



National Report

BULGARIA

Children's right to information in civil proceedings in Bulgaria

Table of contents

1. The children's right to information as an essential component of the right to be heard and to participate.....	1
2. The evolution of the right to be heard in the Bulgarian legal system: legislative provisions concerning the right to participation of the child and the right to receive information.....	3
3. Relevant supranational provisions for the Bulgarian legal system.....	9
3.1 International Law.....	9
3.2. EU law.....	10
4. Relevant national case law.....	11
5. The effectivity of the hearing as dependent on the right to receive adequate information: gaps and deficiency in the Bulgarian legal system.....	14
6. Analysis of the current practices in Bulgaria.....	15
7. Conclusions.....	40

1. The children's right to information as an essential component of the right to be heard and to participate

The children's **right to information in Bulgaria** is closely linked to the **right of the child to express his or her view** during all proceedings concerning children's rights and interests. Both rights serve the protection of the best interests of the child and express the understanding that the children are to be treated like effective rights holders. These ideas stem from the supranational provisions and as well as from the national law. The **general rule** in Bulgarian domestic law on the hearing of the child – Article 15, para. 1 of the Child Protection Act (hereinafter “CPA”) - provides for that *all cases of administrative or judicial proceedings affecting the rights and interests of a child should provide for a mandatory hearing of the child, provided he or she has reached the age of 10, unless this proves harmful to his or her interests.* The right to **information** is envisaged in

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the same Article 15, but in para.3 of the CPA stating that before the child is given an opportunity to express his or her view, the court or the administrative authority shall *provide the child with the necessary information, which would help him or her form his or her opinion and inform the child about the possible consequences of his or her desire, of the opinion supported by him or her, as well as about all the decisions made by the judicial or administrative body*. Thus, the obligation to hear the child and to acquaint him or her in advance with the needed information gets through **all civil law** areas concerning children – parental responsibility, maintenance, child abduction, adoption, origin, placement and so on. The notion is rather **neutral** as it can cover both domestic and cross border cases. It focuses on the **contact** between the child and the authority, entailing the idea to protect the **best interests of the child**. Nevertheless, the child's participation in proceedings can in some cases prove harmful, risky, and undesirable. **Striking the right balance** between the provision of information and the hearing on the one hand and preserving the child unaffected by the parent's affairs on other hand, proved to be a very challenging practical issue.

The current analysis is **focused** predominantly on right to information as part of the right to be heard and to participate when exercised in judicial proceedings. It is based on the Bulgarian legal framework, case law and practical feedback provided by judges, attorneys and other legal practitioners including a representative of the Bulgarian Central Authority – the Ministry of Justice. In Bulgaria there are **no special family or children courts**. Only in Sofia, the Sofia Regional Court, the Sofia City Court, and the Sofia Appellate Court have structured some chambers dealing mostly with family matters. In all other regions in Bulgaria the judges must combine the special family expertise with the general competence in civil and commercial matters and in some instances, even in criminal law. The administrative matters are decided by specialized administrative courts. When faced with issues concerning children these courts have also to apply the general rules on hearing of the child and on provision of information contained in Article 15 of the CPA. Only in the field of child abduction Bulgaria has followed the recommendation to concentrate jurisdiction¹. Thus, in child abduction cases the first instance court is always the Sofia City Court and the second instance court - Sofia Appellate Court, where the access to the Supreme Court of Cassation is excluded (Article 22a, para.1 and Article 22d, para. 1 CPA).

The right to information and to participation of children in Bulgaria was inspired by the **supranational legislation** (see *infra*, para. 3). The most important sources are the UN Convention

¹ See Practice Guide for the application of Brussels IIa Regulation, p. 50.

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on the Rights of the Child (Article 13, para.1 in connection with Article 12, para.1) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 8). Child participation in Family Law in Bulgaria changed significantly at legislative and judicial level during the years, especially after the end of the Cold War and the membership of Bulgaria to the EU (see infra, para. 4).

2. The evolution of the right to be heard in the Bulgarian legal system: legislative provisions concerning the right to participation of the child and the right to receive information.

The right to participation of the child and the right to receive information in conjunction with the right to be heard are achievements of the last 30 years of the Bulgarian legislation.

Before the end of the Cold War in Bulgaria the protection of children was not even mentioned in the Constitution of 1971². The Family Code of 1968³ provided for hearing of the child only in specifically listed hypothesis – conclusion of marriage by a person at the age of 16 to 18 (Article 8, para.2), parental responsibility matters and maintenance (Article 29, para.1 and Article 61, para.1), adoption of a child between 10 to 14 years (Article 51, para.3). A right to receive information was envisaged neither in the Family Code of 1968, nor in the Civil Procedural Code of 1952⁴. Not much changed with the entry into force of the Family Code of 1985⁵. A right to receive information was not introduced. The legislator stipulated hearing of a child in cases of conclusion of marriage by a person at the age of 16 to 18 (Article 12, para.2), in parental responsibility matters and maintenance (106, para.3, Article 71, para.1 and Article 72, para.2) and in adoption cases (Article 55, para.1).

After the collapse of the communist regime in 1989 a new Constitution⁶ was adopted. According to its Article 14 the family, the motherhood and the **children** are under the protection of the state and society. Without explicit mentioning, the right of the child to express his or her view could be detected in Article 39, para.1, devoted to the freedom of expression. The right to information is enshrined in Article 41 stating that everyone has the right to seek, receive and disseminate information. The exercise of this right may not be directed against the rights and reputation of other citizens, nor against national security, public order, public health or moral. The hearing of the child can further be traced within the realm of the right to equal treatment and dignity (Article 6, para.1).

² Promulgated, State Gazette No. 39/18.05.1971.

³ Promulgated, State Gazette No. 23/22.03.1968.

⁴ Promulgated, State Gazette No. 12/08.02.1952.

⁵ Promulgated, State Gazette No. 41/28.05.1985.

⁶ Promulgated, State Gazette No. 56/13.07.1991.

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Finally, the Constitution provides for that the upbringing and education of the children until they reach the age of majority is a right and obligation of their parents and shall be supported by the state (Article 47, para.1). The cited provision of the Bulgarian Constitution considers the children predominantly as recipients of protection, rather than as full-fledged rights holders. This attitude is shared to some extent by the Bulgarian Constitutional Court (see para. 4).

The general rule on the hearing of the child and on the right to information was introduced in the **CPA in 2000**⁷. Firstly, this act enshrines the children's right to freedom of expression. According to Article 12 *every child has a right to express freely his or her opinion on all issues affecting his or her interests. He or she may seek the assistance of the bodies and persons, to whom his or her protection pursuant to this Act has been assigned*. Secondly, it stipulates the children's right to be informed and consulted by the child protection body. This right is envisaged in Article 13 stating that *every child has a right to be informed and consulted by the child protection body even without the knowledge thereof of his or her parents or of the persons who take care of his or her rearing and upbringing, should that be deemed necessary in view of protecting his or her interests in the best possible way and in case where informing the said persons might harm the child's interests*. Thirdly, the right to be heard is expressly established in Article 15, para. 1 stating that *all cases of administrative or judicial proceedings affecting the rights and interests of a child should provide for a mandatory hearing of the child, provided he or she has reached the age of 10, unless this proves harmful to his or her interests*. If the child has not reached the age of 10, he or she may be given a hearing depending on the level of his or her development (Article 15, para.2). In connection with the right to be heard para.3 of the same article expressly stipulates the right to information. Before the child is given a hearing, the court or the administrative body shall: *provide the child with the necessary information, which would help him or her form his or her opinion and inform the child about the possible consequences of his or her desire, of the opinion supported by him or her, as well as about all the decisions made by the judicial or administrative body*. The modalities of the hearing and the provision of information are described in para. 4 and 5 of Article 15. The judicial and administrative bodies shall ensure appropriate surroundings for hearing of the child in accordance with his/her age. The hearing and the consultation of a child shall mandatorily take place in the presence of a social worker from the Social Assistance Directorate at the current address of the child and when necessary - in the presence of another appropriate specialist. The hearing may

⁷ Promulgated, State Gazette No. 48/13.07.2000, V. TODOROVA, 'The Bulgarian CPA: The Start of the Child Welfare Reform?', in: A. BAINHAM (ed.), International Survey of Family Law, Bristol: Jordans, 2002, p. 91.

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take place also in the presence of a parent, tutor, curator, other person who takes care of the child, or another close person known to the child, except where this does not correspond to the child's interests. The participation of the given person may be ordered by the court or the administrative body. Pursuant to Article 15, para. 7 and 8 CPA, the Social Assistance Directorate may represent the child in cases provided for by law and the child has a right to legal aid and appeal in all proceedings, affecting his or her rights or interests.

The aforementioned Article 15 of the CPA represents a rule piercing through all areas of law that can affect children's rights and interests.

The **Family Code of 2009**⁸ contains also specific rules on the hearing of the child, while most of them refer to Article 15 of the CPA. However, there is no special rule in the Family Code of 2009 regarding the right to information. The hearing of the child as envisaged in Article 15 of the CPA is expressly provided for all matters falling in Chapter 9 – relations between parents and children (Article 138 of the Family Code of 2009). This chapter covers for example disputes concerning the exercise of parental rights and discharge of parental obligations (Article 123), rights and obligations of the child (Article 124), co-habitation (Article 126), dispute over parental rights (Article 127), dispute in case of disagreement between parents on the child travelling abroad (Article 127a), management and disposal of the child's property (Article 130), restriction and deprivation of parental rights (Article 131 and 132). The hearing of the child is further provided for in custody and guardianship instatement procedures (Article 155, para. 3), in matters concerning parental rights after divorce (Article 59, para. 6). In Bulgaria, the child is not a party of the proceedings in matters of parental responsibility, including when determining his or her place of residence and the contact rights. The child is a party to maintenance proceedings.

