

Federal Court



Cour fédérale

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**Subject:** Speech by Janusz Korczak  
**By:** Michel M.J. Shore  
With the close cooperation of Sarah Dennene

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Speech by  
**Janusz Korczak**

To the Legislative Assembly of the United Nations

On the occasion of the 20th anniversary of the Convention on the Rights of the Child

### **Background**

Janusz Korczak (1878-1942), a physician by training, was a famous Polish writer and educator. He left a body of work dealing with the education of impressionable children. He went down in history for having deliberately chosen to be deported to the Treblinka concentration camp so as not to abandon the Jewish children from the orphanage he ran in the Warsaw ghetto.

If Korczak were to speak to us on the occasion of the 20th anniversary of the Convention, we believe that this is the speech he would give, based on an analysis of his work.

This must be seen as a bridge between the work of a man who is physically no longer with us but whose spirit and convictions still live on in the passion he devoted to his work.

I speak to the child who is in every one of you so that you can understand my words with the feelings of a child, so that you, as adults, can take action to improve the plight of children.

I wish to emphasize that any helplessness, any surprise arising from ignorance, any error in the application of past experience, any unfortunate attempt at imitation, any dependency — all these are reminiscent of a child regardless of the age of the individual. We shall readily find childish characteristics in a patient, old man, soldier and prisoner.

J. Korczak, *How to Love a Child* (1919), translated from Polish by Jerzy Bachrach, *Selected Works of Janusz Korczak* (1967), pp. 392-395.

I am speaking to the child in each of you, but I urge you, as adults, to keep your promise to protect that child, so that you recognize that age is not merely chronological, and that we can live every age at the same time. In that way, we will not forget what we were, while knowing what we are, in order to become what we dreamed of in our childhood. The bridge between dreams and reality requires the action of adults.

I count on your action as adults to ensure that the Convention does not become irrelevant but instead burns brightly in each of you. To remain faithful to the child within us and the adult that wants the child to be able to express himself, we must light the sacred flame to serve as a beacon for the generations to come.

Have adults truly complied with their duty to respect and trust children in the past 20-plus years? Respect for their vulnerability, respect for their ignorance and knowledge, respect for their tears and laughter, respect for what they are now and not what they will become tomorrow.

You call me a pioneer of the CRC. For my part, I see in this convention the concrete manifestation of my hope in a better world for children. I don't like the idea of pioneer; any person whose purpose is to act in the primary interest of children, who are part of humanity, also blazes new trails in children's rights. We are many. I am very happy and I can only express my extreme gratitude to those who brought this project from its proposal by my country in 1979 to its fruition on November 20, 1989.

There are no words to express just how gratified I am to see the rights that I sketched out in my work live on in the form of an international instrument at the service of children the world over. Is that not something to be proud of? My work which focused on the specific context of Poland in 1920 has stood the test of time and crossed borders.

However, permit me to ask you this question: is the world kinder to children? Do you really live in a better world?

In reading your letter, I understand that the world in itself has not greatly changed. This growing awareness of the cause of the child, although phenomenal in its very essence and the unyielding commitment to take concrete steps to help children, must still grapple with

the lack of resources and poverty which are the close and faithful companions of most of humanity. Thus, there are many children who still work instead of going to school, who are victims of abuse and violence or are silent witnesses to atrocities. Still others are refugees or are deprived of their parents. Some have no documentation and do not even officially exist.

You ask me questions, I answer with questions. Have you truly realized that a child's present is much more important than his future? There can be no future without a present. Where are we in terms of respect for a child's participatory rights, my life's work? Those rights that let him express what he is even before being a child: a human being.

Let's take a moment to look at the judicial system that you mentioned in your last letter.

I was especially drawn to Articles 3 and 12 of the CRC:

#### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

#### Article 12

1. States Parties shall 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.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

[Emphasis added.]

I would readily serve as an *amicus curiae*. Obviously, I don't know if I could have played this role and enlightened the Court on the issue of the child without having met that child first, without having been able to speak with him. Would I then have been able to speak on his behalf? As an educator, I don't believe so. That child would have accompanied me to court. If he was able to speak, I would have given him the opportunity to be heard. We must banish grand theoretical ideas that are not based on practice. As I wrote in all humility:

Thanks to theory — I know; as a result of practice — I feel. Theory enriches the intellect, practice colors feelings, trains the will. I know — does not mean that I act in accordance with what I know. The views of others must crystallize in one's own living ego. I weave from theoretical precepts, but with the possibility of choice. I reject, forget, omit, dodge, ignore. The outcome is my own conscious or unconscious theory which guides my actions. A great deal has been achieved if a piece of theory sustains within me its existence, its *raison d'être*; if it has influenced me to some degree, has had an impact. Theory I repudiate time and again; myself — rather rarely.

