

**Hochschule Niederrhein**  
University of Applied Sciences



**Sozialwesen**  
Faculty of Applied Social Sciences

XXXVII.

International Post Graduate Course on Victimology, Victim  
Assistance and Criminal Justice

# Children's Rights in Victimology. Legal contributions to Professionalization and the Access to Justice.

Prof. Dr. Peter Schäfer

16th May 2023 | 10:00-11:00 | Inter-University Center Dubrovnik, Croatia

# Agenda

1. Introduction
2. Access to Justice
3. Legal Perspectives
4. Conclusions and further Perspectives

# 1. Introduction

# 1. Introduction

In 2021, there were approximately 2.4 billion children and adolescents (ages 0-17) living on the planet. At about 912 million children, the 11- to 17-year-old group accounted for the largest share. People aged 17 and under accounted for about 30.2% of the total population worldwide.

Due to their young age, children and adolescents are considered to be particularly in need of protection worldwide and are therefore also under the special protection of the UN human rights conventions (Statista, 2022a).

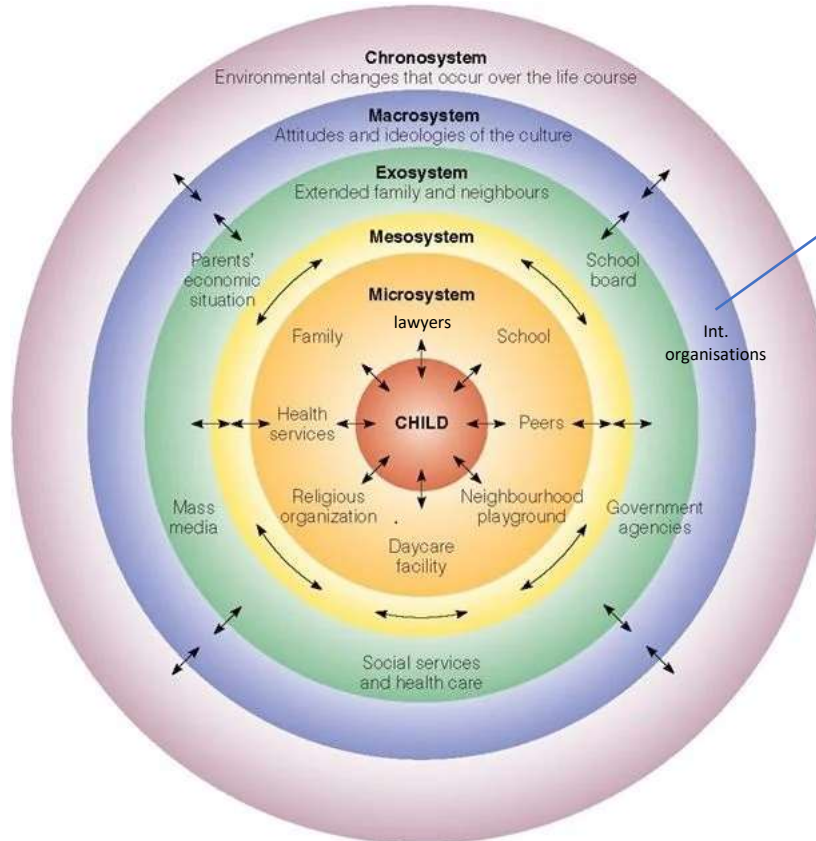
# 1. Introduction

The question of the realization of law, especially through procedural law, takes on a special significance. It is about the de facto effectiveness of the law and thus about legal mobilization, i.e. the real accessibility to the law for the addressees.