The standard for the hearing of the child in court proceedings of Article 15 CPA is further referred to in connection with **child abduction cases and placement**. Pursuant to Article 22a, para.2 of the CPA the court shall hear the child in accordance with Article 15 when an application for the return of a child or for the exercise of rights of access under the Hague Convention on the Civil Aspects of International Child Abduction is examined by the Sofia City Court. Article 28, para. 3 of the CPA includes the hearing of the child pursuant to the provision of Article 15 among the duties of the court seized with requests for placing a child with the family of relatives or friends, with a foster family and in a social or integrated health and social service for residential care.

⁸ Promulgated, State Gazette No. 47/23.06.2009.

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The last provision worth mentioning regarding the hearing of the child is Article 88 of the Social Services Act stating that **all social services** that implement child protection measures shall be provided in accordance with the procedure laid down in the CPA.

Unfortunately, the Code of Civil Procedure⁹ and the Administrative Procedural Code¹⁰ do not contain any rules on the factual provision of information to children. They are the main procedural instruments best known by the judges and the attorneys. Logically, the most appropriate solution would be to enshrine there all procedural aspects of the right to information of the child before, during and after the proceedings.

The enlisted **legal sources do not constitute an exhaustive list** of all hypothesis where the child is heard in civil proceedings in Bulgaria. Nevertheless, it is evident that the hearing of the child is the main core of the topic where the provision of information is attached to it. The focus is put on the right to information within the procedure ending with the delivery of the decision. The exercise of **that right after the decision is not regulated expressly**. The general obligation to provision of information and consultancy is attributed pursuant to Article 13 of the CPA only to the child protection bodies, including Chairperson of the State Agency for Child Protection, the Social Assistance Directorates, the Minister of Labour and Social Policy, the Minister of the Interior, the Minister of Education and Science, the Minister of Justice, the Minister of Foreign Affairs, the Minister of Culture, the Minister of Health Care and the mayors of municipalities. The parents and the attorneys are not envisaged. Under the domestic law the court is not obliged to inform the child about its decision save the cases when it is a party to the proceedings (for example in maintenance cases). Nevertheless, the general application of Article 39 and 41 of the Constitution and the supranational law still applies.

The abovementioned legal framework of the hearing of the child and of the right to information is developed further by the **case law of the Bulgarian Supreme Court of Cassation and of the Bulgarian Supreme Administrative Court**. Having in mind the case law of the supreme courts, a special attention will be paid to the **main aspects of the hearing of the child**, influencing inevitably the child's access to information.

Firstly, according to the quite old interpretative ruling of the Bulgarian Supreme Court of 12.11.1974 in civil case 3/74¹¹ **the view of the child is not binding for the court**, when deciding

⁹ Promulgated, State Gazette No. 59/20.07.2007.

¹⁰ Promulgated, State Gazette No. 30/11.05.2006.

¹¹ Resolution of the Plemun of the Supreme Court № 1 of 12.11.74 in civil case № 3/74.

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on the exercise of the parental responsibilities. The opinion, expressed by the child, is to be assessed together with all evidence and evaluated from the perspective of the best interests of the child.

Secondly, the hearing of the child is indicated as **an obligation** in Article 15, para. 1 CPA, when the child is above the age of 10 and no harm is suspected. According to the Supreme Court of Cassation this obligation binds not only the first instance court, but also the second instance court¹². The omission to hear an eligible child in sense of Article 15, para. 1 CPA amounts to substantial procedural breach¹³. Nevertheless, in some cases the Bulgarian Supreme Courts consider that the hearing is not mandatory for example in civil procedure of partition of child's property¹⁴, in an administrative procedure for provision of funds for medical treatment of a child abroad¹⁵, an administrative procedure for release of municipal property¹⁶. The lower instances tend to omit the hearing of the child when seized with an agreement on divorce and in matters of parental responsibility with the reasoning that there is no dispute anymore¹⁷.

Thirdly, pursuant to Article 15, para. 1 CPA the court may not fulfill the obligation to hear the child above the age of 10, only if **this would prove harmful to his or her interests**. The Supreme Court of Cassation interprets the latter as an exception to the general rule and requires therefore **collection of convincing evidence**. The court, intending to refuse hearing, is obliged to discuss all the facts and evidence in this regard. Its **refusal to hear the child must be substantiated** so in case of subsequent appeal of the decision the next instance may be in the position to check its correctness. Otherwise, there is a non-fulfillment of a procedural norm, which is intended to ensure the correctness of the decision in the respective proceedings¹⁸. In practice, the refusal to hear the child is usually based on the social report and on the evidence of the parents, where the court inclines to rely on emotional disorder¹⁹, difficult adaptation to the changing environment, emotional instability, introversion, rapid mood dynamics²⁰.

¹² Решение № 193 от 24.10.2019 г. по гр. д. № 4781/2018 г., Г. К., IV Г. О. на ВКС.

¹³ Решение № 86 от 13.09.2016 г. по гр.д. № 4685/2015 г., Г. К., IV Г. О на ВКС. Решение № 9926 от 19.07.2018 г. по адм. д. № 13643/2017 г., III Отд. на ВАС.

¹⁴ Определение № 602 от 26.10.2017 г. по гр.д. № 1158/2017 г., Г. К., I Г. О. на ВКС.

¹⁵ Решение № 9669 от 19.07.2017 Г. По Адм. Д. № 4511/2017 г., VI Отд. на ВАС.

¹⁶ Решение № 15490 от 22.11.2013 Г. По Адм. Д. № 9948/2013 г., III Отд. на ВАС.

¹⁷ Определение № 793 от 06.06.2018 г. по гр. д. № 112/2018 Г. На Районен Съд – Търговище, Решение № от 16.11.2017 г. по гр. д. № 2430/2017 Г. на Районен Съд - Горна Оряховица, Решение № От 23.08.2017 г. по гр.д. № 1315/2017 Г. на Районен Съд - Горна Оряховица

¹⁸ Решение № 86 от 13.09.2016 г. по гр.д. № 4685/2015 Г., Г. К., IV Г. О. на ВКС.

¹⁹ Решение № 4512 от 06.11.2017 г. по гр. д. № 8118/2017 Г. на Районен съд – Варна.

²⁰ Решение № 134 от 13.04.2017 г. по в. гр. д. № 1007/2016 Г. на Окръжен съд-Велико Търново.

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Fourthly, as per the Supreme Court of Cassation²¹ the hearing of the child, who at the time of the proceedings has not reached the age of 10, is **optional** and is assessed by the court in accordance with **his or her maturity**. In this case, the hearing may take place both at the request of one of the parties to the proceedings, or *ex officio*. The decision allowing hearing must in any case be substantiated.

Fifthly, the children in Bulgaria are usually heard **directly by the judge** in the presence of social worker from the Social Assistance Directorate or in the presence of another appropriate specialist (Article 15, para.4 CPA). The view of the children can also be found expressed in a forensic psychiatric examination, when requested. The parents are also allowed to attend the hearing (Article 15, para. 5 CPA), but in practice they are usually refrained to do so in matters of parental responsibility as not corresponding to the child's interests.

Sixthly, the hearing shall take place in **child freindly environment** in accordance with his/her age (Article 15, para. 4 CPA). Nevertheless, the information from the pratctioners indicates that the children are heard in the court rooms, in the judge's offices and quite seldom in special „blue rooms“, designated to serve the child freindly justice.

Last but not least, **before hearing the child is to be provided with the necessary information**, which would help him or her to form his or her view and to be notified about the possible consequences of his or her desire, of the opinion supported by him or her, as well as about all the decisions made by the judicial or administrative body (Article 15, para. 3 CPA). As stated above and confirmed by the practitioners' feedback in Bulgaria, the provision of information takes place after the initiation of the proceedings most often as an introduction to the hearing of the child by the judge. The outcome of the proceedings in parental responsibility matter is not brought to the attention of the children by the judge or the social worker and is left to the parents and their attorneys. The provided information varies but most often refers to the reasons for the hearing, the case itself, the possible consequences thereof and of the hearing, the rights of the child, the presence of other persons and the disclosure of the provided information.

²¹ Решение № 86 от 13.09.2016 г. по гр.д. № 4685/2015 Г., Г. К., IV Г. О. на ВКС.



3. Relevant supranational provisions for the Bulgarian legal system

3.1 International Law

Bulgaria is a contracting state to the **United Nations Convention on the Rights of the Child** since 1991²². According to Article 12 (CRC) Bulgaria undertook the duty *to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child*. Bulgaria confirmed further the child's right to freedom of expression including *the freedom to seek, receive and impart information* pursuant to Article 13 (CRC). The right to be heard and the right to information contribute to the protection of the best interests of the child being of primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3 CRC). The General Comment Nr.12 of 2009 elaborates in detail on the right of the child to be heard conditioned on his or her right to receive information. The provision of information is essential part of the preparation of the child for the hearing²³ and of the feedback referring to the weight given to the views of the child²⁴.

The right of the child to be heard and to be informed in Bulgaria stems also from the **European Convention on the Protection of Human Rights (ECHR)**²⁵ as interpreted by the European Court of Human Rights in conjunction with Article 8 – the right to respect for private and family life²⁶.

²² Promulgated, State Gazette No. 55/12.07.1991.

²³ General Comment No. 12 (2009) of the Committee on the Rights of the Child, point 41, a): *Those responsible for hearing the child have to ensure that the child is informed about her or his right to express her or his opinion in all matters affecting the child and, in particular, in any judicial and administrative decision-making processes, and about the impact that his or her expressed views will have on the outcome. The child must, furthermore, receive information about the option of either communicating directly or through a representative. She or he must be aware of the possible consequences of this choice. The decision maker must adequately prepare the child before the hearing, providing explanations as to how, when and where the hearing will take place and who the participants will be, and has to take account of the views of the child in this regard.*

²⁴ General Comment No. 12 (2009) of the Committee on the Rights of the Child, point 45, d): *Since the child enjoys the right that her or his views are given due weight, the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously. The information may prompt the child to insist, agree or make another proposal or, in the case of a judicial or administrative procedure, file an appeal or a complaint.*

²⁵ Promulgated, State Gazette No. 80/02.10.1992.

