Implementing Article 12: Procedures, Obstacles and Explanations

4.1 Introduction

While acknowledging the complexity of the task of understanding and interpreting the right to be heard and have one’s views taken into account as formulated in Article 12 of the CRC (as described in the previous chapter), an (arguably) even greater challenge is the carrying out of this right in practice: overbridging the gap between rhetoric and reality. Without effective implementation at domestic level, this right (as with any right) is of little consequence. The mechanisms of implementation and monitoring of any human rights treaty are its watchdogs. Unless such workings are effective, a treaty is nothing more than a paper tiger. The importance of effective execution at domestic level and the careful monitoring of how state parties to a treaty actually meet their obligations in accordance with the treaty concerned cannot therefore be overemphasised.

Article 12 can be (and has been) interpreted in many different ways by state parties, particularly before guidance from the Committee on the Rights of the Child was issued through the General Comment on Article 12 in 2009.1 The arrival, however, of a General Comment neither created absolute conformity on how Article 12 was interpreted by state parties, nor did it remove all obstacles to its effective implementation. On the contrary, Article 12 has from the beginning been described as one of the more difficult provisions of the treaty to implement in practice and remains to be considered a challenge by many state parties.2 This chapter identifies what is required by the CRC with regard to implementation in general and Article 12 in particular, including the importance of the status of the CRC in domestic law. Moreover, the main obstacles to an effective implementation of Article 12, as presented by state parties within the context of the CRC reporting process, are examined, as are how these

1 Aisling Parkes, Children and International Human Rights Law, The Right of the Child to be Heard (Routledge 2013) 45.
2 Parkes (n 1); Rebecca Stern, The Child’s Right to Participation. Reality or Rhetoric? (Uppsala universitet 2006).
explanations are responded to and commented on by the CRC Committee in their Concluding Observations. The aim of this exercise is not to examine state practice as such on Article 12 in the different aspects of a child’s life, but rather to look at whether, and how, state parties themselves describe the difficulties and, when applicable, to what or whom responsibility for the less than satisfactory implementation of this core right is ascribed. Particular focus is on those explanations that relate to culture, attitudes and tradition, as these (as discussed in Chapter 1) are impediments often referred to by state parties when explaining lack of or ineffective implementation of Article 12. It is held that such an analysis can provide valuable insights on how the legitimacy of the human rights of children are perceived, in particular the right to exercise influence over one’s own life and the community of which one is a member.

4.2 General Measures of Implementation

4.2.1 On Obligations, Requirements and Resources
The actual impact of a human rights treaty is largely a matter of national rather than international action. Following international treaty law, on ratifying a treaty, a state enters into an agreement with the other contracting parties and accepts the obligation to implement the particular treaty at domestic level. A state that is party to a treaty has a duty to interpret it in good faith and in the light of its object and purpose and not to submit reservations that are incompatible with its object and purpose. It is, however, for the state parties to determine how their international treaty obligations should best be implemented, provided the result is in conformity with such obligations. It can be described as state parties being saddled not only with a duty of conduct but

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3 There are several such studies, one of the more recent and comprehensive being Parkes (n 1).
6 VCLT Articles 31–33.
7 VCLT Article 19(3).