**Written law is to be effectively transformed as so-called book law into actually applied law (cf. Schaefer, 2022a, 210ff.).**

**The key issue at this point is the access to justice.**

# Bronfenbrenner's Ecological-System-Theory



## International Organisations:

- United Nations
- European Union

# Bronfenbrenner's Ecological-System-Theory

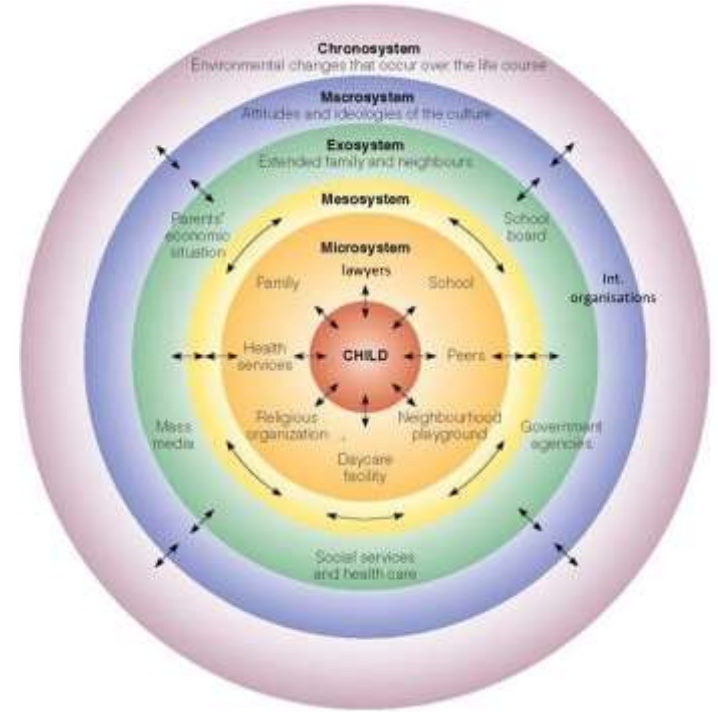
**Microsystem:** these are the direct influences on the individual, such as family, school, or workplace.

**Mesosystem:** this refers to the interactions between the different elements of the microsystem, for example how family and school work together.

**Exosystem:** these are indirect influences on the individual, such as parents' workplace policies or policy decisions in the community.

**Macrosystem:** this is the broader society and its cultural values, beliefs, and norms.

**Chronosystem:** this refers to changes in the environment over time, such as societal changes or personal life events.



## A case from everyday life to set the mood

Please recall an instance from your childhood in which you felt you were treated unfairly to the highest degree. Even though there was a set of rules, norms of behavior or laws that were supposed to protect you, from your point of view you were still harmed either physically or psychologically.

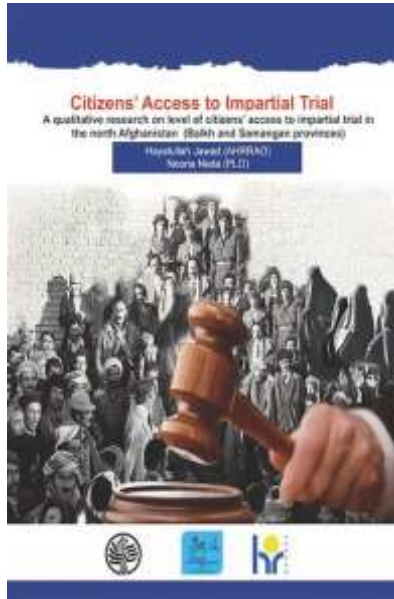
For your orientation, I will briefly describe an example case for this situation:

Paul and George

## 2. Access to Justice



# The topic of access to justice has been highly topical in recent years



## 2. Access to Justice I

### – Exemplary fields

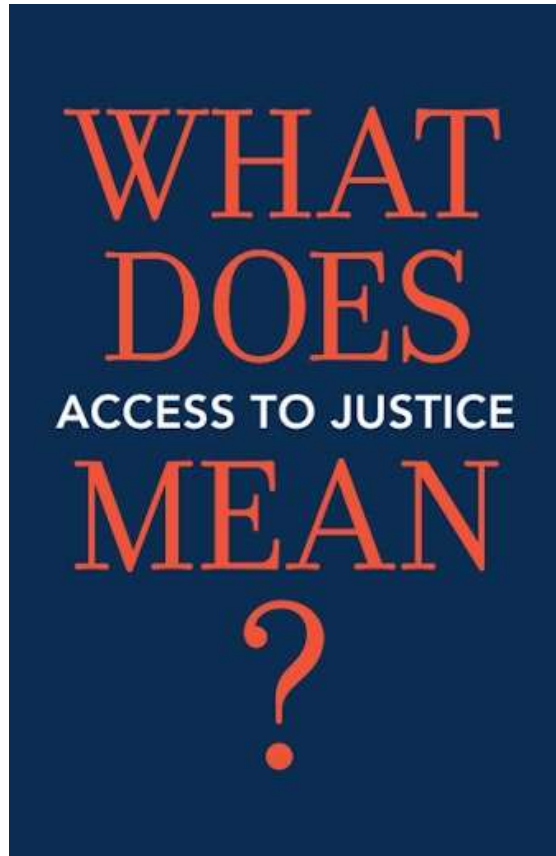


## 2. Access to Justice II

### – Exemplary fields



## 2. Access to Justice



**Research on access to justice has moved through a series of thematic waves that began with**

- focusing on equality of access to legal services and continued,
- with addressing structural inequalities within the justice system,
- establishing informal justice processes to prevent disputes from occurring and escalating,
- focusing efficiency and competition to drive down the costs associated with the justice system,
- and understanding and meeting the actual legal needs of communities.

## 2. Access to Justice

Access to justice has been described as “a cross-cutting right that must be understood and interpreted in line with other principles such as equal recognition before the law” and which “enables and enhances other rights such as the right to health as it guarantees judicial and administrative protection of that right”.

As noted by Lima and Gomez and other authors, “access to justice guarantees that people can go before the courts to demand their rights be protected, regardless of their economic, social, political, migratory, racial, or ethnic status or their religious affiliation, gender identity, or sexual orientation”.

## 2. Access to Justice

Another definition of access to justice focuses on the ability of people to seek and obtain a remedy through formal or informal institutions of justice and in conformity with human rights standards.

Requirements for effective access to justice include legal framework, legal protection, legal awareness and knowledge, legal aid and representation, access to justice institutions, fair procedure and adjudication, enforceable solutions and civil society and parliamentary oversight.