²⁶ See Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life, home and correspondence, updated on 31 August 2020, https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf. See further Judgment of 16 December 1999, T. v. The UK, app. No. 24724/94 and Judgment of 24 September 2007, W.S. v. Poland, app. No. 21508/02. Disclaimer excluding Commission responsibility – This report was funded under the European Union's Justice Programme (2014-2020). The content of the MiRI Project (JUST-JCOO-AG-2018-831608), and its deliverables, amongst which this report, represents the views of the author only and is his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.



The hearing of the child plays a significant role when applying the 1996 Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children²⁷. The omission to hear a child may amount to a ground for refusal of the recognition and enforcement of measures taken by the authorities of another Contracting State pursuant to Article 23, para.2, b)²⁸.

The voice of the child may further motivate the judge applying the **1980 Hague Convention on the civil aspects of international child abduction**²⁹ to refuse to order the return of the child *if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views* (Article 13, para.2).

The list is not exhaustive but sufficiently shows the main international instruments that bind Bulgaria with respect to the hearing of the child.

3.2. EU law

At the level of the **primary EU law** Bulgaria is bound by Article 3(3) of the Treaty of the European Union putting forward the protection of the children's rights as an objective of the EU, as well as by Article 24 of the EU Charter of Fundamental Rights structuring the rights of the child among the fundamental rights.

Bulgaria is further bound as a participant in the judicial cooperation in civil matters by the **secondary EU instruments in field of cross border family matters**. The most important instruments include Regulation 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (hereinafter Regulation Brussels II bis) and Regulation 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (hereinafter Regulation Brussels II ter). The hearing of the child plays an important role in the application of Regulation Brussels II bis as expressly stated in Recital 19 thereof and elaborated in detail in connection with the return of the child in the context of the Hague Convention

²⁷ Promulgated, State Gazette No.15/16.02.2007.

²⁸ b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

²⁹ Promulgated, State Gazette No.82/16.09.2003.

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on the Civil Aspects of International Child Abduction (Article 11 and Article 42)³⁰. The decision of another Member State may not be recognised and enforced if given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought (Article 23, letter “b”). Regulation Brussels II ter, applicable since the 1st of August 2022, straightens further the right of the child to express his or her view. This right is reinforced with two special provisions - Article 21 in Chapter II “Jurisdiction” and Article 26 in Chapter III “International child abduction”, both to be construed in compliance with a detailed Recital 39. Further elements of this right are to be found in Chapter IV “Recognition and enforcement” (Article 41, Article 68, Recital 57 and 71). The leading principles of the hearing of the child are enshrined in Article 21. According to it, any child who is capable of forming his or her own views shall be provided by the court exercising jurisdiction under Chapter II (and in return proceedings under the 1980 Hague Convention as per Article 26), in accordance with national law and procedure, with a genuine and effective opportunity to express his or her views. The court shall give due weight to the views of the child in accordance with his or her age and maturity (Article 21 (2)), in particular when assessing the best interests of the child (Recital 39). The right of the child to express his or her view is shaped in accordance with Article 24(1) of the Charter of the Fundamental Rights of the EU and in the light of Article 12 of the UN Convention on the Rights of the Child. In this sense, Article 21 does neither provide for any minimum age, nor unify the method of hearing, leaving the questions of “who” (by a judge or by an expert), “how” (directly or through representative) and “where” (in the court room or in another place) to the national law. The same applies to the provision of information. In any case the hearing of the child is not an absolute obligation allowing the court to refrain from it due to considerations rooted in the best interests of the child, for example as it could be in cases of agreements (Recital 39).

4. Relevant national case law

The **provision of information to children** is not subject of particularly in-depth analysis in the Bulgarian case law. It is most often referred to in connection with the hearing of the child. In this sense the court decisions either do not indicate anything, state in general that the child has been

³⁰ See ECJ Judgment of 22 December 2010, Joseba Andoni Aguirre Zarraga v Simone Pelz, Case C-491/10 PPU.

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provided with information³¹ or go a little further and clarify the content of the provided information. In doing so, the decisions indicate, for example, that the information relates to the subject matter of the claim³², to the role and consequences of the expressed view³³, or to the reason for the hearing³⁴. In rare cases the decision describes the details of the provided information in the particular case³⁵. In some instances, it is expressly described that the child confirmed that he or she understands the subject matter of the case³⁶.

If the procedural obligation for provision of information is not fulfilled, the act of the administrative authority may be set annulled³⁷. The same is true also for administrative decisions – the lack of provision of all relevant information to the child is considered as a substantial breach of the administrative procedure³⁸. Unfortunately, there are decisions where the provision of information does not amount to substantial breach. The outcome is justified with the consideration that the child's view did not affect the content of the final decision and the result would be the same if the child was properly informed in advance³⁹.

The Bulgarian case law concerning the **hearing of the child** was presented above in connection with the evolution of the right to be heard in the Bulgarian legal system: legislative provisions concerning the right to participation of the child and the right to receive information (see para. 2). There is one new decision of the Bulgarian Constitutional Court rendered in connection to the **Social Services Act**. Unfortunately, in this decision the Constitutional Court tends to construe the children's right to receive information from the perspective of the parents, the state, and the society rather than as an inherent human right of the child. As to the substance in its decision Nr. 9 of 14

³¹ Определение № 531 от 27.08.2014 г. по ч. гр. д. № 674/2014 г. Районен съд - Девня.

³² Определение № 109 от 15.01.2018 г. по ч. гр. д. № 2329/2017 г. Районен съд - Ямбол, Решение № 127 от 17.06.2015 г. по ч. гр. д. № 340/2015 г. Районен съд - Севлиево, Определение № 2155 от 20.08.2018 г. по ч. гр. д. № 1792/2018 г. Районен съд - Шумен.

³³ Определение № от 21.09.2018 г. по ч. гр. д. № 486/2018 г. Районен съд - Силистра, Определение № 531 от 27.08.2014 г. по ч. гр. д. № 674/2014 г. Районен съд - Девня, Определение № 1173 от 02.06.2020 г. по ч. гр. д. № 107/2020 г. Районен съд - Сливница, Решение № 127 от 17.06.2015 г. по ч. гр. д. № 340/2015 г. Районен съд - Севлиево.

³⁴ Определение № от 20.11.2018 г. по адм. д. № 346/2018 г. на Административен съд – Стара Загора.

³⁵ Решение № 28 от 11.01.2017 Г. НА АДМС - БУРГАС по адм. д. № 1278/2016 Г. – in this decision is expressly stated that the child has been aware of the facts and all related consequences and has expressed the desire to be placed under foster care in an institution, having in mind that his aunt does not want to take care of him.

³⁶ Определение № 142 от 19.02.2020 г. по ч. гр. д. № 146/2020 на Районен съд-Свищов.

³⁷ Решение № 190 от 11.01.2016 г. по адм. д. № 5015/2015 г. на Административен съд – София Град.

³⁸ Решение № 4172 от 15.04.2015 г. по адм. д. № 12911/2014 г., VI ОТД. на ВАС, Решение № 9085 от 15.10.2002 Г. ПО АДМ. Д. № 4124/2002 Г., 5 с-в на ВАС, Решение № 80 ОТ 10.11.2009 г. по адм. д. № 448/2009 г. на Административен съд – София Град.

³⁹ Решение № 1045 от 29.05.2019 г. по адм. д. № 654/2019 г. на Административен съд - Варна.

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July 2020 in constitutional case Nr. 3 of 2020⁴⁰ the Constitutional court declared Article 87 of the Social Services Act⁴¹ unconstitutional. This article, applicable in cases where a child looks for support from a provider of social services, obliged the provider of the service to inform and consult the child in general or in connection to specific services (Article 87, para.1 and 2). In addition, it envisaged that if the child seeking support is under the age of 14, the service provider must immediately notify the Social Assistance Directorate (Article 87, para.3). If the child is over the age of 14 years, the service provider must notify his or her parents only with the consent of the child (Article 87, para.4). The Constitutional court held that even in case where the child seeks support, when his or her parents have neglected their duties, the rights and responsibilities of the parents do not cease. If the parents do not take care or are even violent, it is necessary to provide for protection of the child in danger, including the right to contact the competent authorities directly or through social service providers. Nevertheless, the Constitutional court considers Article 87, para.3 Social Services Act unclear as to the guarantees that the rights of both the child and the parents will be respected. In his view the provision of Article 87, para. 4 creates a restriction for the information of the parents of children over 14 years of age, i.e. expands the rights of the minor. The court concludes that insofar as the Constitution does not provide exhaustively on the specific rights of minors, the introduction of a right of the child to seek social services without the knowledge of their parents would be within the competence of the legislator only if the nature of the cases is clearly specified. As the construed provision was formulated too generally and did not create clarity for the persons and institutions applying it, the Constitutional Court has the impression that minors are excluded from the regime of the constitutional rule. After this decision of the Constitutional Court Article 87 reads *when a child has requested support from a social service provider, the provider is obliged to immediately notify the Social Assistance Directorate and the child's parents, guardian or custodian (para.1). When the child does not provide to the provider information about his parents, guardian or custodian, they shall be notified by the Social Assistance Directorate (2).* The outcome of this decision, on one hand, is that the right to receive information and consultancy is not visible when children are looking for support. Luckily, the general rule of Article 13 on information and consultation of the CPA still applies. On the other hand, the Social Services Act ignores the views of children over the age of 14, when it comes to informing the parents about the request for social services.

⁴⁰ Promulgated, State Gazette No. 65/21.07.2020.

⁴¹ Promulgated, State Gazette No. 24/22.03.2019.

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5. The effectivity of the hearing as dependent on the right to receive adequate information: gaps and deficiency in the Bulgarian legal system

The Bulgarian legal framework on the child's right to receive information as presented above proves to be satisfactory, but with room for improvement. The right to be heard and the right to information as enshrined in the Bulgarian Constitution and in the Child Protection Act are covering all areas of law that can affect children. Nevertheless, there are some gaps and deficiencies that hinder the proper consideration of the child's view and in this sense his or her best interests.

Firstly, the provision of information to the child is provided for as an obligation for the child protection bodies (Article 13 CPA) and for the judicial and administrative authorities (Article 13 CPA). The attorneys and the parents for example are not explicitly bound by such a duty. In addition, there is **no clarity on the distribution of responsibilities** between the different actors engaged with the provision of information to the child.

