

Strengthening the rights of the child in administrative and judicial proceedings related to migration:

Implementing the Council of Europe guidelines on child-friendly justice

All EU Member States have ratified the International Convention on the Rights of the Child and are thus bound to its implementation. Every year, **across the EU hundreds of thousands of children experiencing migration¹ have their fundamental rights violated.**

Exercising their fundamental rights relies usually on multiple administrative and administrative justice proceedings. However, these various proceedings related to migration are, in most cases, not adapted to children, even though they directly concern them. **The fact that these migration-related proceedings are not adapted to children** (e.g., application for international protection, family reunification, age assessment, etc.) **constitutes a major obstacle to the exercise of their rights.**

" Justice should be children's friend. It should not walk in front of them, as they may not follow. It should not walk behind children, as they should not be burdened with the responsibility to lead. It should just walk beside them and be their friend."

Maud de Boer-Buquicchio,
Deputy Secretary General of the Council
of Europe from 2002 to 2012

Adopted in 2010, **the Council of Europe guidelines on child-friendly justice** set out both general principles and specific rules that are essential to ensure that children's rights are respected in all proceedings affecting them.

The EU has important competences in this area, mainly as a result of Articles 77 to 80 of the Treaty on the Functioning of the EU (TFEU). Consequently, several European standards directly regulate such procedures, in particular: the Qualification Directive (Directive 2011/95/EU), the Asylum procedures Directive (Directive 2013/32/EU), the Reception Conditions Directive (Directive 2013/33/EU), the Dublin III Regulation (Regulation No. 604/2013), the EURODAC Regulation (Regulation No. 603/2013), which constitute the Common European Asylum System, the Return Directive (Directive 2008/115/EC), the EU-Turkey Agreement of 18 March 2016, etc. Several of these European legal instruments are currently undergoing a reform process, and this document aims to **provide guidance so that proceedings always consider the rights of the child** and protect them to the maximum extent possible.

- Whenever they concern children, whether accompanied or unaccompanied, administrative and administrative justice proceedings related to migration should be child-friendly.

¹ In 2018, 197,725 children, whether in families or unaccompanied, were involved in an asylum procedure in the EU (which represents only a part of the children in migration situations). Source: Table "Asylum seekers and

10 key findings on migration-related proceedings across the EU

The findings presented here are mainly based on the research carried out in the framework of the *CFJ in action!*² project on the implementation of the guidelines in migration-related proceedings in Italy, Greece, Belgium, Spain, the Netherlands and France. Particular attention was paid to unaccompanied foreign minors, with the exception of Belgium, where the research focuses specifically on children accompanied by their parents.

In general, we note that the guidelines are only partially implemented, and we detail ten key findings here:

1. Children are generally either **not informed enough**, especially about their rights, **or informed in a way that is not sufficiently adapted and does not allow them to really understand** the information and its consequences. They are not appropriately informed neither at the beginning of the procedure nor in the different stages even though information and children's understanding of that information is crucial to the exercise of their rights.
2. Children **do not have sufficient opportunity to be heard** in the proceedings. The research points out two main elements: children very often do not have the opportunity to participate, or, when they are heard, ill-adapted proceedings can cause adverse consequences on children. Indeed, many times children's views are not freely shared but their opinion is rather conditioned by environmental factors (such as inadequate setting, language barriers, fear of not saying what professionals or authorities want to hear etc.). Moreover, when they are heard, **their views are often not taken into due consideration**. The real challenge is to ensure meaningful participation.
3. Children do not have **sufficient access to legal aid**. Generally, legal aid is not provided for at the first level of the procedure, yet already at this stage decisive decisions for the child can be issued. For example, in Greece *"The law does not provide for free state-funded legal aid at the first level of the procedure (hearing). This means that children who are not supported by an NGO are not legally represented."*³ Most of the child who are involved in proceedings with their family do not receive direct legal support at all.
4. Whether issued by an administration or a court, decisions are rarely accompanied by an **assessment of the best interests of the child(ren) concerned and therefore generally do not contain reasons outlining how** their best interests are taken into account as a primary consideration.
5. **Accompanied children are invisible**: when a proceeding involves a child or children with at least one parent, the children are often poorly informed, do not directly participate and their best interests are not taken into account. *"What happens a lot with accompanied children, if they have not applied for asylum on their own behalf, is that they are not given much consideration"*⁴. Judge, Belgium

² CFJ In Action" project coordinated by DEI-Belgium, funded by the European Commission's Erasmus+ programme and running from October 2018 to September 2020.

³ Extract from the Greek national research report developed by DCI-Greece in the framework of the project "CFJ In Action".

