



Is special treatment of a minor offender against the best interests of the minor victim?¹

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Abstract

The UN Convention on the Rights of the Child, as well as EU regulations, demand that in all actions concerning children, the best interest of the child shall be the primary consideration. This principle also applies to criminal proceedings. Juvenile delinquency is often committed against other juveniles. In Finnish criminal policy and legislation, juvenile offenders are treated more leniently than adults, and the starting point in intervention is education and guidance. In cases where the suspect and the victim are minors, the best interests of the children should be balanced between them. In such cases, the rights of the child should apply equally to both parties. As a result, we found that the best interests of the child in criminal proceedings should be understood as a procedural obligation.

FN:s konvention om barnets rättigheter och EU:s förordningar kräver att barnets bästa ska komma i främsta rummet vid åtgärder som rör barn. Detta gäller även vid straffrättsliga förfaranden. Ungdomsbrottslighet begås ofta mot andra ungdomar. I Finlands kriminalpolitik och lagstiftning behandlas unga lagöverträdare mildare än vuxna och utgångspunkten för ingripanden är utbildning och vägledning. I fall där den misstänkte och offret är minderåriga ska barnets bästa vägas samman mellan dem. I detta fall bör barnets rättigheter gälla lika mycket för båda. Som ett resultat av detta konstaterade vi att barnets bästa i straffrättsliga förfaranden bör betraktas som en processuell skyldighet.

Keywords:

Rights of the child, best interests of the child, suspect, victim, criminal proceedings
Barnets rättigheter, barnets bästa, misstänkt, offer, straffrättsliga förfaranden

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1. Introduction

The United Nations Convention on the Rights of the Child (later CRC) and EU regulations demand that in all actions concerning children – including pre-trial investigation, consideration of charges and criminal proceedings – the best interests of the child shall be the primary consideration (CRC Article 3). However, the primary aim of the criminal procedure is to enforce criminal liability. In addition, the legal protection of the individual must be ensured in criminal cases. The objective of the criminal process can therefore be to achieve a substantively correct outcome in a fair and ethically acceptable way (Jokela 2018, p. 9). The best interests of the child, on the other hand, require that all the rights referred to in the CRC and the procedural rights of the party are implemented in the most effective way (Silvennoinen 2020, p. 204).

In criminal proceedings, a person's position as a suspect or an injured party determines his or her rights and obligations in the process. The procedural status also influences the minimum standards for a fair trial and what objectives are emphasised in the criminal justice process. However, the suspect or the accused party can be considered to have different objectives from the injured party (Launiala 2010, p. 120). The former does not want to be severely punished, and the latter wants the offender condemned for the consequences of the act. In addition, a minor offender, as well as an underaged injured party, must be treated as a child, i.e., regarding age, level of development, access to information, adequate support, assistance and consideration of his or her individual situation, and the involvement of a guardian or an impartial representative in the criminal proceedings (for further details, see Council of Europe 2010).

This article examines the concept of the best interests of the child in criminal proceedings, in cases where both parties are minors. The criminal process is considered as a whole, and the stages of the process are not separated in terms of the best interests of the child. It discusses the relevance of the concept of the best interests of the child in criminal proceedings and whether the special treatment of a minor suspect jeopardises the rights of the minor victim. In a criminal case, the injured party and the accused are opposing sides, and typically one side loses its case. The best interests of the child as a legal objective, in turn, means that the decision must respond in the best possible way to the different needs and interests of the individual child, and its objective cannot be further defined, as it only acquires its content in the individual case (Singer 2015, p. 34). The debate on the best interests of the child in criminal proceedings is currently ongoing.

Children play a special role in both the criminal justice and criminal policy debate and decision-making (Kinnunen 2021, p. 91). Adolescence has been identified as the most crime-active period in the life cycle (Kaakinen 2021, p. 180; Saarikkomäki – Tanskanen 2018, p. 200; Kivivuori 2006, p. 15-16). In most crimes committed by a minor, the victim is also a minor (Danielsson 2022,



p. 16 and 18). Studies have demonstrated that recidivism, especially serious crime, appears to be concentrated among a small number of young people. This has been linked to wider problems in young people's families, schooling and substance abuse. More generally, it is a question of a decline in young people's control over their lives (Kinnunen 2021, p. 92).

