



The empowerment of children in justice systems: Participation and relational representation

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Aim

My aim is to examine broadly some of the fundamental elements that inform children's representation in justice systems and evaluate some of the challenges and obstacles we face in ensuring children adequate representation.





Outline

- Justice systems
- Participation – representation
- Types of representation
- Relational representation





Main documents

- The Convention on the Rights of the Child (1989) – **CRC**
- General comment no. 12 (2009) The right of the child to be heard - **GC 12**
- General Comment no. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) - **GC 14**
- The Council of Europe´s Guidelines on child friendly justice (2010) – **The Guidelines**
- The European Convention on the Exercise of Children´s Rights ETS 160(1996) - **the Exercise Convention**
- Recommendation CM/Rec(2012)2 on the participation of children and young people under the age of 18 - **Rec 2012**





Justice systems



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Justice systems

- Justice systems – exercise of rights
- Capacity and competence
 - initiate legal action – access to justice
 - participate in legal action already initiated – in justice
- Formal – informal justice systems
- Complex interaction between different systems





Participation – representation



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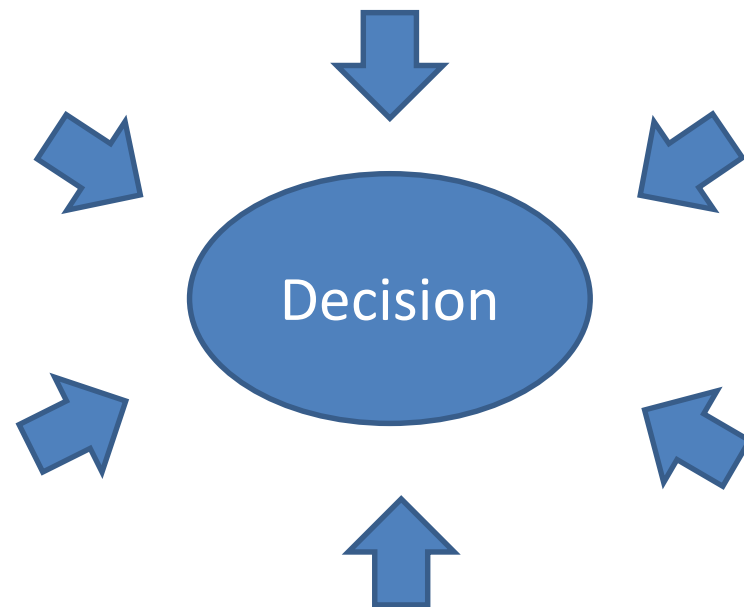
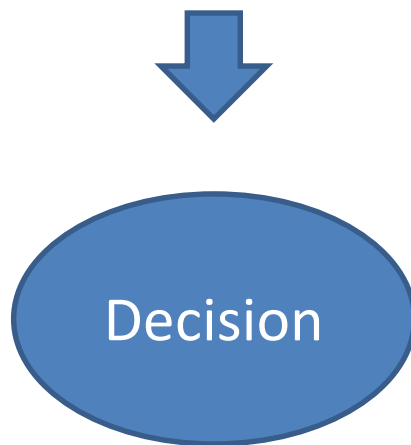
Participation

- Best interest principle cannot be applied if requirements of participation are not met – GC 14
- Art. 12 CRC participation
- Children as rights holders - empowerment
- Children should actively participate in interpreting, implementing and upholding their rights – a dynamic approach



Participation and representation in justice systems

- **Art. 12(2) CRC** – the child must be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative
- **GC12, The Guidelines and Rec 2012** offer *the dynamic interpretation*:
 - providing the right, means, space, opportunity and support when necessary for children to contribute to the decision making process





Participation menu

Adult

- **Appertizer**
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- **Main course**
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- **Dessert**
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Traditional Kids menu

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Dynamic Kids menu

- **Appertizer**
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- **Main course**
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- **Dessert**
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Participation

- **Information**
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- **Process / decision**
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- **Follow up**
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For children with =

**Adjustments
Support**





Types of representation





Types of representation

- Parental representation
- Seperate representation
 - Best-interest representation
 - Child-directed representation
- Self-advocacy
- Relational representation





Parental representation - challenges

- Art. 5 CRC parental responsibility
 - respect the responsibilities, rights and duties of parents ... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention
 - risk, care and control?
 - conflicts of interests?
 - complex personal relationships
 - family is important
 - parents are present





Seperate representation - challenges

- The appointment or role of a special person other than the parent with the task of representing and advocating for the interests of a child in a justice system (a child advocate)
- Mechanism to enable children to exercise their right to actively participate in justice systems
- Keywords – child empowerment, control and contribution
- Complexity of proceedings?
- Multifaceted special knowledge and training?