J. Korczak, "Theory and Practice" (1925), translated from Polish by Jerzy Bachrach, *Selected Works of Janusz Korczak* (1967), pp. 392-395.

Yes, the best interests of the child, as you term it and as conceived of by legislation, is a fortunate concept. However, in all honesty, I must admit to you that I am unsure about

the ambiguity of the concept. Does it not create a risk of concealing the child behind an opaque veil when he can shine forth fully by himself?

I understand the limits of the justice system. I know how, for you, this Article of the Convention—should I instead say the reformulation of this principle in your law—is a valuable tool. I understand your concern. However, I believe that, from theory, this marvellous principle must become practice for the decision-maker. Not practice in the sense of legal and common practice. Practice in the sense of what I have said. Practice to the point of becoming second nature for the decision-maker. A reflex for the decision-maker each time a child is the focus.

Thus, we must make use of the vagueness of the concept in order to create a tool shaped to the specific situation of the child. It cannot remain fixed within a definition. The Supreme Court of Canada in *Gordon v. Goertz*, [1996] 2 S.C.R. 27 rightly explained:

20 The best interests of the child test has been characterized as "indeterminate" and "more useful as legal aspiration than as legal analysis": *per* Abella J.A. in *MacGyver v. Richards* (1995), 11 R.F.L. (4th) 432 (Ont. C.A.), at p. 443. Nevertheless, it stands as an eloquent expression of Parliament's view that the ultimate and only issue when it comes to custody and access is the welfare of the child whose future is at stake. The multitude of factors that may impinge on the child's best interest make a measure of indeterminacy inevitable. A more precise test would risk sacrificing the child's best interests to expediency and certainty. Moreover, Parliament has offered assistance by providing two specific directions -- one relating to the conduct of the parents, the other to the ideal of maximizing beneficial contact between the child and both parents.

The decision-maker must rely on his or her own theory in order to see situations clearly, going further than the blind application of a few words stated in the law. A dialogue must

be created with the child in question. It is only in this way that the decision-maker will be able to fairly value the child. It is only in this way that the decision-maker can appreciate the child's best interests, based on knowledge of the child's country of origin, his values, his history, his past as a factor in his present, his inherent vulnerability as a child. Then and only then can the decision-maker transcend theory and give true meaning to the best interests of the child. The decision-maker will act in accordance with the law, but also in accordance with himself through his way of interpreting the law.

Of course in some cases, particularly in administrative spheres, the decision-maker will not be able to decide in favour of all of the child's claims if they are not in his best interests. However, I believe that this should not prevent the child from being aware of the decision-making process, of being a participant in it. This must be so, even if the words "best interests of the child considered" routinely appear at the bottom of a decision:

- 12 Article 3(1) of the Convention on the Rights of the Child (CRC) provides that the best interests of the child shall be "a primary consideration" in all actions concerning children, but this principle may be subordinated to other concerns in appropriate contexts. It is also common ground that an immigration officer cannot demonstrate that they have been "alert, alive and sensitive" to the best interests of an affected child simply by stating that they have taken into account the interests of a child. In determining the best interests of the child, decision-makers must take the views of the child into account, in accordance with the child's age and maturity (see *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1687, 2002 FCA 475 at para. 32). In order to ensure that the child's wishes are properly considered, Article 12 of the CRC provides that the child must be given an opportunity to be heard, either directly or indirectly, in administrative proceedings affecting his or her rights and interests. Moreover, Article 10 of the CRC provides that "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner."

This is somewhat similar to what has been written in the many judgments you so graciously sent to me. I understand that the laws in some countries, including Canada, have not automatically incorporated the provisions of the CRC. In reading *Kim v. Canada (Citizenship and Immigration)*, 2010 FC 149, [2010] F.C.J. No. 177, I note that the contextual interpretation of laws takes the CRC fully into account. The two adolescents who fled from their home country unaccompanied were under the guardianship of the state. Although they did not meet the conditions for being recognized as refugees, the Court was of the opinion that their best interests had to be taken into account through another disposition of the law.