Secondly, from practical point of view, it is important **to regulate in detail the provision of information** to the child before, during and after the judicial procedure **in the main procedural codes of Bulgaria**. The practiced last minute without escape provision of information just before the hearing has to be replaced with child friendly involvement in advance. The respect for the child also implies an introduction of an obligation to inform him or her in a way appropriate to his or her age and maturity of the outcome of the case. A duty of the court to elaborate on the provision of information and on the hearing of the child in the decision can contribute to better protection of the interests of the child.

Thirdly, the CPA **does not regulate the way** for provision of information. Having in mind that in Bulgaria there are only few specialized family judges and the fact that the judiciary is extremely overloaded and under pressure to provide prompt justice, it is up to the abilities of the individual judge how the child will be approached. It would be of help to provide for use of child friendly and calm language, appropriate materials, different approaches, depending on the age, maturity, and the needs of the child. Regular specialized trainings for judges may also contribute to the better treatment of children when involved in judicial proceedings.

Fourthly, the child in Bulgaria is **not a party to the proceedings** in parental responsibility matters, including disputes concerning child abduction, determination of the child's place of residence or the contact rights. The parents in Bulgaria usually prefer to isolate the child from the court experience or, if he or she needs to be heard, quite often influence him. The protection of the interest of the child pursuant to the CPA is left to the social worker from the Social Assistance Directorate

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that according to Article 15, para.4 of CPA has mandatorily to attend the hearing. Nevertheless, the feedback from the practitioners shows the social worker is quite often passive leaving the child to cope alone. Additionally, the child's view may be considered by the social worker when executing the social report pursuant to Article 15, para.6 of CPA. Unfortunately, these reports quite often focus predominantly on the social living conditions and pay any or little attention to the views of the child. In this sense it is worth analyzing the establishment of the institute of the guardian *ad litem* or the use of special representatives of the child in all parental responsibility cases in Bulgaria in connection with Article 15, para.8 of CPA.

6. Analysis of the current practices in Bulgaria

Bulgarian legislation and case law address minor's right to information in cross – border proceedings. The general remark is that there is no special legislative rule in national Bulgarian sources to deal with the child right to information in proceedings ***with cross – border implications***. The general rule is Article 15, para.3 of CPA is operative to all cases irrespective of the cross – border nature of the law suit. The study carried out among judges and lawyers practicing in the area of child related proceedings shows that the general rule is applied in a similar way to cross – border proceedings as well as to purely internal ones. The general right for information is part of the right for participation of the child. The UN Committee on the Rights of the Child (UNCRC) has used the following terms to describe the right of child participation:

'...processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes. - UN Committee on the Rights of the Child, (2009), General Comment no. 12 on the right to be heard.

Under EU law, Article 24, para.1 of the EU Charter of Fundamental Rights provides that children may express their views freely, and that such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. This rule is a general one and it is to be applied to all proceedings irrespective of the cross – border element. In the *Zarraga* case the CJEU interpreted the meaning of Article 24, para.1 of the EU Charter of Fundamental Rights by stating that hearing a child is not an absolute right. If a court decides it is necessary to hear the child, it must offer him or her a genuine and effective opportunity to express the views. It also held that the right of the child to be heard, as provided in the Charter and Brussels

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Ibbs Regulation requires legal procedures and conditions which enable children to express their views freely and the court to obtain those views. The court also needs to take all appropriate measures to arrange such hearings, with regard to the children's best interests and the circumstances of each individual case.

In the case law of ECtHR the right to respect for private and family life (Article 8 of the ECHR) although the right of the child to be heard in court is regarded as not being absolute, it requires to be applied effectively. As a general rule, it is for the national courts to assess the need to hear a child in court in child related proceedings. The need for hearing shall be assessed in light of the specific circumstances of each case, having due regard to the age and maturity of the child concerned. Irrespective whether the court finds it necessary to hear the child, as per the ECtHR the authority shall ensure, under the procedural limb of Article 8 of ECHR, that all appropriate steps to accompany their decisions with the necessary safeguards have been taken. The procedural requirements implicit in Article 8 of ECHR could be violated by the contracting state courts in case the decision for giving the child the opportunity to express his/her views is not based on reasoned opinion regarding the relevance and importance of child participation. In exercising their margin of appreciation the courts shall provide for the effective hearing of the child⁴².

One of the principles for hearing of the child is namely the need the child to be duly informed in order to express freely his or her views. The qualitative requirement for the effective application of the right of participation is the consideration of what is in the best interests of the child. The best interest is the general test for all aspects of providing child with information. The conventional criterion for successfully guaranteeing the right of hearing is whether the courts' procedural approach was reasonable in the circumstances and provided sufficient material to reach a reasoned decision on the question of access in the particular case. If the answer is positive, the procedural requirements implicit in Article 8 of ECHR are complied with.

“In order to be able to participate meaningfully and genuinely, children and young people should be provided with all relevant information and offered adequate support for self advocacy appropriate to their age and circumstances.Children and young people should always be fully informed of the scope of their participation, including the limitations on their involvement, the

⁴² ECtHR Gajtani v. Switzerland, application 43730/07, p.108 – 112; ECtHR Safin v. Germany, application 30943/96, p.75 – 77; ECtHR Sommerfeld v. Germany, application 31871/96, p.72 – 74
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expected and actual outcomes of their participation and how their views were ultimately considered.”⁴³

Providing relevant information to the child is related to the characteristic of the right of participation being “freely” as per Article 12, para.1 of CRC. In order to be “freely” expressed the right to be heard is subject to the necessary information provided to the child. The child shall have the opportunity to make a reasoned decision whether or not she or he wants to exercise her or his right to be heard. Providing the child with necessary information is important to avoid situations in which the child has been manipulated or instructed by parents or other involved parties - *UN Committee on the Rights of the Child, (2009), General Comment no. 12 on the right to be heard, p.10.*

One of those steps is to provide child with necessary information about the right to participate in applying in an adequate way tailored to the specific characteristics of the case:

- Special treatment of the child taking into account the age and maturity as well as all behavioral and psychological aspects of child protection;
- Information to be provided in adequate premises and by trained professionals;
- The information to be provided in a non – discriminative way regardless of the race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth, sexual orientation or other status, social and/or economic background of the child and/or family;
- In case of judicial proceedings the information provided to the child to correspond to the requirements of the right of fair trial.

The right to be informed includes various elements in order to correspond to the criteria of Article 12 of CRC and Article 24 of the Charter⁴⁴:

- Requirements for the contents of the information – the right and not obligation to express the views; the type of proceedings in which the child could participate; the impact that his or

⁴³ Evaluation of legislation, policy and practice on child participation in the European Union – Final report, 2015, Directorate-General for Directorate-General for Justice and Consumers (JUST), p.4;

⁴⁴ Those responsible for hearing the child **have to ensure that the child is informed about her or his right to express her or his opinion** in all matters affecting the child and, in particular, in any judicial and administrative decision-making processes, and **about the impact** that his or her expressed views will have on the outcome. The child must, furthermore, receive information **about the option of either communicating directly or through a representative**. She or he must be aware of the **possible consequences** of this choice. The decision maker must adequately prepare the child before the hearing, providing explanations **as to how, when and where the hearing will take place and who the participants will be**, and has to take account of the views of the child in this regard Since the child enjoys the right that her or his views are given due weight, the decision maker has **to inform the child of the outcome of the process and explain how her or his views were considered..** - *UN Committee on the Rights of the Child, (2009), General Comment no. 12 on the right to be heard, p.13*

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her expressed views will have on the outcome; the venue, time and participants; the option for the child of either communicating directly or through a representative; the consequences of the possible refusal for participation by the child; the persons who shall help the child to express its position;

- Requirements for the procedural and technical rules for the accomplishment of the right, including the environment in which the child feels respected and secure when freely expressing her or his opinions; the training and special qualification of the person who presents the information;
- Requirements for the adequate from time perspective provision of information – the information to be provided before, during and after the participation of the child;
- Mechanisms for control by the state over the exercise of the right of information.

In the assessment of the current practices in Bulgaria regarding the right of the children to receive information in all proceedings, which concern the person or the property of the child, present report finds its findings on two limbs – 1. the case law of Bulgarian courts and 2. the survey data collected from practicing lawyers in the field. As a general characteristic of the jurisprudence of courts it could be outlined that the central issue in the judges' reasoning is the more general topic of the right of child to be heard – whether it has been respected and the value given to the views of the child. The right for information is *only one of the procedural* elements of the right to be heard as per Bulgarian legislation. It is part of the general provisions of Article 12 of CRC, of Article 24 of the Charter, of Article 21 of Regulation Brussels IIter of Article 11, para. 2 of Regulation Brussels IIbis. Respectively the legal framework in Bulgarian legislation of the right for information is the provision of Article 15, para. 3 of CPA. This rule is of general application, which is guaranteed by the legislator by other legal provisions referring to it.

First, the wording of Article 15 CPA is oriented *to all cases* of administrative or judicial proceedings affecting the rights and interests of a child. The rules for providing information to the child are mandatory and shall be respected by all administrative and judicial bodies. Next, the all – encompassing rule of Article 15 CPA is further referred to in many provisions dealing with specific court proceedings: Article 59, para. 6 of Family Code (claims for parental responsibility in the course of divorce proceedings); Article 138 of Family Code (all court proceedings on parental responsibility - the attribution, exercise, termination or restriction of parental responsibility, as well as all issues related to the right of custody and right of access); Article 155, para.3 of Family Code (the designation and functions of guardians), Article 28, para.3, p.2 of CPA (the placement of the child in a foster family or in under resident care); Article 22a, para.2 of CPA (court proceedings for

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return of the child in cases of international abduction as per the Hague 1980 Abduction Convention). All special provisions use the same technique of referral to the general rule of Article 15 CPA, although its wording that it is applicable in all cases related to a child. This shows an overzealous effort by the legislator to stress to the attention of competent administrative or judicial authorities to the mandatory and special nature of the right of child to express his/her views. Thus in case of disrespect of the right of child to be heard the failure to comply with law rules by the competent authority to be out of any doubt.

