

Children's best interests between theory and practice

Discussion topics based on international best interests practices

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Overview

- Goal:
 - Preparation to the conference
 - Identify common tensions in best interests concept
- Methodology
- Tensions
- Conclusion

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Methodology

- Internet search (online databases and Google search engine)
- Key words 'children's best interests', 'best interests of the child', 'belang van het kind'
- Last ten years (>2004)
- Selection: title and focus of the project

➔ Limited methodology:

- only 'tip of the iceberg' is uncovered!
- results might reflect search strategy instead of reality
- however...

Tensions

- Workability of a 'vague' and 'generalist' concept
- Conflicts of interests
- Hearing children's voices
- Lack of monitoring

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Tension 1: workability of 'vague' and generalist concept

- How to apply the best interests concept to individual situations?
- 'Normative' vs. 'reasonable agreement', 'margin of appreciation', 'degree of discretion' (Archard & Skivenness, 2009)
- Substantive vs. procedural application
- Substantive:
 - BIC-Q Kalverboer & Zijlstra
 - based on scientific methodology
 - specific perspective

Tension 1: workability of 'vague' and generalist concept

Workshop 3

- Procedural:
- Consider using a clear decision-making structure
 - Makes underlying assumptions visible
 - Reduces inconsistency, arbitrariness and (too much) subjectivity
- Best interests assessment as a learning trajectory, not as the unambiguous outcome of a concrete instrument
 - E.g. through use of mediation techniques
- Recognize the importance of the individual who performs the assessment as well as the decision maker
 - Need for child specific training programs
 - Need for monitoring



Tension 2: conflicts of interests

- Interests of children are embedded in a broader social context
- Interests of other parties (parents, states...) may interfere
- How to prevent 'children's best interests' to become an 'umbrella term' that is used to protect other interests? (e.g. Bonthuys, 2005)



Workshop 2

- Clearly separate children's interests from their parents' and other parties' interests
- Develop adequate methodologies to safeguard other parties' interests as well

Tension 3: hearing children's voices

- How to realize meaningful participation of children in assessing their best interests?
- How to avoid tokenistic, negative participation and overquerying of children?
- Information and partaking



- **Information:**
 - adequate
 - adapted and understandable


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Tension 3: hearing children's voices

Workshop 1

- Partaking:
- Individual: judge evolving capacities on case-by-case basis
- Group (meso-level): consult *representative* group
 - Cooperate with target organisations working with vulnerable children
 - Use customized methodologies to include vulnerable children
 - Use representative sampling methodologies
- Direct or indirect participation?
 - Direct participation is preferred
 - Individual: representation for children who cannot participate themselves
 - Group: representation by organisations who are specialized in communicating the views of children (e.g. Youth Council) may be advisable in some cases

Workshop 4

- What happens after the decision has been taken?
 - Monitoring as an important part of the decision-making process
 - Learning and building expertise
 - Improving impact of best interests assessment
 - Part of democratic best interests decision: allowing (public) control
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- Provide ex-post evaluation: need for reliable monitoring systems
 - Provide possibilities for appeal and review of contested decisions

Conclusion

- Exchange of international ‘good practices’ can serve as an inspiration to further develop a best interests framework that is applicable to children’s daily realities
- Vagueness of best interests principle as a difficulty, but also as a strength: prevents standardisation, uniformity, depreciation
- Need for dialogue between theoretical inspiration and practical creativity

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Thank you!



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