Despite legislative constraints, there is therefore a true willingness to respect the rights of the child who, often unwillingly, is caught in a legal tangle. The Federal Court stated this as follows in *Kim*:

- [9] It is clear that Article 3(1) of the CRC does not state that the best interests of the child are to be a substantive consideration of every decision which affects children. The Court concludes that there is more than one manner by which decision-makers may consider the best interests of the child. Section 96 of the IRPA takes the best interests of the child into account because of the specific procedural and evidentiary considerations in the Guidelines. It is recognized that procedural and evidentiary considerations may be different for other determinations outside of the refugee framework; the key is to ensure that the best interests of the child are considered in context, within the framework of the determination to be made by a tribunal or entity deciding the case, dependent on its particular jurisdiction and legal purpose as set out in legislation.



The example of the child refugee raises a number of problems. If it is difficult for an adult to go through this process, imagine what it must be like for a child. A child is a vulnerable being; in adversity, it is important to be mindful of that vulnerability, which can take various forms.

As in *Little Prince (decision for law students as a learning exercise)*, it is important to actively listen to the child. Although this judgment was a learning exercise, it illustrates the decision-maker's concern for hearing the child's voice in a context of vulnerability in which the child is trying to express himself but is not always heard. Little Prince is unaccompanied, but must, on his own, demonstrate like an adult a subjective and objective fear of returning to his home country in order to be granted refugee status. However, at eight years of age, Little Prince has his own way of speaking, using his own references. This child, with a fertile symbolic imagination, sketches out what is for us, as adults, merely a reflection of reality. These are his words:

[35] Indeed, the applicant's testimony highlights the fact that the child did not fully comprehend what happened to him. This is an excerpt of the applicant's testimony at the RPD hearing:

[TRANSLATION]

Q: Can you tell me more about what happened to you, Little Prince?

A: Grown-ups always need explanations . . .

Q: Yes, you need to explain clearly to the Board what happened to you in your country . . .

A: Can I draw my story instead of telling it to you?

Q: Just tell me in your own words.

A: Please be patient. I'll explain my dream to you with a drawing.

Grown-ups don't know how to draw, but children do.

Q: A dream you say? What did you dream about?

[Here, the child did not answer and began to draw. The member gave him time to finish his drawing.]

A: Look, do you like my first drawing?

[The child had drawn a planet crowded with three enormous volcanoes that were erupting.]

Q: Explain your drawing to me, Little Prince.

A: These are volcanoes that are erupting. They burned me, look, I still have the scars. In my dream, I didn't have any scars.

Q: Did you have this dream when you were in the coma, Little Prince?

A: I remember that I dreamed. I dreamed, and in my dream I was trying to find a country while I was flying, but I couldn't find one . . .

Q: What do you think of Canada, Little Prince?

A: The snow shines like the sand in the desert where I was . . . but, sir, I don't think you're dressed for winter. It's cold in Canada!

Q: Not all the time, Little Prince.

A: Do you have sheep in Canada?

Q: Why do you want to know if we have sheep in Canada?

A: Sheep don't hurt anyone, they like children. I would like someone to draw me a sheep . . .

Q: Little Prince, can we talk about serious things now? What I'm talking to you about is very important . . .

A: Grown-ups confuse everything. I *am* talking to you about serious things. On my planet, I could see 44 sunsets a day. You have an astronaut in Canada, Marc Garneau, could he see 44 sunsets in one day while flying around the Earth? Isn't it serious that your astronaut Marc Garneau could have seen 44 sunsets?

Mr. de Saint-Exupéry: You see, sir, out of the mouths of babes . . . !

...

*Little Prince v. Canada (Minister of Citizenship and Immigration)*

The child must also feel that he is being listened to and understood. This is the first sign of respect:

[41] ... A: You're writing all the time, sir. Are you really listening to me when you take notes? I'm talking to you about serious things, real serious things. Are you taking my misfortunes seriously?

Q: Of course, yes, I'm really listening to you. I'm taking notes to make sure I remember everything you told me today, Little Prince.

A: Are you the person who's going to decide whether I can stay in Canada, sir? Are you interested in numbers or in human beings, sir?