However, the referral to the rule of Article 15 CPA is covering the need to respect the requirement for the mandatory hearing of the child. *There is no additional provisions as to the procedural aspects of how it is to be effectuated*, including the right of the child to receive information about the proceedings. The only specific rule as to providing the child with information remains Article 15, para.3 of CPA, applicable to cross – border as well as to internal proceedings. This rule is not detailed and it satisfies the basic requirement for the right of information. There are no details in law as to how the information is to be provided – in or out of the court room; the use of child-friendly materials; differentiation of the approach based on the age of the child or other features; additional requirements for providing information to children with special needs, etc. The law is clear that the person who bears the full responsibility for informing the child is the judge or administrative official in charge of the court or administrative proceedings. The role of social workers and/or psychologists in the process of providing information about the proceedings is not decisive. The hearing and the consultation of a child shall mandatorily take place in the presence of a social worker from the Social Assistance Directorate at the current address of the child and when necessary - in the presence of another appropriate specialist. The research shows that the presence of social workers is not always used in most efficient way, the active role for informing the child is taken usually by the judge and the social worker being a witness of the process. On the other hand the absence of social worker is regarded as obstacle to the hearing of the child⁴⁵. Not always the court additionally appoints an expert psychologist to take part in the process of providing information to the child⁴⁶. This is partly due to the procedural aspect since the expert psychologist or behavioral expert needs to be appointed in addition by the judge or by the administrative authority following the general rules for the appointment of expert witnesses of the Code of Civil Procedure or of the Code for Administrative Procedure. The social worker is provided by law to be

⁴⁵ Определение № 2155 от 20.08.2018 г. по ч. гр. д. № 1792/2018 г. Районен съд - Шумен.

⁴⁶ Определение № от 21.09.2018 г. по ч. гр. д. № 486/2018 г. Районен съд - Силистра.

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present in all hearings of the child unlike other specialists whose presence depends on the discretion of the competent authority. In addition, as per Article 15, para.5 of CPC the court or the administrative body shall order that the hearing of the child is effectuated in the presence of a parent, tutor, curator, other person who takes care of the child, or another close person known to the child, except where this does not correspond to the child's interest. In many instances the courts use their discretion to conduct the hearing without the presence of parents due to the conflicting interests between child and parents and the negative influence that parents may exert on the free expression of child's views⁴⁷. However, even if they are present on the hearing, parents, tutors, curators or other persons who take care of the child, are not subjects of the obligation to consult the child – the only responsible person remains the court or administrative official. The law doesn't provide expressly for the role in the process of informing the child of attorneys, representing the child, including those appointed *ex officio* by the court, The study shows that the function of the child's lawyer is very important since many times this is the only person who puts efforts to provide the child with the information needed to express his or her views and, especially, giving information about the events post hearing – the contents of the judicial or administrative act.

The contents of the information to be provided to the child is specified in very broad terms by law - the *necessary information*, which would help him or her to form his or her view and the possible consequences of the participation. This definition applied in the light of the best interests of the child creates a high threshold for the court in exercising its authority to inform the child. It covers a wide range of topics, which are related to the child forming its view like – the reason of the hearing, the presence of other persons at the hearing and their role; the extent of disclosure of the information provided; about the option of either communicating directly or through a representative; the availability of procedural safeguards; the behavioral rules during hearings; the children's rights; the background information on the case; the hearing's possible outcomes.

The efficiency of the hearing is a prerequisite for successful fulfillment of the right of child for participation, whereas the failure to meet this criterion would lead to a breach of international instruments as mentioned above. In order the participation to be effective the information shall be provided *before, during* and *after* the hearing. Bulgarian legislation and jurisprudence show that in the normal course of events the child is consulted *only immediately* before giving him the opportunity to express his or her views. This is a deficiency of the legislation, which sometimes is

47 Определение № 1173 от 02.06.2020 г. по ч. гр. д. № 107/2020 г. Районен съд - Сливница, Определение № 109 от 15.01.2018 г. по ч. гр. д. № 2329/2017 г. Районен съд - Ямбол ;

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cured by the efforts of the lawyers of the child. The child is not consulted until the elapse of specific period of time before the hearing, which seriously limits the utility of the overall consultation process. In practical terms the jurisprudence shows that the judge arranges for the release of information on all topics immediately before the start of the court trial in the premises of the court. As a general trend the child is heard in the court room after parents and other parties leave for the participation of the child to be held⁴⁸. In some occasions as an exception the child is provided with information in the cabinet of the judge⁴⁹ in more informal attitude and ambience. As a part of a governmental project⁵⁰ in some courts the Ministry of justice has built so – called “blue rooms”, which represent special premises with design and furniture facilitating the contact with children. However such special equipment designed especially for hearing children is available in limited number of courts and it is not part of the general trend. Providing the child with information immediately before the start of the hearing in many cases could not meet the level of diligence inherent for the best interest of the child, since the child could not be able to realize and/or to deal with such complex information in just a few minutes. Practicing lawyers and judges confirm that there is a need for a change in legislation or in the practices established in this aspect by guaranteeing that in one or in several consecutive meetings the child is prepared for facing the judge or other authority.

Other general remark is the lack of consistent approach in building cooperation between the judicial or administrative authorities and the social worker/s engaged with the hearing. As per Article 15, para. 6 of CPC the court or the administrative body shall notify the Social Assistance Agency at the current address of the child using the mechanism for service of notifications of the Code of Civil Procedure or the respective provisions of the Administrative Procedure Code. This is the general legal framework for service of documents by the courts, which is fulfilled by sending the request to the director of the social service authority to nominate a representative for the date and the hour of the hearing. In many instances the social worker, who attends the proceedings is not known to the child, have no previous contacts with him and follows a routine. In one of the reply to the study a practicing attorney described a case of disturbing lack of coordination between the judge and the social worker, which was resolved only due to the efforts of the lawyer to call over the phone the judge and to serve as transmitter of the statements of the social worker. After the judge confirmed

⁴⁸ Определение № 531 от 27.08.2014 г. по ч. гр. д. № 674/2014 г. Районен съд - Девня, Определение № от 21.09.2018 г. по ч. гр. д. № 486/2018 г. Районен съд - Силистра

⁴⁹ Определение № от 20.11.2018 г. по адм. д. № 346/2018 г. на Административен съд – Стара Загора

⁵⁰ Bulgarian-Swiss Cooperation Program under the project "Strengthening the Legal and Institutional Capacity of the Judicial System in the Field of Justice for Children";

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the need for the social worker's assistance as described in the formal notification, the procedure continued. The Ministry of Justice and the Ministry of Labour, the latter being the supervising authority of Social Assistance Agency, could enact mutual protocol for coordination and communication between judges and social workers in the process of hearing the child. In the absence of new legislative framework, those soft law rules could overcome the lack of requirement in the legislation for consulting the children by the social worker in one or more meetings before the day of the official hearing.

Next the survey shows that there are no special protocols for judges drafted by the Ministry of Justice with guidance as to the best behavioral practices for hearing the child, including advises how to present the data and all necessary information in terms and language suitable for children.

It must be noted, that unlike many other Member States, in Bulgaria there are no specialized family or juvenile courts and children shall visit the common court houses for the hearings. Some major courts in the capital city and in some other district centers have specialized judges and/or specialized panels dealing only with family lawsuits, but they don't have separate premises or special rooms for attendance by children. Thus, when the child enters the court building and becomes part of the regular flow of lawyers and parties on different cases, no beneficial conditions for the child to feel at ease to express his or her views are created. This is combined with the fact that necessary data has not previously being released to the child and the first time to receive information is by the judge, whose authority may intimidate the child.

As to consulting children in cross – border proceedings, no significant case law of Bulgarian courts was found, except for some cases on child abduction in the course of applying the 1980 Hague Convention. No instances of cross-border collection of evidence through distant hearing of the child using the tools of the Hague Evidence Convention have been found.

The questionnaires from lawyers and judges gave some interesting insights to the research, especially as concerns the current best practices that are on-going in Bulgarian civil proceedings and the perception that legal practitioners have on the existence, content and importance of children's right for information. The information provided in the present paragraph need to be read together with the analysis conducted in para. 1-5 of the report.

SECTION 1 – BACKGROUND INFORMATION

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This section of the questionnaire was devoted to the acquisition of certain background information of the respondents. The number of questionnaires collected is 24. The profile of respondents is the following:

Lawyers - 14

Judges - 8

Academics -1

Representative of Ministry of Justice responsible for cooperation as Central Authority under the Hague Conventions – 1

All the respondents were targeted for their specialized practice in child related judicial proceedings. The majority of respondents have a professional experience exceeding 10 years.

SECTION 2 - GENERAL

This section contained general question on children's right to information. The scope was to have a general idea on the perception of judges and practicing lawyers on the contents and the ways of application of a general right of the child to receive adequate information in civil proceedings. Additional emphasis is added on the functioning of the right for information in cross – border cases – especially when EU instruments and international conventions were concerned.

1. *In your country, is there a general obligation to provide written/oral information to children, when the dispute involves a child or is capable to affect the child's life and future? Does it depend on the age of the child? What is the main content of this information?*

There is a well - established national rule of Bulgarian legislation and namely Article 15 of CPA, which requires all court and/or administrative authorities in the course of proceedings affecting the rights and interests of a child to hear the child, in case he or she has reached the age of 10, unless this proves harmful to his or her interests, to hear the child. In cases where the child has not reached the age of 10, he or she may be heard depending on the level of his or her development. The decision to hear the child shall be reasoned. All respondents – judges and lawyers, are well acquainted with the obligation to hear the child. As a part of the obligation to provide for the hearing of the child the law states that the child shall be provided with the necessary information, which would help him or her form his or her view and to inform the child about the possible consequences of his or her desire, of the shared view, as well as about all the decisions made by the judicial or administrative body.

