



## **Children's Commissioner for Jersey** Promoting and Protecting Children's Rights

### **P.43/2020: Court Proceedings: Provision of Live-streaming for Sitings Normally Held in Public**

The basis of the Proposition is found in Article 6 (1) of the European Convention on Human Rights which protects the right to a fair trial. This provides that:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

The right to a fair trial is of significant importance, and I welcome the intention to protect human rights within the rapid changes in law and practice during this public health emergency. I would highlight that it is justifiable for the press and public to be excluded from part of or indeed all of a trial “where the interests of juveniles or the protection of the private life of the parties so require”.

I note with concern that the Attorney General in his comments has expressed caution that live streaming hearings could prevent individuals, including child witnesses, from participating in cases<sup>1</sup>. Further, this could have a chilling effect on crimes being reported. We have raised concerns that current restrictions on movement could have the unintended consequence of exacerbating the rates of domestic violence as has been reported in other jurisdictions, a concern also highlighted by the United Nations<sup>2</sup>. Children have the right to be protected from violence<sup>3</sup>, and to have their best interests as a primary consideration in all decisions which affect them<sup>4</sup>. It is crucial that the live streaming of hearings do not create additional barriers in keeping children safe and protected from harm.

The European Court of Human Rights has recognised that the protection of witnesses is a lawful reason to interfere with Article 6 rights. In the case of *B. and P. v. The United Kingdom*<sup>5</sup> “even in a criminal-law context where there is a high expectation of publicity, it may on occasion be necessary under Article 6 to limit the open and public nature of proceedings in order, for example, to protect the safety or privacy of witnesses or to promote the free exchange of information and opinion in the pursuit of justice.”<sup>6</sup>

I have in the past expressed concerns over anonymity with respect to the publication of judgements and children's right to privacy. I wish to raise similar concerns that the publicity of such information could not only infringe their right to privacy but also risk the safety of child witnesses. In addition to the right to privacy enshrined in the Human Rights (Jersey) Law 2000, the United Nations Convention

<sup>1</sup> See <https://statesassembly.gov.je/assemblypropositions/2020/p.43-2020com.pdf>

<sup>2</sup> <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25778&LangID=E>

<sup>3</sup> Article 19, United Nations Convention on the Rights of the Child

<sup>4</sup> Article 3, United Nations Convention on the Rights of the Child

<sup>5</sup> App. No(s). 36337/97; 35974/97

<sup>6</sup> Ibid, paragraph 37

on the Rights of the Child (UNCRC) is clear that children and young people have the right to privacy under Article 16.

Therefore I urge that in debating this Proposition, full consideration is given to the full complement of rights as established in international law to allow for a proportionate assessment of rights implications. Children and young people are entitled to special measures of care and protection under the UNCRC, which was extended to Jersey in 2014. I am clear that the potential livestreaming of proceedings for which children would be involved would be a threat to the safety of child witnesses and an infringement of their privacy as per international law. It is imperative that all children and young people's rights, including their rights to privacy and the right to be protected from violence are respected, protected and fulfilled.