Do you count human beings or do you believe human beings count? I knew someone who did nothing but count . . . he didn't know the value of any thing, just their price....

*Little Prince v. Canada (Minister of Citizenship and Immigration)*

Decision-makers at first instance, triers of fact who directly witness the voice of the child, are in the best position to hear that voice and take it into account. They enter into a direct relationship with the child. In that regard, Guideline 3 of the Chairperson of the Immigration and Refugee Board is a valuable procedural tool in ensuring that the child is understood. This guideline is used to adapt procedure to facilitate a child's testimony.

I would also like to draw your attention to the fact that the Little Prince's representative did not obscure the voice of the child. On the contrary, he tried to highlight it in close cooperation with the decision-maker.

[36] In his decision, the RPD member wrote: [translation] "[W]hen Little Prince was testifying, I understood that I had to listen to everything the child was saying so as not to break the bond of trust. There were, in fact, connections between the child's dream and reality demonstrating that Dr. Rose Petal's psychiatric analysis was taken into consideration with respect to Little Prince's state of mind through his dream that he considered his reality and that his counsel, Mr. de Saint-Exupéry, submitted as evidence of his subjective fear." (RPD decision, p.2)  
*Little Prince v. Canada (Minister of Citizenship and Immigration)*

Let us also take a look at the story of Ms. Nahimana (*Nahimana v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 161), which shows that the culture of the child may be an impediment to the decision-maker's ability to understand the child. The Federal Court, in that case, was able to attentively listen to that child:

26 The Board did not take into consideration the fact that Ms. Nahimana was a child when the events in question took place as well as when she entered Canada and at the time of the hearing. They treated her as an adult and assessed her evidence as that of an adult. Furthermore, the Board did not consider that Ms. Nahimana is Muslim and from Africa. In such societies and cultures, female adults and children are treated very differently than in Western culture. It was incumbent on the Board, as a

specialized tribunal, in its approach to consider Ms. Nahimana's particular circumstances, context, culture, age, experience and even demeanor which can also be reflected in the life's experience, one has undergone, when attempting to understand and to assess her evidence.

[Emphasis added.]

That young girl, who seemed older than her age, who had left childhood despite herself, had overcome many obstacles before claiming refugee protection in Canada. Having herself become a mother, she wanted only to live in peace with her child.

Let also listen to the account of the child Patel, 13 years old, who had fled from his country without his parents. This case is another illustration of how the child's vulnerability was understood through the Guideline.

The child whispered:

2 "I am afraid I will have nowhere to live. Afraid of having no caregiver in India"....

*Canada (Minister of Citizenship and Immigration) v. Patel*, [2009] 2 F.C.R. 196

The decision-maker at first instance interpreted this voice as follows:

31 ...The child was not asked whether he had a fear of returning to India to live in an orphanage, which is what he would be required to do should he be returned to India. Neither should a child be expected to contemplate such changed circumstances. An unaccompanied child claimant is by virtue of that status a child who may be at risk. In assessing the evidentiary issues in the claim, I rely on the objective component of the claim and the documentary evidence, rather than any subjective elements of fear.

*Canada (Minister of Citizenship and Immigration) v. Patel*, [2009] 2 F.C.R. 196

Article 3 of the CRC seems to be the one before the courts most often, and I am proud to note that it is properly used in general.

I am worried about one thing, however. These best interests you speak of may prove to be an implacable enemy to participatory rights if incorrectly handled by adults. How to reconcile this? When combined with methods for fully incorporating the child's participation their purpose is better understood, in my opinion.

What about legal proceedings where children are accompanied by their parents and where various family or immigration interests collide? Does the person designated as the child's representative truly speak for the child? Should the child not be heard if possible? In other words, should Article 3 not be applied in combination with Article 12?

As Andrée Ruffo, then of the Court of Québec, Youth Division, wrote:

[TRANSLATION]

In this forum of speech which is the court, an entire parade of children, parents and grandparents have passed before me, painfully bearing their history of violence, mistreatment and misfortune which they sadly pass on from generation to generation. I have felt both horror at this suffering and courage to confront it. During a meeting with Françoise Dolto, I complained a little about the difficulty of facing the suffering of these children on a daily basis. In that tone of voice that immediately jolts you back to reality, she said, "But those children are fine, they cried out and you heard them; they are more than fine. What you have to do is to quickly move on to those who no longer speak, those who no longer cry out."