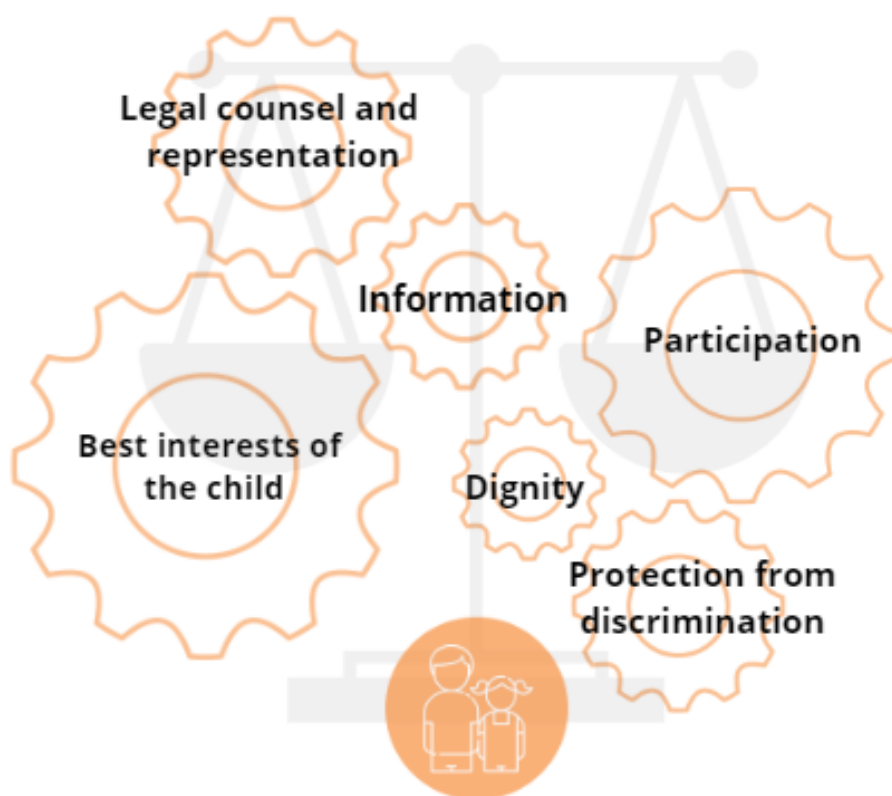
⁴ Extract from the Belgian national research report developed by DEI-Belgium in the framework of the project "CFJ In Action".

6. The **duration of the proceedings is often inadequate**. They are often far too long and can last several years and are therefore incompatible with the well-being and effectiveness of children's rights. On the other hand, there is evidence that rushed proceedings can also be detrimental by, inter alia, hindering the accessibility of remedies or the information and participation of the child.
7. **The training**, both initial and in service, of professionals directly involved in migration-related proceedings is still insufficient in most EU countries. The professionals (lawyers, judges, guardians, administrative officials, etc.) we were able to interview testify to these shortcomings in training and many of them express a desire for better training in the area of children's rights (particularly in communicating with a child or assessing the best interests of the child).
8. Children in the context of migration are all too **often deprived of appropriate accommodation during the proceedings**. On this issue, the situation is quite different from one country studied to another. In the worst situations (which remain frequent), it is observed that children are either homeless, kept in detention, or accommodated in hotels without receiving any support. In other countries the situation is better and children have easier access to accommodation. Lack of appropriate accommodation constitutes a major obstacle to the exercise of their rights during the proceedings (right to information, to legal support) and aside (health, freedom, education etc.).
9. Across the EU, **procedures for age assessment are** still mainly based on medical examinations which are neither reliable nor in accordance with the principles of child-friendly justice⁵. Moreover, in many EU countries there is an overuse of these procedures which are used even though the child has genuine and legitimate identity documents.
10. Across the Union, hundreds of children - alone or with their families - are **detained** every year for **migration-related reasons** even though it is widely established internationally that deprivation of liberty has severe consequences for children, in particular for their physical and psychological integrity, and is therefore a serious violation of their fundamental rights⁶.

⁵ See for example Committee on the Rights of the Child, 27 September 2018, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 11/2017

⁶ The detention of children around the world for migration-related reasons and its illegality under international law is particularly documented in the final report of the UN Global Study on Children deprived of Liberty published in December 2019

Child-friendly justice in migration proceedings



"It [child-friendly justice] treats children with dignity, respect, care and fairness. It is accessible, understandable and reliable."

Maud de Boer-Buquicchio,
Deputy Secretary General of the Council of
Europe from 2002 to 2012

Implementing the CFJ guidelines in migration-related proceedings: guidance for action

The European Union's competences in the field of migration-related procedures are important and numerous. In this light, and in response to the above-mentioned key findings from the research and experience of the project partners as well as an approach based on the fundamental rights of the child, we present a series of recommendations for action to be taken at EU level.

192 States throughout the world, including the 27 Member States of the European Union, have ratified the International Convention on the Rights of the Child (CRC). **The Union should also sign and ratify the CRC in order to guarantee its commitment to the rights of the child and respect for them in all the legislation and policies it adopts**⁷.

In order to strengthen the implementation of the Convention, EU Member States which have not done so should ratify as soon as possible the Third Protocol to the Convention, which has already demonstrated its usefulness in protecting the rights of children in the context of migration⁸.