Finnish legislation on criminal procedure does not explicitly mention the best interests of the child, but it does have some specific provisions for minors. The special treatment of young offenders is partly based on the intention to protect. There can be a tension in the treatment of young offenders between the sensitivity and individual needs of the child on the one hand and the requirement of criminal law for prosecution and concrete sanctions on the other hand (see, for example, Johansson 2011, p. 45-49). Juveniles can be described as protected objects, but also as bearers of rights and independent individuals with their own responsibility for their actions (Tärnfalk 2007, p. 28).

The research method in this article is legal doctrinal. The UN Convention on the Rights of the Child provides an interpretative framework from which national legislation is examined. As a human rights treaty, the CRC is binding, and Finnish national legislation must safeguard the rights of the child guaranteed by the Convention. In European Union law, the rights of the child are guaranteed in Article 24 of the Charter of Fundamental Rights of the European Union, which is based on the CRC. EU legislation generally refers to the best interests of the child under Article 24.

2. Child's rights perspective in criminal proceedings

The concept of children's rights is based on the equality of persons as rights holders (Hakalehto-Wainio 2013, p. 27). The perspective on children's rights has changed from the protection of the child to the protection of children's rights (Freeman 1998, p. 433-435), and the Convention on the Rights of the Child challenged the idea of the child as a part or property of the family (Hägglund – Thelander 2011, p. 365). It provides both general human rights for all children under the age of 18 and specific rights for children only. The overarching theme and main message of the Convention is the dignity of the child, and there are four guiding principles through which all its articles should be interpreted. These principles are also important when considering the rights of the child in criminal proceedings. The four principles are the principle of non-discrimination (CRC 2), the principle of the best interests of the child (CRC 3), the right to life, survival and development (CRC 6) and the right to participation (CRC 12).

The best interests of the child principle is considered one of the most important provisions of the CRC (Zermatten 2010, p. 498). According to Art. 3(1), »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.« This means that in criminal proceedings, from the preliminary investigation onwards, the child's best interests must also be considered in all actions, decisions and activities concerning the child. A provision on the primacy of the best interests of the child is also included in Article 24 of the Charter of Fundamental Rights of the European Union.

Guidance on the application of the best interests of the child is given in UN Committee on the Rights of the Child General Comment No.14. According to the Committee, the concept of a child's best interests is aimed at ensuring the full and effective enjoyment of all the rights recognised in the Convention (CRC/C/GC/14 point 4). The Committee also notes that »in all actions« in Art. 3(1) means every action relating to a child, and the word »actions« includes decisions, acts, conduct, proposals, service, procedures and other measures. It also includes inaction and failure to take action (CRC/C/GC/14, point 17). The best interests of the child are defined at three levels: right, principle and practice (CRC/C/GC/14, point 6.a-c).

The CRC does not provide specific rights for victims, but it does include the right of the child to protection from all forms of abuse and negligence, including sexual abuse (in particular, articles 19, 34 and 36; see also Tordes 2019) and the obligation to promote the psychological recovery and social reintegration of such child victims (Article 39). The CRC and the committee address child suspects in different articles and different general comments. However, both groups of children, the victims and suspects, require protection from harmful treatment. The criminal proceedings should not harm the child and the rights of the child should apply equally to both. Neither should suffer any loss of rights because of being a child (Silvennoinen 2020, p. 204). Even when the suspect and the victim have different rights and obligations as a party, they should have the same rights as a child. This is important to understand, since when the interests of the parties are in conflict, the interests of the children involved may also be in conflict.

The strengthening of children's rights and considering the best interests of the child have been also reflected in the development of child-friendly judicial procedures at the European Union level. The most important are the provisions of the EU directive on combating the sexual abuse and sexual exploitation of children and child pornography (2011/92/EU), the Victims of Crime Directive, which contains child-specific provisions (2012/29/EU), and the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings (2016/800/EU). In addition, the Committee of Ministers of the Council of Europe (Council of Europe 2010) has published guidelines on child-friendly justice, which aim to strengthen the realisation of children's rights, such as the right to information, representation and participation in proceedings, and protection.