## 2. Access to Justice



**legal advice**

**legal information**

**financial support**

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## 2. Access to Justice



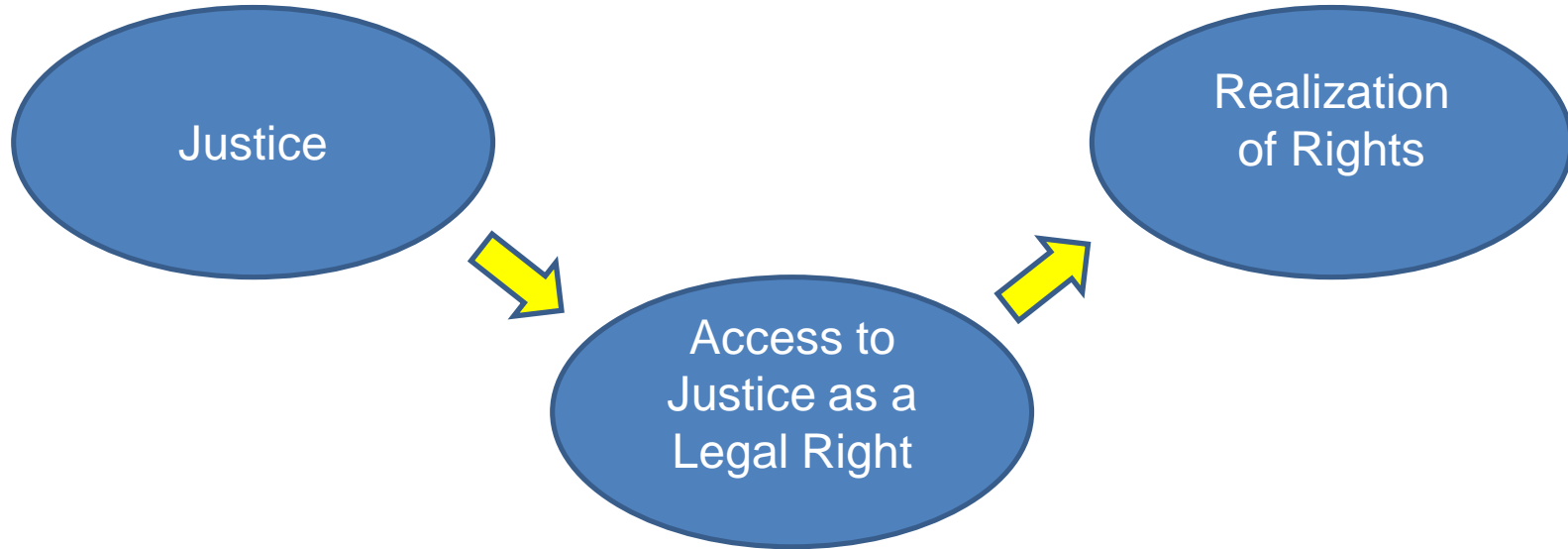
# Justice and Realization of Rights



Being right and getting right are two different things.

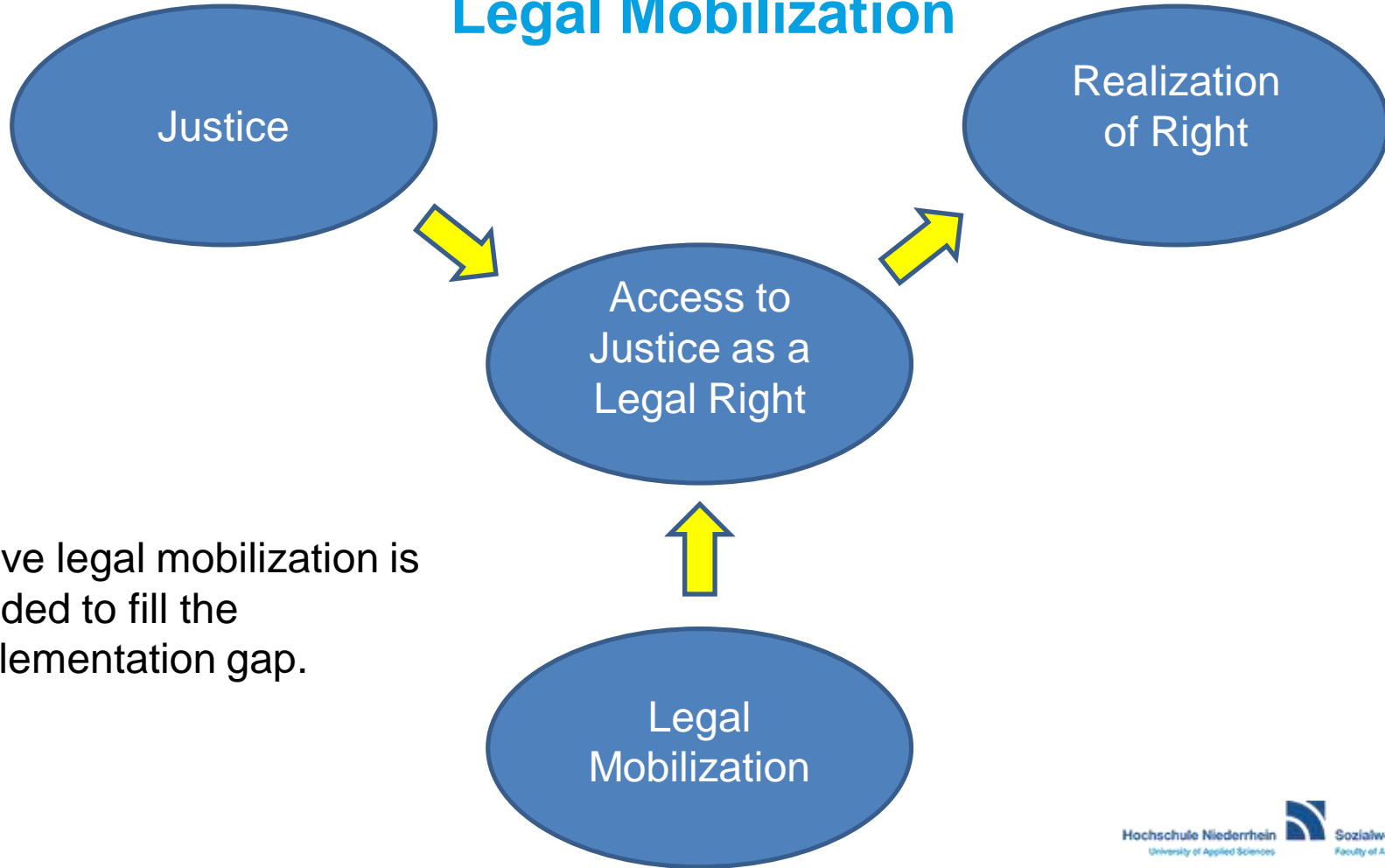
Law must be implemented or realized. This does not happen by itself - it requires: knowledge, competencies, necessary resources (money ...) and capacities etc. These must be translated into active strategies and planned activities.

