



# Access to Justice in International and European Law

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# Rights of the Child (Best Interest?)

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- **Welfare and “best interests” of the child**
  - Human dignity and prevention from inhuman and degrading treatment (stigmatization, victimization and criminalization)
  - Fair and effective access to justice
  - Fair and effective access to health care, education, social and economic institutions aiming at the *“promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential”*
  - *Successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations (The Riyadh Guidelines)*
- **Can *neuroscience* help us realise these rights more fully?**

# Multilevel system of rights/obligations

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- Shift from ***general*** rights discourse to ***effective participation***

## International Level

- UN Convention on the Rights of the Child 1989
- The Beijing Rules 1985 (General Assembly resolution 40/33)
- The Riyadh Guidelines 1990 - UN Guidelines for the Prevention of Juvenile Delinquency (General Assembly resolution 45/112);
- The Havana Rules 1990 - UN Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113)

# Multilevel system of rights/obligations

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## International Level

- UN Convention on the Rights of the Child 1989
  - Article 37(d):  
Every child deprived of his or her liberty shall have the **right to prompt access to legal and other appropriate assistance**
  - Article 40(2)(b)  
States Parties shall, in particular, ensure that... [e]very child alleged as or accused of having infringed the penal law has at least the following guarantees:  
[...]  
To have the matter determined without delay by a competent, independent and impartial authority or judicial body in **a fair hearing** according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, **taking into account his or her age or situation**, his or her parents or legal guardians;

# Multilevel system of rights/obligations

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- Shift from ***general*** rights discourse to ***effective participation***

## Council of Europe

- ECHR: Art. 3, Art. 6, Art. 8
- ***SC v UK [2004]***: fair trial = effective participation
- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice 2010

# Multilevel system of rights/obligations

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## Council of Europe

- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice 2010:

### A Participation

1. The right of all children to be informed about their rights, to be given appropriate ways to access justice and to be consulted and heard in proceedings involving or affecting them should be respected. This includes giving due weight to the children's views ***bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful.***
2. Children should be considered and treated as full bearers of rights and ***should be entitled to exercise all their rights in a manner that takes into account their capacity to form their own views*** and the circumstances of the case.

# Multilevel system of rights/obligations

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## European Union (EU Law ≠ International Law)

- The Charter of Fundamental Rights of the EU (Art. 24)
- European Consensus on Development 2005 (Part I, para. 5, 7)
- EU Commission Communication “Towards an EU strategy on the rights of the child” 2006
- European Forum for the Rights of the Child 2007



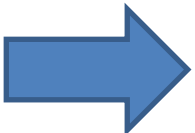
# Multilevel system of rights/obligations

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## European Union (EU Law ≠ International Law)

- ***Legislative proposal on special safeguards in criminal procedures for suspected or accused persons who are vulnerable***
  - Minimum standards not always enshrined in legislation/practice
  - EU action therefore proposed



Opportunity for the UK to **shape** the law in this field