The guidelines on child-friendly justice are not legally binding but provide guidance on how the rights of the child should be implemented in legal proceedings. Child-friendly justice in this context means that children must be treated with dignity, respect, care and fairness (Council of Europe 2010, p. 8). Particular attention should be given to their personal situation, well-being and specific needs, regardless of their status in the case (Council of Europe 2010, p. 18). Children are thus to be heard and their views must be taken seriously. Child-friendly justice guarantees that all children have adequate access to treatment in justice in a respectful and responsive manner (Council of Europe 2010, p. 8). The guidelines aim to ensure that all rights of children are fully respected in proceedings, with consideration of the child's level of maturity and understanding and of the circumstances of the case (Council of Europe 2010, p. 16).

The main challenge in systematising the rights of the child and the rights associated with the criminal justice system is the vastly different objectives of the rights and the conceived context in which they operate. Since the initial stages of the Convention, it has been recognised that it approaches children's rights mainly from the perspective of Anglo-American middle-class childhood (Freeman 2000, p. 277-278; Kallio 2009, p. 122-124). Children involved in the criminal justice system appear to be a departure from this (Kallio 2009, p. 124), even the victims, although for them the need for special protection and other well-being rights protected by the CRC is easily recognised (Silvennoinen 2020, p. 230-231).

3. Special treatment of minor suspects

3.1. *Specific rights of children in criminal proceedings*

The Convention on the Rights of the Child contains specific rights for those accused of a crime. The application of Art. 40 is necessary in order to respect the rights of the child and thus conduct the proceedings in the best interests of the child. According to the Committee's General comment No. 24 on children's rights in the child justice system, children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults (CRC/C/GC/24, point 2). Article 40 (2) of the Convention contains an important list of rights and guarantees aimed at ensuring that every child receives fair treatment and trial.

The three main objectives of the Committee are (a) to promote and protect children's rights in criminal proceedings in a holistic way, (b) to reiterate the importance of prevention and early intervention, and of protecting children's rights in all stages of the system, and (c) to reduce the especially harmful effects



of contact with the criminal justice system in line with increased knowledge about children's development in particular areas (CRC/C/GC/24, point 6a-c). According to the Committee, the core elements of a comprehensive child justice policy are prevention of the child from offending, intervention to avoid justice proceedings, the minimum age of criminal responsibility, guarantees for a fair trial, sanctions / measures, deprivation of liberty and related rights (CRC/C/GR/24, chapter IV).

The comment does little to help assess the success of the Finnish criminal justice system in protecting the rights of the child or what it means to protect the rights of the child in an individual system or even a case. The notes and recommendations are of a general nature. The comment does, however, provide a framework for the issues to which attention should be paid. The Finnish regulation on criminal law and criminal procedural law has considered minor suspects of crime in diverse ways, some of which protect the child in the proceedings, some of which concern the fair trial and some of which concern the consequences of the offence.

3.2. *Measures to protect the child in proceedings*

Finnish legislation has adopted several measures to protect minors, and some of the most important from the point of view of the CRC are presented here. The directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings also requires similar procedural safeguards in many respects for children suspected or accused of a crime.

First, one of the most principal issues. As required under Article 40(3) of the Convention, Finland has enacted the minimum age of criminal responsibility. The minimum age of criminal responsibility of 15 years was already laid down in Finland's first Criminal Code (39/1889, later CC) in 1889. Prior to this, the 15-year age limit appeared in the Imperial Majesty's gracious presentation to Parliament in 1863-1864 (for further details, see Harrikari 2004, 73-109). This has been interpreted by the Finnish Supreme Court in precedent KKO 2010:77 as meaning that a person is not liable for a criminal offence on the day he or she turns 15, but only from the beginning of the next day. The age limit is designed to protect children, who are not assumed to have the same maturity and set of values as an adult, and they cannot be considered as the guilty party. Therefore, being underage requires understanding rather than condemnation. Nor can a punishment have the same preventive effect on a child as on an adult (Nordlöf 2012, p. 178; Matikkala 2021, p. 166).