# Access to Justice



There are clear discrepancies between the legal entitlement to justice and the actual use of justice. This is referred to as an implementation gap in the law.

# Legal Mobilization



## 2. Access to Justice

### - Requirements for Effective Access to Justice

- **Legal Protection:** The justice system must provide and guarantee legal standing for children, parents and the professionals in order to ensure that their rights to remedies through either formal or traditional mechanisms are recognized.
- **Legal Awareness:** children, parents and the professionals must have ready access to information that will help them understand their right to seek redress through the justice system; the various officials and institutions entrusted to protect their access to justice; and the steps involved in starting legal procedures.

## 2. Access to Justice

### - Requirements for Effective Access to Justice

- **Legal Aid and Counsel:** children, parents and the professionals must have access to the technical expertise and representation tools and service that would allow them to initiate and pursue justice procedures including legal aid and counsel from professional lawyers (i.e., public defender services and pro bono representation), laypersons with legal knowledge (i.e., paralegals), or both (i.e., “alternative lawyering” and “developmental legal aid”).
- **Adjudication:** children, parents and the professionals must enjoy the benefits of capacities to determine the most adequate type of redress or compensation, which can be regulated by formal law, as in the case of courts and other quasi-judicial and administrative bodies, or by traditional legal systems.

## 2. Access to Justice

### - Requirements for Effective Access to Justice

**Enforcement:** a justice system is not effective unless it produces outcomes that can be readily enforced without delay or unnecessary additional expense and legal action.

#### **Civil Society and Parliamentary Oversight:**

- legal framework
- legal knowledge
- advice and representation
- access to justice institutions
- fair procedure
- enforceable solutions.

# Factors of legal mobilization on individual, interactional and institutional level

Individual Level	Interaction Level	Institutional Level
<ul style="list-style-type: none"> <li>• Rights knowledge/ awareness</li> </ul>	<ul style="list-style-type: none"> <li>• Type of social relationship on which the interaction is based</li> </ul>	<ul style="list-style-type: none"> <li>• Legal factors: chances of success / stability of personal legal position</li> </ul>
<ul style="list-style-type: none"> <li>• Legal knowledge / informedness</li> </ul>	<ul style="list-style-type: none"> <li>• Power ratio between the parties</li> </ul>	<ul style="list-style-type: none"> <li>• Professional legal advice available</li> </ul>
<ul style="list-style-type: none"> <li>• Awareness of demands and assertion</li> </ul>	<ul style="list-style-type: none"> <li>• Perception of the problem by the own social environment</li> </ul>	<ul style="list-style-type: none"> <li>• Substantive and procedural law</li> </ul>
<ul style="list-style-type: none"> <li>• Economic capital</li> </ul>	<ul style="list-style-type: none"> <li>• Social access and relationship to legal advisors</li> </ul>	<ul style="list-style-type: none"> <li>• Support systems: counseling centers run by associations, counseling assistance, process aid</li> </ul>
<ul style="list-style-type: none"> <li>• Cultural capital (level of education)</li> </ul>		<ul style="list-style-type: none"> <li>• Institutional discrimination</li> </ul>
<ul style="list-style-type: none"> <li>• Social capital, personal network, contact with lawyers / other legal professionals</li> </ul>		<ul style="list-style-type: none"> <li>• Regional and linguistic factors related to communication (courts, advocacy centers, counseling centers)</li> </ul>
<ul style="list-style-type: none"> <li>• Time resources</li> </ul>		
<ul style="list-style-type: none"> <li>• Attitude toward the legal system and other government agencies</li> </ul>		
<ul style="list-style-type: none"> <li>• Relationship to the legal process: alienation vs. feeling uplifted</li> </ul>		

