COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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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.