The Committee considers decisions without delay and with the involvement of guardians (under Article 40(2) (b) (iii)) to be part of the guarantees for a fair trial (CRC/C/GC/24, point 54). In Finnish criminal procedural legislation, these are also viewed as a means of preventing future offending of a suspect. When the suspect of crime is under 18 years old, the pre-trial investigation



and consideration of charges and prosecution shall be conducted urgently (Criminal Investigation Act (805/2011, later CIA) Chapter 3, Section 11, Sub-section 2; Criminal Procedure Act (689/1997, later CPA) Chapter 1, Section 8a (2)). Similarly, the organization of trials for more serious offences has been accelerated (CPA, Chapter 5, Section 13(2)). There will be a similar regulation for the victim in October 2023, so before that, in offences between minors, the minor victim can also benefit from this arrangement.

The involvement of guardians and social welfare is a means to achieve the best interests of the child in criminal proceedings. The minor's guardian has the right to be present at the questioning and must be informed in advance (CIA 7(14)). The same rules apply to an underaged injured party, but the law and its drafts are written with the suspect in mind. Other adults close to the suspected minor may also have the right to be present at the questioning if the guardian cannot be present and it is in the suspect's best interests (CIA 7(14)). According to the main rule, when a minor is suspected of having committed a criminal offence, the social welfare authority must be informed and given the opportunity to attend the hearing and submit a record of the hearing (CIA 7(16)). The role of the social welfare authority is highlighted when the child's guardian cannot be called for a hearing (Government bill HE 222/2010, p. 225).

Children are guaranteed the right to the assistance they need (Art. 40(2) (b) (ii)). A suspect under the age of 18 who has no public defender must be provided with one *ex officio* by the court for the preliminary investigation and trial, unless it is apparent that he or she does not need one (CPA Chapter 2, Section 1(3,2)). The court may also appoint trial counsel for an injured party on request or *ex officio* in certain offences and circumstances provided for by law. The same rules apply to a child as to an adult, although the age of the victim may be relevant (CPA 2(1a)). In particular, the position of minors in violent crimes is different, as the suspect is presumed to need a free of charge lawyer and the injured party is only allowed one for a justified reason.

The Finnish CIA has a separate provision on the treatment of children, according to which children must be treated in a manner appropriate to their age and development (CIA 4(7)). The importance of the best interests of the child in criminal investigations is reflected in the provision. It is considered to be both a procedural rule guiding the activities of the criminal investigation authority and a right of the child participating in the criminal investigation (Silvennoinen 2020, p. 216). The provision does not give a right to a particular type of treatment, but it does impose an obligation on the authority to take account of the child's age and stage of development and to minimise the negative impact of the preliminary investigation on the child's everyday life.



3.3. *Consequences of the offence*

A significant difference from the point of view of minors involved in a criminal case concerns the consequences of the offence. There is a strong assumption that a crime committed by a child is a mistake. In Finland, the special treatment of young people in the field of criminal law has been justified on the grounds of thoughtlessness, testing of limits, lack of knowledge and ability (Marttunen 2008, p. 102; Government bill HE 229/2009, p. 4). It has been recognised that the consequences of overly punitive approaches risk harming children in a way that will affect their ability to develop into responsible adults (Lublin – Lainpelto 2020, 379). In Finnish criminal policy and legislation, juvenile offenders are treated more leniently than adults, and the starting point in intervention is education and guidance.

The UN Committee on the Rights of the Child states that a strictly punitive approach is not in accordance with the principles of child justice spelled out in Article 40 (1) of the Convention. Therefore, intervention should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (CRC/C/GC/24, point 76). The Committee also recalls that the decision to bring a child into the justice system does not mean the child must go through a formal court process (CRC/C/GC/24 point 72). Finnish national legislation has taken this into account in diverse ways. For example, legislation requires an individual assessment of a juvenile offender to identify the juvenile's social situation and the reasons for the offence, and to assess the risk of offending and the conditions for supporting the juvenile to lead a crime-free life (Act on investigating the situation of a young suspect of crime (633/2010), Section 1). The assessment focuses on how the choice of sanction could contribute to the young person's social coping and prevent him or her from re-offending. (Government bill HE 229/2009 vp, p. 17). The statement is relevant for both the sentence requested by the prosecutor and the sentence imposed by the court (Government bill HE 229/2009 vp, p. 22). The court may refrain from imposing a sentence under Chapter 6, Section 12(2) of the Criminal Code if the offence was committed when the person was under 18 years of age and the offence is deemed to have been committed without understanding or recklessly.