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Practice on the application of Article 15, para. 3 of CPA shows that although the mandatory requirement to hear the child is obeyed by courts, the provision of information to the child is not so effectively applied. There are no specific rules on the form in which the information is to be provided which leaves the judges with the opportunity to make it orally. There are no or small quantities of special materials drafted and disseminated by the state in helping judges and social workers to accomplish their task to inform the child.

Since the right to provide child with information is part of the obligation to hear the child, it is applied only in cases of ongoing judicial or administrative proceedings. It is further preconditioned by the age and the level of development of the child. The case law of Bulgarian courts has not established a clear set of criteria for assessing the proper level of development of the child, which qualifies for the right to be heard. The courts have case-by-case flexible approach in assessing the right of the child to information if he or she is below the age of 10. If the child is not qualified to be heard according to the rule of Article 15, para.1 of CPA, no information is provided to him or her.

The jurisprudence of the courts is not firm on the right of child for information to minors. In some instances the court makes a distinction whether the child is heard as a witness or to reveal his or hers opinion on some facts from the past or the child is heard in order the court to rule on a matter that will determine the future of the child's being. In the first option the court can proceed without providing information to the child. However, as per Article 13 of CPA all children are entitled to information and consultation by the child protection authorities. The study shows no cases of practical application of this general rule, not related to specific proceedings. All reported instances of informing the child were in the course of formal proceedings, whereas the general rule of Article 13 of CPA remains more as a legal guarantee not often applied in specific context.

The general assessment is that the law expressly provides for the right of child for information in the course of court proceedings, but its application is far from settled or qualifying to the best interest of the child threshold in all instances.

2. Are children informed before the start of the proceeding?

The law expressly provides that the process of informing the child is held before the hearing, not before the start of the proceedings. In many instances children are not informed about the proceedings until they are summoned to appear before the judicial or administrative authority or until the start of the hearing. There are no established standards or rules how to prepare the child

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for the hearing, including to keep him or her informed from the start of the proceedings. The general right for information and consultation by State child protection authorities could come into play (Article 13 CPA), but there are no proofs for its application. Small number of answers point toward the fact that child is always informed before the start of the proceedings. In 50% of cases the study is showing that child is not informed before the start of the hearing.

3. *How long before children are informed before the start of the proceeding?*

The clear majority of respondents (19 out of 24) are on the position that there is no fixed rule in law how long in advance the children to be informed. This is a reflection of the provisions of CPA, which have a lacuna on the definition of the time in which prior to the hearing the information to be provided. 15% of the answers refer to the lack of data on it.

4. *Are children informed during the proceeding?*

For the majority of respondents, the child is “always” (4), “often” (9) or “sometimes” (9) provided information *during* the proceeding. Only three respondents stated that the child is “barely” or “never” provided with information. This result is to be explained by the provision of Article 15, para.3 of CPA, which obliges the court or administrative authority to inform the child before the start of the hearing. There is a clear difference between the preliminary and ongoing during the hearing provision of information.

5. *Are children provided information after the proceeding?*

The general trend is clear leading to the conclusion that children are not at all or not adequately informed about the outcome of the proceedings – the “barely” and “never” answers are 13. Only 4 answers have opted for “often”. Judges have no contact with child after the end of the hearing and, respectively, the general duty by law for providing information doesn’t cover the outcome of the proceedings. The only participants in proceedings, who provide information to the child for the result are the lawyers of the parties.

6. *In general, in your legal system, is there a professional that has the duty to help the child in expressing his/her opinion?*

The study shows that judges and lawyers perceive the figure of the *social worker* as the person who has the duty to help the child in the process of expressing its views. This result is directly attributable to the text of Article 15, para.4 of CPA, according to which the hearing and the consultation of a

child shall mandatorily take place in the presence of a social worker from the Social Assistance
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Directorate at the current address of the child and when necessary - in the presence of another appropriate specialist. The law does not expressly provide that the social worker is entitled to assist the child, but this comes from the general obligation of child protection authorities under Article 13 of CPA.

The assessment of the utility of the presence of the social worker on the hearing are not very positive – some respondents point out that the social worker usually hasn't met with the child before the court hearing and the law provides only for the formal presence of this type of officials. Others express doubts from their experience on the qualification of the social workers.

In many cases the court, who is the addressee of the obligation to inform the child is referred as also the professional who is entitled to inform the child. Also, the court has the power to appoint in addition to the mandatory presence of the social worker a court expert – child psychologist, but the study is decisive that in most cases the social worker is the only person to help the child.

If yes, is this professional neutral from the parties of the dispute and from the court institution?

The majority of respondents (9) answered positively that the social worker is independent from the parties and from the court, since he or she is an official of the “Social Assistance” Municipal Directorate to the Social Assistance Agency (an Agency under the auspices of the Ministry of Labour and Social Policy). In some cases, however, there is a gap in the legislation, which rebuts the presumption for the impartiality of the social worker. Those are the cases, where the social worker is party on the proceedings – in proceedings for relocation of the child out of the family as per Article 25 of CPA. In the latter case the social workers make the request to the court for relocation of the child out of his or her family and, in the same time, he or she is present on the hearing of the child, the latter, in many cases, opposing putting him or her under resident case or under other form of care.

In the cases of an expert psychologist being appointed, the CPC requires the expert to declare its independence from the parties and the case – Article 196 of Code of Civil Procedure.

7. *In general, and even when there is no obligation for the judge to hear the child under domestic law, does your legal system provide for an obligation to inform the child about the proceeding?*

Majority of respondents answered positively to this question citing the general provision of Article 15, para.3 of CPA according to which the authority provides children with information before the

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start of the hearing. Some of the respondents refer to the more general provisions of Code of Civil Procedure regarding the procedural capacity of children as parties in the court cases depending of their age – Article 28, para.4 of CPC. Thus, there is a confusion between the information provided before the specific hearing and the more general obligation for giving information to the child that some kind of proceedings have been initiated.

8. *Are parents prepared or advised by courts or other public service on how to explain to children the situation and how to communicate them the outcome of the proceeding?*

The majority of the answers were in the negative that Bulgarian legislation doesn't effectively guarantee that parents are prepared by the judge or by other public institution on how to assist their children and how to explain them the situation or the outcome of the proceedings. As per Article 8, para.2 of CPA Directorate Social Assistance shall cooperate and help parents and all persons responsible for the child with information and guidance for all measures of protection of the child. This obligation of Directorate Social Assistance is not applied and as a result it is the role of parents to inform the child for the outcome of the proceedings.

9. *In civil proceedings, are children provided with child-friendly material on their right to information and to be heard?*

If yes, which of these materials?

If yes, are there different materials on the basis of different age categories?

There are no legal rules, nor standards and good practices enacted for giving children information materials for the right to participate in proceedings tailored to their age and development. However more than 50% of answers are in the positive. In most cases the judicial or administrative authority provide drawings and/or other leaflets. Major part of the respondents points out that social workers and judges provide all relevant information orally without any specially drafted materials.

10. *If the child does not understand the local language, are there translation services or materials available in order to guarantee that the child receives proper information?*

The survey shows that the right for information is backed up with translation services in case the child does not understand Bulgarian language. The guarantees for it are twofold – 1. There is a general requirement as per Article 4, para.2 of CPC the court to appoint an interpreter if the party on the proceedings is not in command of Bulgarian language; 2. In Article 15, para.4 of CPA a special rule is enacted for the court to appoint appropriate specialist to take part in the hearing of

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the child (this specialist could be an interpreter). The result of the study shows that there are no deficiencies in assuring translation services to guarantee that the child receives proper information.

11. *Is information adequately provided also to children with special needs? How?*

For children with special needs are enacted special rules for access to justice in Article 65 to Article 67 of Bulgarian Law on People with Special Needs. People with special needs have access to consultations regarding the ongoing proceedings as well as to personal assistant to help them take part in the court hearings. The judicial authority may appoint so – called *assisting person* in order to facilitate the access to justice. Majority of respondents are on the position that the law and practice are in line with the requirements of children with special needs.

SECTION 3: PROCEEDINGS ON PARENTAL RESPONSIBILITY

This section is dedicated to proceedings on matters of parental responsibility that therefore fall into the scope of application of Regulation (EC) No. 2201/2003 (as well as the Regulation (EC) 2019/111 that will enter into force in 2022). This section is of direct interest for the application of EU instruments in the field of judicial cooperation in civil matters.

12. *In parental responsibility proceedings, is the child heard before issuing a decision on the merits (either directly, or through a representative or an appropriate body)?*

In parental responsibility proceedings the general rule of Article 15, para.1 of CPA regarding the requirement for hearing the child is additionally emphasised through the special rules of Article 59, para.6 (divorce proceedings), Article 138 (parental responsibility proceedings), Article 155, para. (proceedings for appointment of guardian or curator), all of which referring to Article 15 of CPA. Bulgarian legislator is cautious in guarantying the child involved in parental responsibility proceedings the right to express his or her views. The study is unambiguous that the right of participation of children in this kind of proceedings is fully implemented.

13. *Who hears the child? If the child is heard by the judge, is the judge assisted by a psychologist or an expert?*

As per Article 15, para.1 of CPA the hearing of the child is mandatory in case the child has reached the age of 10 years. The court has the discretion to refuse to hear the child if this could be in his or



her detriment. In cases where the child has not reached the age of 10, he or she may be heard depending on the level of his or her development. The decision to hear the child shall be reasoned.

As per Article 15 of CPA the judge is the person hearing the child in the mandatory presence of a social worker from the Social Assistance Directorate at the current address of the child and when necessary - in the presence of another appropriate specialist. On many cases judges appoint psychologists paid by the state budget to take part in the hearing and to meet in preliminary with the child (in the presence of parents or alone with the child) in order to establish a psychological assessment of the child. The court determines the tasks of the expert to be addressed. Thus on the hearing controlled by the judge a social worker as well as a psychologists could be present to help the child to express his or her views. The audition is always directed by the judge.

Does one of the parents (or both parents) attend the hearing?