*Les enfants de l'ombre* Andrée Ruffo at p.155

I repeat, I was tremendously happy to read the Convention on the Rights of the Child. For someone who is familiar with my thinking, you will not be surprised to learn that Articles 12 to 17 are the ones that particularly drew my attention.

You eloquently express yourself on the different schools of philosophical thought. In fact, my teenage reading included Plato and Rousseau. Allow me to refine your thinking by connecting these schools of thought to the positive rights of the child. Both to expound on theory, and to conceptualize practice. In 1912, I founded the “Orphans’ Home,” an orphanage for Jewish children, and I codirected in 1919 “Our House,” an orphanage for Catholic children. Please note that the law at the time prohibited mixing faiths. Within these two orphanages, I made every effort to give children the chance to live in a true republic, a participatory democracy, a sun-filled world, even if they were later to come face to face with the darker side of humanity.

Upon their entry, the children were given a citizenship category based on their attitude. The first was “troubled entrant” and the last was “comrade”. Although this system may be similar to a caste system – I refer here to the reservations you express in your letter – it was intended to be a concrete way to personally evaluate children in their daily efforts to improve a little more. I also promoted the role of mentorship. Each entrant was taken in charge by a more experienced child, a mentor who helped him learn and invited him to get involved in the life of the orphanage.

Can this be viewed as a city organized on the same lines as the ideal city described by Plato? Yes, even though, once again, my common sense was more of a guide in this process, since this approach worked. I set up a parliament, a newspaper and a court run by the children. In this city, a republic of children, each had a role to play. However, I believe that this was more along the lines of an attempt to improve the children's worth. When assigning tasks, I did not assign any that I had not tried myself. The children therefore learned to love to work and to experience the idea that all work was valuable.

The Allegory of the Cave is one of the richest parts in Plato's Republic, and the one that undoubtedly touched me the most. No participatory republic can be built without this crucial step of leaving the cave. In this text, philosophy is at the service of politics. The symbolic imagery is magnificent and adds a little colour to abstract concepts: the sun as the manifestation of Good and darkness as the unavoidable expression of ignorance. The Allegory aptly recreates the path of the educator. The cave therefore represents the human condition. The inhabitants of the cave do not perceive the things that truly have value. Everything is in shadow.

But let us "infantilize" the metaphor a little. I sincerely believe that children carry this light within them and the educator's duty is to let it shine. The Allegory refers to puppeteers pulling the strings of the puppets whose shadows subjugate the inhabitants of the cave. Children must not be manipulated in this way by adults and learn by false examples. It is our duty to accompany them and help them leave the cave. In turn, they

will do tomorrow what we have done for them today, the philosopher's fate being, unavoidably, to return to the cave.

Once outside this cave, once the recognized values and the prejudices fall away, what purpose will this long path be, I ask you, if children cannot assert themselves as an integral part of the republic and its democracy?

In your time, where attitudes have greatly evolved, in which you have documents that enshrine respect for the rights of the child, what is preventing you right now from advancing participatory rights by allowing children to take their place in society?

I will go further by referring to the philosopher Jean-Jacques Rousseau. I believe that a social contract must bind children and adults in society. The parties to this contract are equal and free before the law. The child does not alienate his freedom in a system created by adults. He has a recognized right to exist.

This is the reason why I recreated in my orphanages political and judicial spheres adapted to children. These children helped me develop an entire democracy. Although an adult staff member generally sat on the committees of these bodies, this adult was not a voting member. He was there more to serve as a resource for the children.

We drew up a constitution, the supreme law. The children regularly had the power to negotiate the rules governing their lives. This way of operating within the orphanages



was, for me, the ultimate expression of the participatory rights of children, a way of putting these rights into practice. There is nothing utopic in allowing children to express themselves.

I am pleased to learn that the United Nations allowed a forum on children to be held during the Special Session of the General Assembly of the United Nations on Children in 2002. I carefully read the Assembly's resolution, "A World Fit for Children," adopted by many countries including Canada:

We want a world fit for children, because a world fit for us is a world fit for everyone.

Should we not see this as living proof that children have ideas on the causes of interest to them that are worth listening to?