The age of the suspect affects the measures taken in a criminal case. However, the young age of the injured party does not affect the course of the criminal proceedings. A minor victim is entitled to special protection in the proceedings because of his or her age, the nature of the crime and other circumstances (for further details, see Silvennoinen 2020), but if the suspect is also a minor, the case is less likely to go to court. If the right to a trial and a court decision is considered a victim's right in criminal proceedings, it is less effective when the offender is a child. There is a risk that this regulation treats children differently depending on whether they are victims or offenders. It also treats child victims differently from adult victims, as juvenile crimes are often committed against other young people.



The prosecutor is the main authority responsible for enforcing criminal liability in Finland. The legislation allows the prosecutor to waive prosecution if the suspect is a minor, the suspected offence is not profoundly serious, and if the prosecutor considers the act to be more a result of a lack of understanding or thoughtlessness than of heedlessness of the prohibitions and command of the law (CPA Chapter 1, Section 7(2)). The prosecutor may also decide on the proposal of the head investigator to discontinue the preliminary investigation or not to conduct it on the grounds of youth, as described above. An additional condition is that there is no important public or private interest in prosecuting the case (CIA Chapter 3, Section 10 (1)).

According to the CRC, non-judicial measures should be taken against children alleged to have committed or found to have committed offences whenever appropriate and desirable (Article 40.3 (b)). For the victim, on the other hand, it is important to ensure that he or she has the possibility to claim and obtain compensation. It is also said that for the victim, it is more important that the offender takes moral responsibility than legal responsibility (Wemmers – Cyr 2005, p. 540). In addition to, or even instead of, criminal proceedings, it is possible to deal with criminal cases between young people in mediation (Act on mediation in civil matters and confirmation of settlements in general courts 394/2011). If the parties reach an agreement on damages and the offender compensates the victim, there is usually no specific private interest that requires the continuation of the process.

The Convention on the Rights of the Child does not prohibit the imprisonment or other deprivation of liberty of a child. However, the deprivation of a child's liberty should only be a last resort and for the shortest appropriate period of time (CRC 37 (b)). This is clearly emphasized by the Committee (CRC/C/GC/24 point 82-88) and applies to all forms of deprivation of liberty in all stages of criminal proceedings. Under Finnish law, a minor offender can be arrested and sentenced to imprisonment, and it is also possible to use pretrial detention. From the injured parties and the public's point of view, imprisonment and its length are the most important and visible indicators of how seriously society takes crime.

According to the Finnish CC, if the offender is underaged, the sentence will be imposed according to a reduced scale of penalties (CC Chapter 6, Section 8 (1,1)). The offender may then be sentenced to a maximum of three quarters of the maximum term of imprisonment or fine for the offence and at least the minimum term for the type of offence. If the offence could be punishable by life imprisonment, the maximum penalty is twelve years' imprisonment and the minimum penalty is two years' imprisonment (CC 6(2)).

For a minor, the court may also impose a fine as the punishment instead of imprisonment, if there are particularly serious reasons for this, even when the most severe punishment provided for the offence is imprisonment for a fixed term (CC 6:8(4)). An offence committed by a minor may not be punished with an unconditional custodial sentence unless there are serious reasons for doing



so. When considering the significance of serious reasons, the placement of the offender in a child protection institution is considered (CC 6(9.2)). This means that both sentencing children to unconditional imprisonment and placing them in prison should be avoided by law.

The Finnish Supreme Court assessed whether there were serious reasons to sentence a minor to a fine instead of imprisonment in its decision KKO 2022:67. In the case, a 15-year-old attempted to rob property from a 14-year-old victim using violence and the threat of violence. The robbery had remained an attempt only because a third party had observed the situation. The scale of penalties for a juvenile convicted of robbery is from 14 days to 4 years and 6 months imprisonment. The Supreme Court stated there are serious grounds for departing from this scale of penalties where a custodial sentence on a reduced scale cannot be considered reasonable because of the exceptional circumstances of the offence or the offender. In this case, the age of the offender and the fact that the offence was attempted could be taken into account, but neither the offence nor the circumstances of the defendant were exceptional. The application of the normal reduced scale of penalties does not lead to an excessive sentence and there are no particularly serious reasons for imposing a fine instead of imprisonment.