Majority of respondents point out that as a principle the presence of parents on the hearing is required and they are summoned by the judge unless it is contrary to the interests of the child. In some instances, Article 15, para.5 of CPA provides that the presence of parents could prevent the child to express freely his or her view and the court could decide to lead the hearing only in the presence of the social worker and/or psychologist. The parents could stay close to the child in adjacent room. The court or the administrative body shall order that the hearing of the child takes place in the presence of a parent, tutor, curator, other person who takes care of the child, or another close person known to the child, except where this does not correspond to the child's interest.

14. *Is the hearing usually preceded by a phase in which the child is provided information?
How is the information provided?*

When is the information provided?

The information normally is provided by the judge immediately before the start of the hearing in the premises of the court – in the court room or in a specially suited ambience called “blue room”.

The law doesn't specify a period before the hearing when the information shall be released, and the

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practice of courts is not to summon the child on a separate meeting before the hearing. Thus, the effectiveness of the information given to the child could be impaired, since the possibility to assess the data and possible options by the child is not realistic to be fulfilled in a period of few minutes. In some cases, the social worker prepares the child for the hearing giving him information for it. Social workers have a general obligation to inform children for their rights as per Article 29, para.1 of the Rules on Application of CPA.

What is the content of the information?

This question allowed for multiple answers, whereas they cover all aspects of the information provided like the reason of the hearing, the presence of other persons at the hearing, professionals' functions, the extent of disclosure of the information provided, the availability of procedural safeguards, behavioural rules during hearings, children's rights, background information on the case, hearing's possible outcomes as well as all other type of information that the authority could seem relevant (for example about the right to have the absence from school of the child excused, etc.). In most cases the judge gives the child information on the reasons for the hearing, the possible outcome of the hearing and general description of the case at hand.

The content of the information is not predetermined by law. Considering the answers above, according to which it is usually the judge to give information to the child, it is possible to infer that the contents of the information is determined by the judge on a case-by-case basis.

Are children informed at the beginning of the audience that their opinion is important but they won't be responsible of the final outcome of the proceedings?

The result of the survey is that definitely the child as a principle is informed before the start of audience that his or her opinion is important and that the final decisions is to be made by the court. There is no data as to what is the depth and complexity of the accomplishment of this task by the authority.

15. *Is the hearing usually followed by a phase in which the child is provided feedbacks and information about the following steps?*

Bulgarian courts have no special procedure to inform the child about the outcome of the proceedings. After the end of the procedure the judicial authorities only sends a notice to the representative of the child (parents, guardians, lawyers) about the act that has been pronounced following the general rules of civil procedure. There is no rule of law about the mechanisms of

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cooperation between the courts and social workers in informing the child about the outcome of the proceedings. Some social workers take the necessary steps to keep the child updated following the general requirement to consult the child as per Article 13 of CPA. However, the study demonstrates that habitually it is for the parents/guardian or lawyers to inform the child about the outcome. In four cases, respondents stated that the child is “never” provided with this kind of information. Three times the answer was “sometimes”, and nine times the answer was “barely”.

16. *Do you usually provide information to children together with a person they trust?*

Who is this person?

As per Article 15, para.5 of CPA the court or the administrative body shall order that the hearing of the child shall take place also in the presence of a parent, tutor, curator, other person who takes care of the child, or another close person known to the child, except where this does not correspond to the child's interest. In most cases the court organises the hearing in the presence of parents except when this could be contrary to the interests of the child. The share of opinions on the survey that no person of trust to the child is present is significant – half of the answers. As per the case law in many occasions the court decides that the hearing shall take place only in the presence of social worker and a psychologist since the parents’ interests could be conflicting or contrary to those of the child.

17. *After the judge has issued a decision on the merits, who informs the child about the outcome of the proceeding (i.e. the decision and its consequences)?*

How is this information provided?

Normally it is the lawyers of the parties or the parents who have the role to inform the child about the decision on the merits – majority of responses on the survey. The reported answers show that there is no fixed rule about the modalities under which this kind of information may be provided. The general rules of civil procedure requires that every party is informed about the final decision on the merits of the proceedings. If the child is under the age of 14, he or she is represented by law by the parents or by guardians in the proceedings and all notices for the outcome of the case are addressed and sent to the representatives and not to the child – Article 28, para.4 of CPC. It is a settled practice the judge to point out in the court decision that the child is entitled to legal aid or counselling about the appeal.

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SECTION 4: INTERNATIONAL CHILD ABDUCTION

This section makes reference to international child abduction proceedings and to return proceedings. The section comprehends proceedings for the return of the child under the 1980 Hague Convention, and also return applications following a decision of non-return, according to Article 11 of the Regulation (EC) No 2201/2003.

The hearing of the child – as well as the necessary procedural guarantees – may be difficult in the context of child abduction proceedings, where the court has to act expeditiously and shall take a decision on return or non-return within six weeks. Providing assistance and proper information to the child could in general constitute an even greater challenge for courts and practitioners, since the collaboration of the parent that is taking care of the child is not always guaranteed. Also, the high degree of urgency of those proceedings may constitute another important obstacle.

18. *In international child abduction cases, is the child heard before the decision of (non)return in international child abduction cases under the 1980 Hague Convention on the Civil aspects of International Child Abduction (and, when applicable, the EC Regulation No 2201/2003 – from August 2022, Regulation EU 2019/1111)?*

The national legal frame supplementing the rules of the 1980 Hague Convention on the Civil Aspects of International Child Abduction is contained in the Children Protection Act (Article 22a to Article 22g). There is a special rule of Article 22a, para. 3 of CPA, which refers to the general rule for hearing the child – Article 15 of CPA. The requirement to hear the child is observed – there is a positive unanimous answer by all respondents. Some of the participants in the study cite the rules of Article 11, para.2 of Regulation No 2201/2003 as well as those of Article 13, para.2 of 1980 Hague Abduction Convention. The courts are on the view that in abduction cases it is crucial to understand the view of the child, which is a potential ground as per Article 13, para.2 of 1980 Hague Abduction Convention to refuse the return of the child.

19. *Who hears the child?*

If the child is heard by the judge, is the judge assisted by a psychologist or an expert?

Does one of the parents (or both parents) attend the hearing?

As per Article 22a of CPA there is one nationwide competent court for all cases of child abduction claims as per the 1980 Hague Abduction Convention– the Sofia City Court. The judges are well specialised in hearing the child and the general requirements for the mandatory presence of social
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worked as per Article 15, para.4 of CPA is observed. If needed the courts appoint expert psychologist. The presence of a state prosecutor is also provided for by law, who has the function to control and safeguard the procedure regarding protecting the best interests of the child.

The study shows that in most cases the legal requirement of a parent or guardian of the child to be present on the hearing is applied unless the court deems that the abducting parent or the claimant could influence and impair the child's free expression of view.

20. *Is the hearing usually preceded by a phase in which the child is provided information?*

Who provides the information to the child? How is the information provided? When is the information provided?

The clear majority of answers to the study is that the judge arranges for the providing the child with information following the rule of Article 15, para.1 of CPA before the start of the hearing. The information is given orally without special procedure by the judicial authority assisted by the social worker and on occasions – by a psychologist. There is a routine to hear the child in the cabinet of the judge, outside the court room and without the presence of abducting parent and the claimant.

This question allowed for multiple answers, whereas they cover all aspects of the information provided like the reason of the hearing, the presence of other persons at the hearing, professionals' functions, the extent of disclosure of the information provided, the availability of procedural safeguards, behavioural rules during hearings, children's rights, background information on the case, hearing's possible outcomes as well as all other type of information that the authority could seem relevant (for example about the right to have the absence from school of the child excused, etc.). In most cases the judge gives the child information on the reasons for the hearing, the possible outcome of the hearing and general description of the case at hand.

The content of the information is not predetermined by law. Considering the answers above, according to which it is usually the judge to give information to the child, it is possible to infer that the content of the information is decided by the judge on a case-by-case basis.

Are the children informed at the beginning of the audience that their opinion is important, but they won't be responsible of the final outcome of the proceedings?

The prevalent opinion is that the child is informed about the value of sharing its view with the deciding authority. However, in five cases the answer is "sometimes". There is no special attention to the detail that the child won't be responsible for the final outcome.

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21. *If a decision of return is issued, is the child informed about the decision? If the answer is YES, how is the child informed? By whom? ('Decision of return': decision adopted under article 11 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, ordering the immediate return of the child in the State of habitual residence)*

There is no special rule of Bulgarian legislation for informing the child for the return pronounced by the court. As per Article 528, para. 4 of CPC in proceedings for enforcement of return order the bailiff could ask the Social Assistance Directorate to issue measures for assistance as per Article 23 of CPA in arranging for the voluntarily return of the child. Possible measures are the consultation and provision of information by the social worker to the child.

Also, in most occasions it is the lawyer of parties who has the role to inform the child about the outcome of the return order.

22. *If a decision of return is issued, is the child prepared and informed about the enforcement of a return order? If the answer is YES, how is the child informed? By whom?*

The result of the survey is negative – 11 out of 15 answers are that the child is not prepared for the enforcement of the return order. The above – mentioned procedure of Article 528 CPC is sometimes applied. Habitually it is the social worker who could enter into contact with the child and prepare him or her for the execution of the return order. Rarely a psychologist intervenes at the enforcement stage.

SECTION 5: MAINTENANCE PROCEEDINGS

The general obligation to hear the child as per Article 15 of CPA is relevant in maintenance disputes. The law is clear that the judge shall assure for the participation of the child in all proceedings that affect his or her rights and interests, irrespective whether the maintenance case is separate one or the court is seized simultaneously with divorce or parental responsibility claims. The fact that the child is a party on the lawsuit being the claimant of maintenance shall not prejudice its right to participation. However, since the law presumes for the need of the child to maintenance offered, most judges don't find it necessary to hear the child in order to pronounce the decision on the merits.

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23. *When proceedings on maintenance or child support are celebrated outside a divorce/separation/marriage annulment proceeding, is the judge under an obligation to hear the child?*

Yes. The respondents in the survey are definitely on the opinion that the general requirement of Article 15, para.1 of CPA is applicable and if the child has reached the age of 10 a hearing shall take place. If the child has reached the age of 14 years as per the general rules of civil procedure – Article 28, para.4 of CPC, he or she is entitled to act before the court with the approval of the parent or guardian.