# **3. Legal Perspectives**

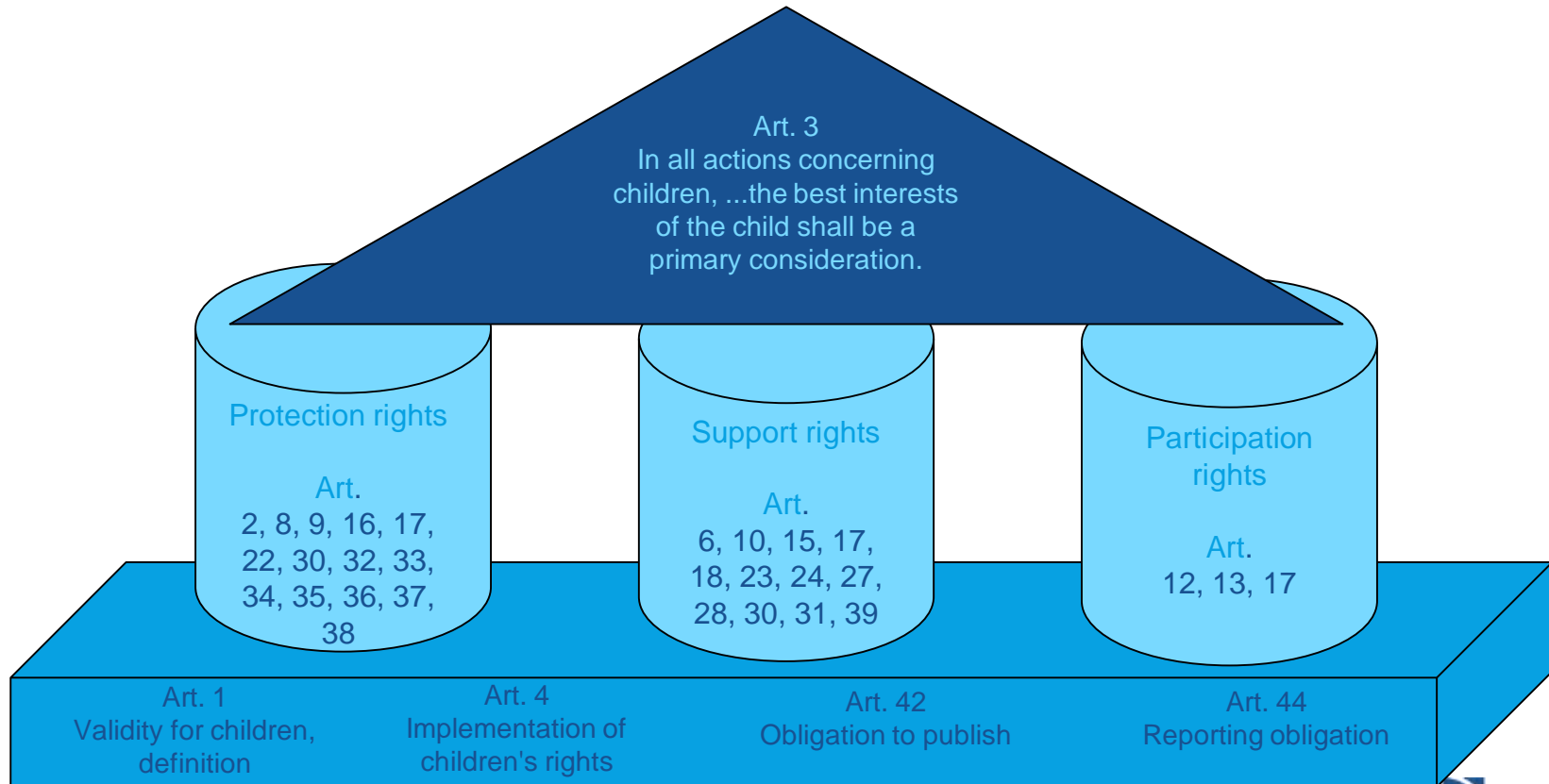
### 3. Legal Perspectives

- In order to improve the international connectivity of the discussion, the focus will therefore first be on the UN Convention on the Rights of the Child (CRC) and its concept of the best interests of the child.
- Since the CRC applies worldwide, it is of particular interest here. In addition, supranational child rights policy regulations of the European Union that refer to the CRC will also be presented. Child and adolescent participation worldwide is largely based on the UN Convention on the Rights of the Child.

### 3. Legal Perspectives

- With the exception of the United States, 196 countries have ratified the Convention. The notion of what is concretely meant by participation of children and adolescents has changed considerably in the professional discussion in the recent past in the context of societal change with mutual changes in social, cultural, economic and ecological dimensions (Middel, Post, López López & Grietens, 2021; Schaefer, 2022b).

# The building of the Children's Rights







## Child's Best Interest

The need to protect the child from harm and exploitation

The nature of the child's relationship with his/her family and other significant people in the child's life

The capacity and willingness of the child's parents or other family members to care for the child

The child's wishes and views, whilst considering the child's maturity and understanding

The child's need for permanency in his/her living arrangements

The child's need for stable and nurturing relationships

The child's physical, emotional, intellectual, spiritual, developmental and educational needs

The child's age, maturity, gender, sexuality and cultural, ethnic and religious backgrounds

Other special characteristics of the child

### 3. Legal Perspectives

- Every year, thousands of children in Germany come into contact with the judicial and administrative system. For example, they are involved in family law proceedings when their parents divorce, (victim) witnesses in criminal proceedings, affected parties in asylum proceedings or their interests are affected by projects in the municipality.
- In order to take into account the special needs of children, the UN Convention on the Rights of the Child sets out requirements for a child-friendly justice system. Thus, the interests of children must also be taken into account as a primary consideration in judicial and administrative proceedings. (Article 3 of the UN Convention on the Rights of the Child) and the child must be given the opportunity to be heard (Article 12 of the UN Convention on the Rights of the Child).

