



© E. Merille

# The Best Interests of the Child: a dialogue between theory and practice

The best interests  
of the child in family affairs

Conference concept paper



Federal Public Service  
Justice



Flanders  
State of the Art



FÉDÉRATION  
WALLONIE-BRUXELLES



Belgian Chairmanship  
Présidence belge  
Belgisch Voorzitterschap  
Belgischer Vorsitz



COUNCIL OF EUROPE  
CONSEIL DE L'EUROPE



“The concept of the best interest of the child is often put forward to justify interventions that turn out to be catastrophic for the children and their families. Whether in the field of divorce or of protection of endangered children, the adults appointed by the society: magistrates, police officers, social workers, doctors, intervene in the name of a vaguely contoured concept that allows many abuses.”<sup>1</sup>

---

<sup>1</sup> J. Goldstein, A. Freud, A.J Solnit, Beyond the Best Interests of the Child, 1973 Adaptation from the French version of the book.



## Introduction

The European Conference “The Best Interests of the Child” is organised by the Belgian Chairmanship of the Committee of Ministers of the Council of Europe in collaboration with the Council of Europe Children’s Rights Division in the context of celebrating the 25th anniversary of the UN Convention on the Rights of the Child. The one-and-a-half-day conference will be held in Brussels on 9 and 10 December 2014.

The Conference will explore and discuss the challenges decision makers face when implementing the complex concept of the child’s best interest. Specific attention will be paid to the notion of the child’s best interests in family affairs.

The target group of the Conference are experts, policy makers and practitioners involved in the decisions that have an impact on children’s lives, as well as representatives of the major European institutions and non-governmental organisations protecting the rights of the child. Each member State of the Council of Europe is invited to send a delegation of two participants to the Conference, ideally with a diversified profile (academics, policy makers and practitioners). The total number of participants is estimated at 140 persons.

History has provided sufficient evidence that periods of economic, financial, social and environmental crisis do not favour children and youth and the defence and promotion of their rights. Yet, it is in these times more than any other that children must remain at the heart of the decision makers’ concerns. The UN Convention on the Rights of the Child states that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” The Belgian authorities have chosen to put the child’s best interests on the agenda of a European Conference as a way to bring the child back into the core of their interests.

One of the main challenges is to mobilize decision makers around the concept of the child’s best interests so that it can be taken as a primary consideration in daily decision-making. Judges, medico-psycho-social workers, psychologists, educationalists and other professionals in the field of childhood and youth must have the necessary tools at their disposal to assess and determine the child’s interests.

In order to achieve this objective, the Belgian authorities have decided to make better known and to develop the normative provisions around this concept, the deontological and ethical rules that pertain to it and the procedural rules related to it.



## Conference

The European Conference entitled “The best interest of the child: dialogue between theory and practice” is one of the priorities set by the Belgian Chairmanship of the Committee of Ministers of the Council of Europe under the topic “promotion and realisation of human rights”.

### **Objectives and expected results of the Conference:**

**The Conference will pursue three objectives:**

1. to take stock of the understanding and application of the child’s best interests in the international context as well as in the various national contexts;
2. to identify factors that hinder and those that drive as observed by decision makers in the application of the child’s best interests and to outline some solutions;
3. to find and develop ethical, procedural and practical standards which support practitioners and policy makers when they take into consideration the child’s best interests.

The main lessons drawn from the Conference will be submitted to the Committee of Ministers of the Council of Europe.

### **Structure and themes of the Conference:**

The Conference will consist of two parts. The first part will focus on the child’s best interests in general and the second part on the child’s best interests in family affairs. The lessons learned from the first part of discussions will sustain those of the second part.

The Conference will open with a plenary session and a round table dedicated essentially to the understanding and application of the regulatory framework concerning the child’s interests (UN Convention on the Rights of the Child and General Comment No. 14 (2013) of the UN Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration).

It will be followed by a second plenary session that will back up the understanding and application of the child’s interests through the contributions of other disciplines (developmental psychology and education sciences).

Four parallel workshops will go deeper into the understanding and application of the concept of the child’s best interests in general. These workshops will explore questions and tensions that arise during the implementation of the general and complex concept of the child best’s interests in practice.



The first one will target the relationship between the best interests of the child and the right of the child to be heard, namely on his or her own vision of his/her best interests. It will address the way obligations related to article 12 UNCRC can be met while implementing article 3.1. UNCRC. Practical issues concerning the necessity and appropriate ways to listen to children about what “is best for them” will be discussed.

The second workshop will be devoted to the issue of balancing the best interests of the child and the interests of other stakeholders. It will discuss the possible conflicts between the best interests of the child and the interests of other actors involved, such as the parents, the whole family, caregivers and society. During this workshop the issue of the possible conflicts between different children’s rights will be developed as well as the potential tensions between the right of one child and the right of a group of children. The focus will be placed upon the search for solutions to resolve these conflicts in a way that they respect and protect the best interests of the child.

The third workshop concerns the assessment of the best interests of the child. The child has the right to have his or her best interests assessed. Yet, how can a child’s best interests be determined? The Committee on the Rights of the Child judges it useful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in the evaluation of the best interests of the child. This workshop will look into the methods used for the evaluation, the questions around it and the evaluation criteria about the best interests of the child that can be used by practitioners.

Finally, the fourth workshop will cover the challenge how to monitor the best interests of the child. The example of the returned asylum-seeking minors will stress the importance of the monitoring. Assessment and determination of the best interests of the child are not enough, it is essential that follow-up and monitoring of this decision is provided. The workshop will therefore deal with what is in the best interests of the child, once the decision is taken ( obligation to monitoring, frequency, review of the decision, guidance, etc.).

The second part of the Conference places emphasis on the child’s interests in family affairs and will be introduced at the end of the first day by a plenary session. This session will be dedicated to the analysis of the case law relating to family affairs of the European Court of Human Rights, to the risks and problems faced by professionals in the application of the best interests of the child and finally to the questions and perspectives of children in relation to their interests in family affairs.

The second Conference day will start with a presentation of key findings and will highlight the outcomes of the workshops of day 1.

Four parallel workshops will explore more into detail the understanding and application of the child’s best interests in family affairs.



The first workshop will be dedicated to the child's interests in parental separation and be based on the views of children who are living or have experienced different forms of parental separation. This workshop will address not only 'the taking into account' of the best interests of the child in the decision on parental separation but also the interests of the child in concrete living conditions of the child after separation (moving, custody arrangements, school choice, etc.).

The second workshop will consider the child's best interests in situations of placement in an institution or a foster family. It will broach both how to take into consideration the child's interests in decisions regarding placement as well as regarding the conditions of care.

The third workshop will examine the interests of children with parents in prison. It will explore the relationship between the child's interest to preserve family ties and the context of the imprisonment of the parent concerned and it will refer to testimonies of children and parents who experience or have experienced imprisonment situations.

The fourth workshop will concentrate on the best interests of the child with regard to those tracing their origins against the backdrop of different lines of descent. The workshop will examine the questions relating to the child's best interests in various configurations such as adoption, medically assisted procreation, anonymous childbirth, gestational surrogacy or other lines of descent.

The Conference will close with a final plenary session during which speakers from different backgrounds will make a synthesis of the contributions and discussions of the Conference in order to define the main ethical, procedural and practical standards which support professionals and policy makers in taking into consideration the child's best interests in their daily work.