugee minor.
- There were also prepared guidelines for experts in the field of psychology. They are regarding the issuance of opinions on persons under 18 years of age in guardianship and criminal proceedings. Their aim is to ensure uniform standards of opinions on cases in the courts and they include such elements as:
- the principles of the psychological examination,
 - requirements for correct opinion (substantive and formal),
 - presentation of stages of preparing an opinion, including guidelines for the purpose of interviewing the respondent (interview questionnaire).



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