I seem to see an echo of this in my book, in Matt's speech during the first session of Parliament, which resonates with me every day:

'I hope that someday children from all over the world will meet together, the way the kings did recently, and all the children will present their own special needs. For instance, African children don't need skates, because they don't have skating rinks.'

J. Korczak, *King Matt the First*, Chapel Hill: Algonquin Books, p. 245.

This initiative is worth being adopted in all countries at the national level. The child must be given a voice in legislation. Experience is educational. The child has the opportunity to exercise his civic duty and learn to understand his world. As for leaders, they have everything to learn from children. Their point of view is strikingly different from that of adults because, as you have informed me, according to Simone de Beauvoir, "a child is a

rebel” (Simone de Beauvoir, *Mémoires d'une jeune fille rangée*, 1958). In my view, a rebel through his sometimes disturbing sense and through his often disconcerting sensibility.

This also applies at the local level in all spheres of the child’s life, including school where the child spends most of his time, provided, of course, he is one of the lucky few who have access to education. Like the non-voting adult on my committees, adults must build ways to dialogue with the child in public services. Do you have a minister or ombudsman responsible for children’s affairs in each nation?

At the judicial level, the orphanages also had a court whose judges were chosen from among the children. This court judged offenders including, sometimes, staff members. The court obeyed a code that I myself had drafted at the time I was doing my military service. The articles of that code are not punitive; on the contrary, the children were encouraged to forgive penitents in minor cases. Do the schools or detention centres for minors that you described to me have this type of mechanism? Does your penal system for young offenders allow for rehabilitation through educational support?

I also founded for the children a newspaper managed by the children, with a circulation of over 150,000 copies, and whose young correspondents came from all over the country. I established the “letter box” that allowed the children to address their comments or complaints to the staff or directly to their companions. This also was an exercise of

freedom of expression. The written word is the most edifying form of freedom of expression. Please believe the writer who addresses these words to you:

Kindness, fairness, creativity and knowledge flourished everywhere  
*The tempest*, Michel M.J. Shore p.35- in describing Korzcak and his educational system within the home he created in the orphanages of the time

In your era where differences are expressed in the media, in those countries where censorship does not exist, where many opinions collide, do children have the opportunity to voice their opinion? How do you encourage freedom of expression, written or verbal, among the children in your societies? I fervently hope that Article 13 of the CRC is the true guardian of this right.

#### Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

You need to understand from the above text that granting participatory rights does not involve transforming children into adults, encouraging them to think as adults, or leading them to recreate the same errors, but rather respecting their status as children and their right to participate, to be heard as children. I am firmly convinced that pragmatism is inevitably the key to giving more legitimacy to participatory rights.

In your letter, you wanted to know my thoughts on adolescence. I must explain to you that the children in my time became adults at the age of 14, the age when they left the orphanage.

I understand that things are very different in your time, because a child between 14 and 17 is an adolescent, not an adult. Allow me to use this turn of phrase, because an adolescent is still a child. What a fragile and delicate period the time of adolescence is, like the period of early childhood! Children must not be pigeonholed, because each one is unique, but I believe that, rather than being a question of age, it is one of maturity. It is imperative that we keep in mind that some adolescents are adults, in terms of maturity, much earlier than others, depending on their culture or other specific circumstances of their life. Why then deny them certain rights, including participating and taking action with regard to the issues that concern them?

Adolescents, whose maturity is in many respects at the same level as that of an adult, should be the primary participants in the decisions concerning them. At that stage of life, it is hardly possible to act in their interests without giving them the means to be heard.

The Supreme Court in *A.C. v. Manitoba (Director of Child and Family Services)* [2009] 2 S.C.R. 181 explained it well:

88 ... When applied to adolescents, therefore, the “best interests” standard must be interpreted in a way that reflects and addresses an adolescent’s evolving capacities for autonomous decision making. It is not only an option for the court to treat the child’s views as an increasingly determinative factor as his or her maturity increases, it is, by definition, in a child’s best interests to respect and promote his or her autonomy to the extent that his or her maturity dictates. (See

John Eekelaar, “The Importance of Thinking that Children Have Rights” (1992), 6 *Int’l J.L. & Fam.* 221, at pp. 228-29, and “The Interests of the Child and the Child’s Wishes: The Role of Dynamic Self-Determinism” (1994), 8 *Int’l J.L. & Fam.* 42.)

[Emphasis added.]