Different types of separate representation - challenges

- Best-interest representation
 - the child advocate safeguards the interests of the child
- Child-directed representation
 - the child advocate represents the views of the child
- Tension – conflicting roles?





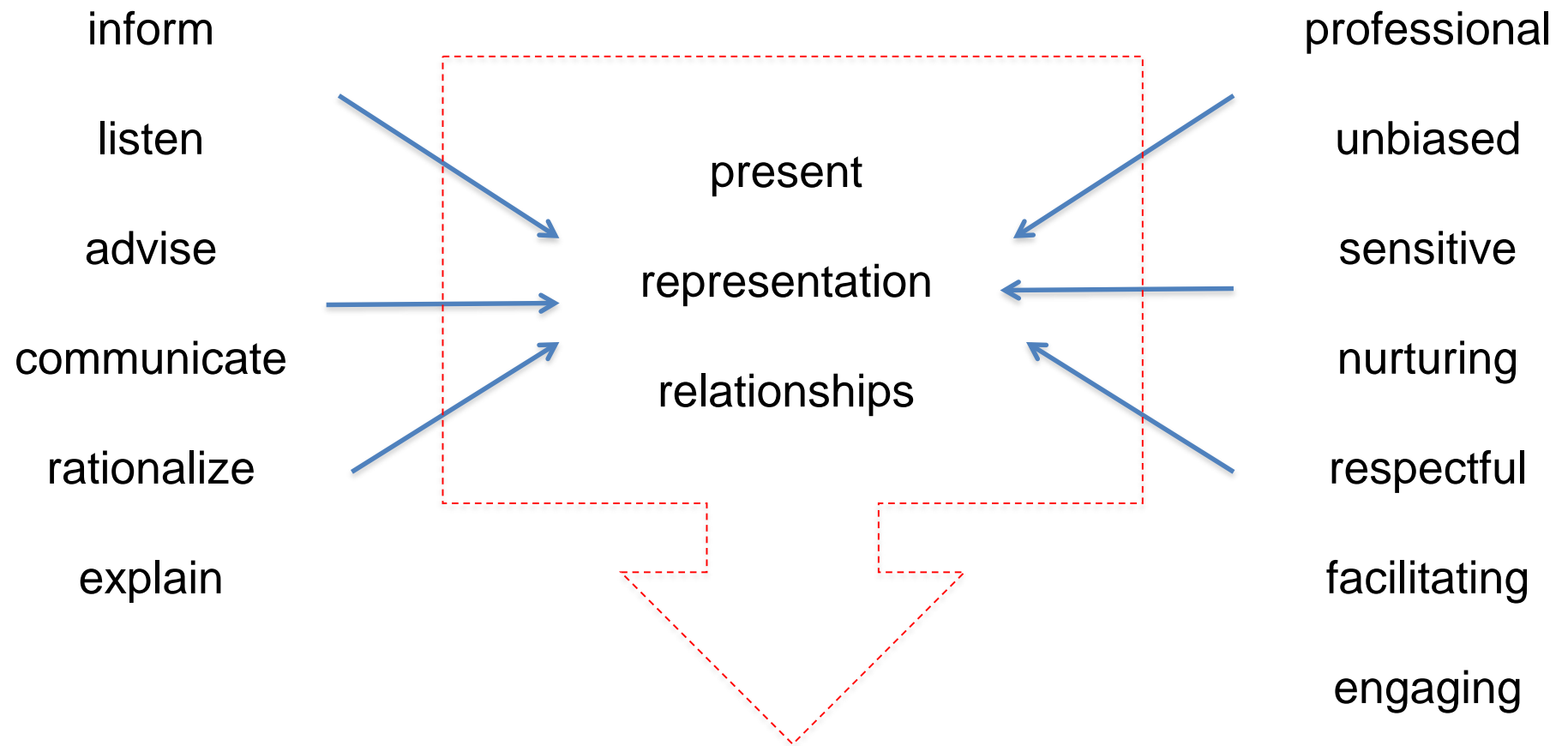
Self-advocacy

- The right of the child to be present and directly involved in proceedings without having their voice moderated by a third party
- Empowerment – critical thinking and critical expression
- Support and advice





Relational representation



**Child
empowerment**