### 3. Legal Perspectives

- Legal assistance in court proceedings
- Legal counseling and psychosocial support during proceedings
- Rights of children in administrative and public law proceedings
- Rights of children in family court proceedings
- Rights of children in administrative proceedings
- Rights of minor victim witnesses in preliminary and criminal proceedings
- International legal instruments for the enforcement of children's rights in judicial proceedings.

## **4. Conclusion and further Perspectives**

## 5. Conclusion and further Perspectives I

- Above all, however, the actual implementation and realization of the CRC and the Constitution in the everyday lives of children and adolescents and their families remains the task of all states and must be advanced further.
- The extent to which this task can be carried out jointly in constructive synergetic cooperation between state institutions and NGOs remains to be explored in concrete terms by the actors involved. Otherwise, a proactively demanding and initiating child rights policy could fall to the NGOs. Such a policy can largely be based on an autonomy possible within the framework of the respective organizational and regulatory law and can be based on the mandate of the CRC.

## 5. Conclusion and further Perspectives II

Access to justice must open up those opportunities that actually promote access.

For whom: - children, Parents, guardians and foster parents  
- Professionals in counseling, guidance, support.

By whom or what:

- by institutions of the state and civil society : administration, day care centers, youth welfare offices, schools, family centers etc.- NGO's (e.g. child protection)
- networks
- self-help groups
- Communities etc.

# 5. Conclusion and further Perspectives III

How:

- By means of ombudspersons, complaints offices,
- guardians ad litem (professionals - mostly social workers who represent the interests of children in court),
- by means of psychosocial process support (representation of victims by professionals in criminal proceedings) in non-legal, but psychosocial questions , with
- legal aid,
- public and private financing.

**Thanks for your attention**

## **Prof. Dr. Ass. Jur., Dipl.-Krim. Peter Schaefer, Mediator**

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