The Finnish Supreme Court did not consider the best interests of the child and did not apply the Convention on the Rights of the Child to the case. The Supreme Court's approach to the CRC has changed over the last three decades: the Supreme Court has made greater use of the Convention and has also used the Committee on the Rights of the Child in its reasoning (Hakalehto 2021, p. 677, Tolonen – Koulu – Hakalehto 2019, p. 167-168). The CRC is not used in matters of criminal liability, punishment or the rights of suspects. In criminal cases, the decisions have concerned cases where a parent is accused of a crime against a child (KKO 2016:24 and KKO 2016:25).

The CC (Chapter 6, Section 10 a) also provides for a special penalty for offenders aged 15-17. The offender can be sentenced to a juvenile sentence if the penalty is between a fine and unconditional imprisonment. Juvenile punishment includes supervision, measures and programmes to promote the social functioning of the young person and the guidance provided in connection therewith (Section 64 of the Act on the Enforcement of Community Sanctions). The content of juvenile punishment thus aims in particular at preventing the marginalisation of young people and strengthening a crime-free lifestyle (Government Bill HE 215/2014 vp, p. 80). However, this form of punishment has remained almost unused and the main reason for the low number is considered to be that prosecutors find it difficult to apply the law. It is difficult to find applicable cases (Prison and Probation Service of Finland).



4. Child's best interest and criminal proceedings

The main objectives of the criminal justice system do not include the realisation of specific children's rights, nor do they explicitly require, for example, that the best interests of the child are considered in all the decision-making. Despite this, there are provisions specifically aimed at children and youth: protective measures exist for both parties, and young offenders in particular are treated more leniently compared to adults. A bigger question is the concept of best interest: how and when it should be considered in criminal proceedings where, unlike many other judicial procedures concerning a child, the best interest is not a primary purpose of the procedure. In addition, the importance of the best interests of a child is not clear when the interests of individual children are in conflict.

The UN Committee on the Rights of the Child has suggested that the best interests of the child should be seen in three ways: a substantive right, a fundamental interpretative legal principle and a procedural rule (CRC/C/GC/14, point 6.a-c). According to the General Comment, the best interests of the child as a substantive right means that »The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake.« It also means the guarantee that it will be implemented whenever making a decision concerning a child, a group of children or children in general. It is also a factor that can be invoked before the courts (CRC/C/GC/14, point 6.a).

The concept of best interests as a substantive right is problematic. In criminal proceedings, there are many different decisions about a child, directly or indirectly. There are also many different interests and objectives depending on whose point of view or which part of the process is considered (Launiala 2010 p. 7-9, 15-19). If the best interests of the child were a substantive right to be considered alongside other interests, we should have a clear understanding of what the best interests of the child are in each individual situation. This is a challenge, not least because establishing the best interests of the child is an unusual objective for the criminal justice process and its actors. There is also the difficulty that the criteria used to assess the best interests of the child are determined by the perspectives of the different professionals and actors (Hirvelä 2006, p. 234).

The concept has faced criticism before. One problem is that the Convention does not define the best interests (Zermatten 2010, p. 485), and it is therefore unclear what the best interests are (Sormunen 2020, p. 751). It has also been questioned whether relying on the best interests of the child changes the outcome compared to relying on other rights of the child or general human rights (Cantwell 2017, 65-67). Since the best interests of the child is such a vague right, it is more effective to talk about the realisation of a specific right, such as the right to express one's views or the need for legal protection, for



example, rather than the best interests of the child. However, based on the guidelines, the CRC and procedural rights, it can be generally stated that the best interests of the child are met when all the rights relevant to the child in the situation are fulfilled.