We can only guide them in this transition to adulthood. We can only hope that we have given them a model of what is good. When it is time to say goodbye, we can only aspire to one thing, that they develop values that they carry within themselves. I will reproduce for you the speech that I gave to orphans heading towards their future:

[TRANSLATION]

We are bidding farewell to you, you who have already left our house or who will soon depart, never to return.

We are bidding farewell to you as you embark on a long and distant journey. And the name of that journey is Life. We have often wondered how to say goodbye, what advice to give. Words, alas, are lacking and weak.

We give you nothing.

We do not give you God, because you must look and find Him yourself, in your heart, in your solitary efforts.

We do not give you a homeland, because you must find it yourself by the labour of your hearts and minds.

We do not give you love, because there is no love without forgiveness and to forgive is difficult, a labour which everyone must do for himself.

We give you only one thing: the yearning for a better life that does not exist now but will one day; a life of truth and justice.

Perhaps this yearning will lead you to God, to a homeland, to love.  
Never forget and fare thee well.

J. Korczak, 1919

Finally, as I finish this letter, I wish to discuss certain points that are important to me. At that time of great darkness, in 1940, the orphanage for Jewish children was closed. I

decided to move it into the Warsaw ghetto. I will spare you the details of the living conditions, with which you are familiar. At that time, I lost the right to voice my opinions as an educator on the radio. In this reign of the most inhuman brutality, I devoted my efforts to keeping the children's republic intact. This was undoubtedly the time when I refined my thinking on the obstacles faced by children from different ethnic minorities, but the end for me was near.

In reading your letter, I understand that this question is still of interest to you. How to eradicate discrimination when even children are discriminated against in relation to adults? How hard it is to be a minor child, how difficult it is to be a child from an ethnic minority... in the eyes of those who judge...not in the eyes of those who have no prejudice. In those eyes, the brilliance of cultural diversity is not blinding; the intensity is the same, only the colour is different.

The child is a very resilient being. He overcomes adversity much better than adults, who can't. Perhaps because he knows how to keep hoping in a better future, probably because he trusts more easily. However, it is possible, in adolescence, to become resigned to what should not be. Then the child tragically disappears, assimilated into adult stereotypes.

We must therefore take prompt intervention, value the child, give him the desire to stake a claim on the world by including him in collective projects. Is this any different than the children's republic I established, with the help of the children, in my institutions?

I have learned of the work of certain NGOs that defend the cause of children. The one founded by Greg Mortenson appeared to me to be an excellent example of education as a means to fight against discrimination. After being saved by the population of a village in Pakistan when he was lost in the mountains, Mortenson, who wished to demonstrate his gratitude for the great generosity of the villagers towards him, promised to return to build them a school. Nearly twenty years later, several schools have been built in Pakistan and Afghanistan. These schools are intended mainly for the education of girls who do not have access to education...because they are... merely girls. This project has succeeded because it does not fight ignorance by judging it, but by providing the means of education using resources from the community.

One of the students from the first school, Jahan, made a speech to Greg Mortenson one day:

Jahan had been one of the Korphe School's best students, and Mortenson had often listened to her talk about the hopes she had for her career.

"I told you my dream was to become a doctor one day and you said you would help," Jahan said, at the center of the circle of men. "Well, that day is here. You must keep your promise to me. I'm ready to begin my medical training and I need twenty thousand rupees."

Jahan unfolded a piece of paper on which she'd written a petition, carefully worded in English, detailing the course of study in maternal health care she proposed to attend in Skardu....

Mortenson grinned at the girl's pluck. The first graduate of his first school's first class had obviously learned the lesson he'd hoped all of his female students would absorb eventually—not to take a backseat to men....

She didn't defer to anyone, sat down right in front of Greg, and handed him the product of the revolutionary skills she'd acquired—a proposal, in English, to better herself, and improve the life of her village.

Greg Mortenson and David Olivier Relin, *Three Cups of Tea*, pp. 299, 300.

Or let us cite the case of another young girl, on another continent, who experienced with her younger brother the many torments of life on the streets, and who got a helping hand. She was allowed to express herself about her own existence, about choosing to be helped.