24. *Is the hearing usually preceded by a phase in which the child is provided information? Who provides the information to the child? How is the information provided? When is the information provided? What is the content of the information?*

The clear majority of answers to the study is that the judge arranges for the providing the child with information following the rule of Article 15, para.1 of CPA before the start of the hearing. The information is given orally without special procedure by the judicial authority assisted by the social worker. The social worker who is in charge for presenting a report on the needs of the child conducts one or more meetings with the child before the court hearing. During those meetings the social worker informs the child for the upcoming hearing and describes him or her the details about the participation. This question allowed for multiple answers, whereas they cover all aspects of the information provided like the reason of the hearing, the presence of other persons at the hearing, professionals' functions, the extent of disclosure of the information provided, the availability of procedural safeguards, behavioural rules during hearings, children's rights, background information on the case, hearing's possible outcomes as well as all other type of information that the authority could seem relevant (for example about the right to have the absence from school of the child excused, etc.).

The content of the information is not predetermined by law. Considering the answers above, according to which it is usually the judge to give information to the child, it is possible to infer that the content of the information is decided by the judge on a case-by-case basis and it is related mainly with the need of the child for financial support.

Are the children informed at the beginning of the audience that their opinion is important but they won't be responsible of the final outcome of the proceedings?

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There is no firm opinion on whether the child is informed about the value of sharing its view with the deciding authority. The positive and negative answers are almost even. There is no special attention to the details that the child won't be responsible for the final outcome.

SECTION 6: SPECIAL REPRESENTATIVE OR SPECIAL CURATOR OF THE CHILD

The study shows high certainty in respondents about the guaranteed by the Civil Procedure Code right of children to have appointed special person to represent them in court proceedings – a registered with the National Bureau for Legal Aid attorney on the expenses of the court. As per Article 15, para.8 of CPA the child has a right to legal aid and right to file an appeal in all proceedings, affecting his or her rights or interests. The entitlement to legal aid through representation by a lawyer is depending on whether the child is a party on the proceedings. Examples, when the child is a party on the proceedings are maintenance cases, establishment of parenthood, the contestation of the parent-child relationship, placement of the child under foster care or under institutional protection, issuance of protection orders related to domestic violence. Where the child is only appearing to express its view and he or she is not a party on the proceedings (divorce proceedings, parental responsibility cases), he or she is not entitled to have appointed special representative. There is additional rule for instances of conflict between the interests of the child and the parent/guardian/curator, when the latter is the representative of the child for the specific procedure (as per the general rule of Article 28, para.4 of CPC children under age of 14 years are represented before the court by their parents/guardians/curators). As per Article 29, para.4 of CPC in case of conflict between the interests of the representative and the party, the court assigns the task to defend the child to a special representative – a registered attorney, providing legal aid. Also Article 129, para.2 of Family Code provides for appointment of special representative in all deals and legal relations, when interests of the parent and those of the child are conflicting.

25. *In your country, has the child the right to be separately represented in civil proceedings?*

If the answer is YES, please list the proceedings, as well as the relevant legal provisions, in which the child has the right of separate representation:

In general, the child has the right of separate representation before the court in civil proceedings (through a special representative - attorney) when there is a situation of conflict of interests between the child and its representative/s by law (parents, guardians, curators). The answers collected make difference as to whether the child is a party on the proceedings and there are conflicting interests

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with the parents/guardians/curators or the child is not a party and there is no conflict of interests. In the first situation the study clearly comes to the conclusion that the child has access to special representative on expenses of the court budget.

In these cases, does this representation include the specific duty to provide the child with adequate information about the object, the scope and the possible outcomes of the proceeding?

The majority of respondents are on the position that there is no special duty for the attorney appointed by the court to provide children with information (13 out of 20 answers). Five practitioners referred to the general obligation of Article 15, para.3 of CPA. However the cited legal provision expressly obliges only the judge or the administrative officer and not the special representative with the duty to inform.

If the child is heard during the proceeding, has the representative the duty to prepare the child for the hearing?

The special representative appointed for the judicial proceedings has to perform his professional tasks as a lawyer in the proceedings with due care, but he or she has no separate or express obligation to prepare the child for a hearing.

26. *In your country, is there the possibility to appoint a special curator or a guardian ad litem of the child in civil proceedings involving him/her?*

If the answer is YES, please list the proceedings, as well as the relevant legal provisions, in which the appointment of the special curator or the guardian ad litem is foreseen:

In those cases, what are the main duties and responsibilities of the special curator or of the guardian ad litem?

The respondents didn't recognise the legal figure of special curator or that of a guardian *ad litem*, since there are no such in Bulgarian legislation. All answers refer to the special representative in civil proceedings – an attorney, appointed for the respective case to protect the interests of the child.

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As per Article 29, para.4 of CPC in case of conflict between the interests of the representative by law and the party, the court assigns the task to defend the child to a special representative – a registered attorney, providing legal aid. Also Article 129, para.2 of Family Code provides for appointment of special representative in all deals and legal relations, when the parent has conflicting interests with the child. Some participants in the study make reference to the general rules for determination of guardian of the child, who doesn't qualify for special guardian *ad litem*.

SECTION 7: FINAL CONSIDERATIONS

27. *Have you ever had a specific training for professionals on children's rights and/or how to protect and fulfil the best interests of the child in civil proceedings?*

Majority of respondents have taken part in educational initiatives and trainings to practitioners about the children's' rights in proceedings and about the protection of best interests of the child. Those professional trainings are more general in context and scope with no special focus on the children's right for information in cross border civil proceedings.

28. *Have you ever had a training on child-friendly language for informing children?*

29. *Have you ever had a training on how to explain to parents how to inform their children about proceedings?*

30. *Have you ever had a training on child friendly behaviour to relate to children involved in proceedings?*

With very few exceptions almost no practitioners took part in specialised trainings on the ways to inform children how to exercise their right to participation in civil proceedings, including the requirements for the language and communicational skills used or for the proper ambience.

31. *What do you think can be done in order for children to receive complete and adequate information about the proceeding that concerns them in your country?*

This question was addressed by majority of respondents and a number of proposals for specific measures were put forward:

- To fill the legislative gaps about the specific procedure and requirements on the ways to provide information to children. This could be done via changes in the Children Protection Act as well as by drafting a set of practices to be endorsed by the Supreme Judicial Council

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and by the Children Protection Agency. Detailed law provisions to be drafted to specify the mandatory scope of the information to be given to children and the time limits for it, including the roles and responsibilities for presenting the outcome of the proceedings.

- Reform toward establishment of specialised juvenile courts and/or specialised juvenile chambers in the structure of existing courts.
- Legislative changes toward institution of list of specially trained and qualified attorneys, who could be appointed as special representatives of children and/or provide legal aid to children.
- The state Child Protection Agency to draft, edit and distribute to courts and to social workers special materials helping the provision of information to children in the form of internet site, comics, books, tables, movies.
- Improvement of the ambience in which the child is heard by creating more special facilities in court houses in order to diminish the cases in which the child is summoned to the court room.
- Mandatory special training of judges and of social workers regarding the proceedings of providing information to children.
- Introducing requirement for mandatory presence of psychologist during hearing of children.
- Improvement of coordination between different stakeholders – the judiciary, social workers, attorneys, representing the child in the form of new specially enacted rules. Current Child Commissions as per Article 20a of CPA could be a starting point for this development.
- To enact codes of conduct for social workers and judges for the accomplishment of the task to prepare the child for the hearing enough time before the actual proceedings.
- To strengthen the case law regarding mandatory reversal of judgements pronounced in breach of the rules for informing the children in the process of expressing his or her views.

32. *Is there any other aspect that has been omitted in this survey and that you think is relevant for the purpose of this research?*

The preponderant number of respondents are on the position that the study covers all relevant aspects and possible flaws in the process of informing minors in exercising their right to participation in cross border civil cases.

Several practical inputs were raised in order to amplify the scope of the survey, which after analysis could be qualified as suggestions for enactment of new measures. The first one is to record on video

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the hearing of the child in order to help the judge and parties and to eliminate possible second hearing on topics covered by the child in the first one. The second proposal is to expressly define in law a maximum number of hearings of the child in the course of single proceedings, especially in cases of domestic violence orders cases.

Some of the respondents put forward the possible amplification of the study toward the activities of social workers before the hearing in informing, consulting, and preparing the child to express his or her views.

7. Conclusions

The children's right to information in Bulgaria is known and well applied in the practice institute. It is closely linked to the right of the child to express his or her view during all proceedings concerning children's rights and interests. Bulgaria is legally bound by the supranational standards stemming from the UN Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the primary and secondary instruments of the EU law. The right to information about all proceedings affecting the child is guaranteed by an express provision of Bulgarian legislation, which requires all judicial and/or administrative authorities to provide details to the child for the hearing. Judges are assisted by the mandatory presence of social workers during the child participation. Although some differences in the routine of courts in various regions of the country, in general, social workers are required to meet the child before the hearing and to assist the judge in the proceedings to follow. In many instances courts don't hesitate to appoint additionally an expert psychologist to be present on the hearing.

Nevertheless, Bulgaria faces some difficulties in the proper application of the hearing of the child and in the provision of information in all judicial proceedings affecting his or her rights and interests. The provision of information to the child is not an explicit obligation for the parents and for the attorneys, it is only incumbent to the authority. It is not regulated in detail in respective procedural laws. There are no rules setting the way of provision of information. The child is most often informed shortly before the hearing about the subject matter of the case, the reason for the hearing and the role of the shared view. The provision of information to the child about the final outcome is not well settled in law and this task most often is fulfilled by the lawyers of the parties. The hearing of the child outside the court tends to lack substance. Under the Bulgarian law the child



is quite seldom a party to the proceedings and the protection of his or her interests at the end of the day is usually left indirectly to the parents and to the child itself.

Despite some gaps and shortcomings, the development in Bulgaria in the last 30 years shows a tendency to increase the standards of child protection. The outcome of MiRI project can be used to maintain this trend.