The second function of the best interests is a fundamental, interpretative legal principle. This means that of the possible ways of interpreting a legal provision, the one that most effectively serves the child's best interests must be chosen (CRC/C/GC/14, point 6.b). Again, the problem is that the interpretation would require that the best interests of the child be defined in some way. In addition, it is not possible to interpret criminal law in the best interests of the child. There is a challenge in situations where the best interests of the child come into conflict with other rights and interests (Sormunen 2020, p. 754). For example, what is the weight of the best interests of the child compared to the investigation of a crime and the right of the injured party to compensation? The problem is also when the interests or rights of two or more children come into conflict. How can the best interests of the child be weighed when there is a conflict between the physical integrity of the minor victim and the freedom of the minor defendant?

In criminal proceedings, the best interests of the child should be understood as a procedural obligation (Hirvelä 2006, p. 233), not a substantive right. Also, the Committee names the third dimension of the concept as a procedural rule or code of conduct, which imposes an obligation to assess and justify the effects of the decision on the child concerned (CRC/C/GC/14, point 6.c). A procedural approach to the decision-making process allows the concept to be applied consistently across different categories of cases and to focus on the rights of the child rather than on a substantive assessment of the best interests of the child (Sormunen 2020, p. 767). When the best interests of the child are understood as an obligation and a guarantee of procedural fairness, there is no need to weigh the interests of the parties. In this way, the lenient treatment of the offender does not have to be assessed from the point of view of the interests of the injured party. Moreover, treating the victim of a crime in the best interests of the child does not jeopardise the rights of the accused.

In considering the best interests of the child, a distinction should be made between cases that directly affect the child and those that indirectly affect the child, as the best interests are ultimately assessed on a case-by-case basis. In cases directly affecting the child, the outcome of the decision must be in the best interests of the child, and in cases indirectly affecting the child, the decision-maker must seek the best option or solution, rather than the best interests of the child (Eekelaar 2017, p. 57-58). The latter involves a risk of vagueness (Eekelaar 2015, p. 24). This is another argument in favour of a procedural approach to the best interests of the child, as many decisions in criminal proceedings directly affect the suspected child but only indirectly affect the victim.



5. Conclusions

A child's rights must be realised both in relation to other children and in relation to adults. In criminal proceedings, however, rights are determined by procedural status. The main difference, including for minors, is whether they are accused of a crime or are victims of a crime. This situation places the rights of children who are opposing parties in the same criminal case in a tense situation, as minors accused of a crime are treated more leniently than adults.

Lenient treatment of a minor suspect, particularly in terms of non-prosecution, avoidance of unconditional imprisonment and reduced sentences, may be negative from the victim's point of view. However, good treatment, the involvement of guardians and child protection do not influence the victim's rights. On the other hand, rapid intervention in the case of a minor suspect can also benefit the injured party.

Are the best interests of the child victim at risk if the crime is committed by another child? This is affected by how we understand the best interests of the child. If we understand it as a procedural provision designed to safeguard the rights of the child in question in the situation, the best interests of one child are not to be equated with the best interests of another child. If the best interests of the child were to be regarded as a substantive right that must be given priority in decision-making, there should be a clear understanding of what the best interests of the individual child are in a criminal case and under what conditions a decision against the best interests of the child can be taken. Furthermore, in cases where both parties in a criminal case are minors, it would still have to be decided which one's interests prevail, if the interests of the children are opposed.

In criminal proceedings, rights and obligations are linked to procedural status and determine, *inter alia*, how a party can participate in the proceedings. Understanding the best interests of the child as a specific, vague additional right or as a fundamental principle of interpretation would not necessarily add anything to the realisation of the rights of the child. Instead, the best interests of the child as a procedural rule obliges the authorities to consider the age and developmental needs of the child when applying procedural rules and criminal law. For these reasons in particular, the best interests of the child in criminal proceedings should be understood as a procedural obligation. However, the best interests and importance of the child may vary depending on the part of the criminal proceedings that is being considered: the pre-trial investigation, the prosecution or the trial.

Understanding the best interests of the child primarily as a procedural rule in criminal proceedings allows the focus to be on the realisation of the rights of the child and ensuring legal certainty for both parties involved. Instead of



defining the best interests of the child, the emphasis can be on achieving rights that are relevant to the child in the situation.

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