That time I was not able to think about something, to dream or to regret. In one of these days, one of our guys told me that the car came and fed everybody not far from our point. We went there. That was my first acquaintance with my support person. After few weeks and after many conversations I agreed and was taken to “The Way Home”. At “The Way Home” I finally found what I needed and what I was looking for the whole life – this was love, warmth, security and understanding. Now I know exactly what I want in life and what I do not want most of all. I know that I still have a lot to be done for this, but there are people in my life who can help me in this. Thank them very much for that.

– 13-year-old from Ukraine (female)

*Adolescence-Beyond the stereotypes*, UNICEF.

Publication comprised of messages from adolescents the world over.

Programs such as *Reclaiming Adolescence: Roma Transitions to Adulthood* make it possible to rebuild stereotyped adolescents by allowing them to participate. This project works with them hands on. Dialogue is encouraged. The project does not study the Roma by categorizing them once again as a distinct group. On the contrary, this project is unifying, inviting young people to communicate with other young people and get involved.

This must be viewed as true child participation. Children deserve to exercise all the rights conferred by the Convention. The exercise of these rights logically requires the means to put them in practice.

I am now concluding this epistle which I know is very long. I was an enthusiast. I have addressed the child in each one of you. You must remember:



In the sphere of emotions, he excels us by power untrained to restraint.  
J. Korczak, *How to Love a Child* (1919), translated from Polish by Jerzy Bachrach, *Selected Works of Janusz Korczak* (1967), pp. 392-395.

I urge you, do not restrain your power.

I have devoted my life to fighting for children's rights. I lost my life in that fight. A similar sacrifice awaits those who defend children on a daily basis. Despite the flagrant lack of means, efforts must be redoubled to draw on the resources available in order to carry out this task in the best way possible.

How to take more effective action with respect to children—that is the question you asked me. I don't have the only answer. I was qualified as a physician, writer, educator, philosopher. Must my passion be limited to one title? You who convey the voice of children, you are students, judges, teachers, lawyers, educators, physicians, social workers who are at the start or end of a career. You are all different, but all at the service of children, and your mission goes far beyond these titles.

After all, you are only showing compassion for the other half of humanity. Is this not, truthfully speaking, your duty?

My admiration goes with you in your task. Please keep for me that name given to me by my children and so dear to my heart,

The "Old Doctor",  
*Janusz Korczak*

**Note: In this text, the work of Janusz Korczak was a source of inspiration.**  
**The ideas suggested in this text are not his, but those of the author.**

## Korczak's Recommendations

- 1) By means of guidelines, make decision-makers aware of the importance of the child's judicial voice, in terms of exercising his right to be heard and giving his opinion in circumstances that take his age and maturity into account, before analyzing his best interests.
- 2) Train lawyers and judges specialized in childhood issues<sup>1</sup> to ensure the child is adequately represented in any legal issue affecting his interests based on the importance of communicating with the child.
- 3) Make the different professionals who work with children aware of the importance of their participatory rights and the importance of their right to give their opinion on issues affecting them and to be informed of the decisions concerning them.
- 4) Promote the development of multidisciplinary approaches<sup>2</sup> for assessing the best interests of the child by encouraging cooperation among the various stakeholders with a view to adequately identifying the child's interests and opinion.
- 5) Encourage, support and take into consideration the participation of children,<sup>3</sup> as an exercise for learning the rights conferred by the Convention, in school and extracurricular activities through interactive citizenship courses, the creation of student councils, peer helping relationships and democratic conflict resolution mechanisms.
- 6) Encourage and support the participation of children locally and nationally, in full exercise of the rights conferred by the Convention, through the creation of democratic means of expression such as a children's assembly on issues affecting them including, but not being limited to, family policy, recreation and sports, education and the integration of students with disabilities.
- 7) Encourage, support and take into consideration the participation of children locally and nationally, as an exercise of the rights conferred by the Convention, through written, electronic, televised or broadcast means of expression.
- 8) Use information technologies to inform children of their rights and programs designed to promote them.
- 9) Promote and support programs developed by children in recognition of the exercise of their right to participate.

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<sup>1</sup> Final draft of [the recommendation containing] the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

<sup>2</sup> Ibid.

<sup>3</sup> See the General Comment on "The aims of education" by the Committee on the Rights of the Child.

- 10) Create at the national level a body responsible for managing children's affairs based on direct dialogue with children.
- 11) Encourage and support parents in their primary role as educators by making them aware of the participatory rights of children and the respect owed to them.