Furthermore, all **European legislation** that rules or indirectly impacts on migration-related proceedings must **comply with the** Council of Europe guidelines on child-friendly justice. In order to promote their real and concrete application, **implementation tools must be developed and the necessary means allocated**.

- The **transfer** of the examination of an application for international protection concerning a child **from one Member State to another should be possible only if motivated by the best interests of the child**.
- Guardians of unaccompanied minors have a key role in ensuring that the rights of the child are respected throughout the procedure. A Guardian should be appointed for all unaccompanied minor (even in the case of doubts about the age). It is therefore essential to ensure that there are enough suitably **trained guardians, that they are independent from the decision-making authorities and that they have the necessary means to accompany the minor**.
- To guarantee the presence of an interpreter whenever necessary (ensure that children do not become de facto interpreters for their parents due to a lack of interpreters) and generalise the presence of cultural mediators. To this end, it is necessary to **recruit and train these professionals in sufficient numbers and at every stage of any proceeding their presence should be guaranteed**.
- Ensuring access to legal aid implies that the law states that **all children involved in migration-related proceedings can access free legal aid from the outset of the procedure**

⁷ The EU has already ratified such a human rights treaty: the UN Convention on the Rights of Persons with Disabilities, on 5 January 2011. More information in the Commission press release: https://ec.europa.eu/commission/presscorner/detail/en/IP_11_4

⁸ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Adopted on 19 December 2011, entered into force on 14 April 2014

(by having access to a qualified and properly trained lawyer or legal adviser). Moreover, it is very useful to **mainstream the presence of legal advisers in accommodation facilities**.

- The duration of proceedings must be appropriate, and to this end, the **legislation must provide for reasonable lengths of time** (short deadlines respecting the exercise of the rights of the child, emergency procedures are not necessarily appropriate) when the proceedings concern one or more children. In that regard, it is also necessary that there is a **sufficient number of staff in administrations and courts**.
- **To include in every migration-related proceeding involving a child or children the assessment of the best interests** of the child or children involved according to a holistic methodology and monitored by trained professionals.
- **All decisions** in migration-related proceedings concerning one or more children **must be duly motivated, taking into account their best interests as a primary consideration, failing which they shall be null and void**.
- To guarantee to all children, whether accompanied by their families or not, the **right to adequate accommodation** and guarantying the effectiveness of this right by **allocating the necessary means for accommodation**.
- **To prohibit, in all cases, the detention of children** (alone or accompanied) for migration-related reasons. To this end, Articles 8 of the Reception conditions Directive, 26 of the Asylum procedures Directive, and 17 of the Return Directive should be amended to include "Member States may never detain a child, whether alone or with his or her family. This prohibition of detention must not justify the separation of families".
- **To include in the legislation the right of the children to be informed in** a language they can understand, clear and adapted to their level of maturity and their particular situation, about, inter alia: their rights, the stages, actors and time limits of the proceedings, the possible consequences of every step of the proceeding, and the support they may receive. This right could in particular be included into the Asylum procedures Directive.
- **To support compulsory initial and continue training of all professionals concerned** (lawyers, guardians, judges, administrative officials, etc.) to enable them to implement the requirements of child-friendly justice. Such training should therefore include content related to children's rights, assessment of the best interests of the child, communication methods and child-friendly language. To this end, certain elements of the training of civil and criminal justice or administrative staff already existing and regarding children's rights can be mainstreamed or adapted.
- **To develop child-friendly information materials**, i.e. materials that have been developed and tested by children.
- Ensure that the law recognises **children's participation** in migration-related **as a fundamental right**. The law should also recognise that **children's participation should never be considered as an obligation**. Children may refuse to participate and this should not influence negatively the analysis and outcome of their application, even if the child is an unaccompanied minor.

- To guarantee to **each child who wishes to participate an adequate preparation** with a legal adviser and/or his or her lawyer (and with medical and psychological support when necessary) and to guarantee the presence of the child's lawyer and a trusted person or the guardian at each hearing in which he or she participates. To this end, concrete courses of action to be undertaken are: **to mainstream the presence of legal advisers in reception and accommodation centres, to reinforce the availability and accessibility of legal aid for these children and to facilitate access to health care.**
- To ensure that each child's participation is meaningful, respectful of his or her rights and especially of his or her physical and psychological integrity. To this end, measures must be adopted to **adapt the environment, duration and course** (including breaks), as **well as the content** (e.g. content and wording of questions) of **hearings.**
- Safeguarding the rights of the child while respecting his or her fundamental right to be heard means adopting a legal framework that provides that **child's statements should never be used as grounds for rejecting the family's application because of contradictions between the statements of the child and his or her parents.**
- **Age assessment:** Legislate to ensure a **presumption of minority status** for any person who presents himself or herself as a **minor** and to determine age assessment procedures that are consistent with the guidelines; that are not based on medical methods whose reliability is questioned, but on a **medico-social and multidisciplinary model** and in which the right to appeal the results is guaranteed.
- Particular attention should be paid to the implementation of article 39 of the CRC along the whole asylum process. Indeed, these proceedings should "promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts".

More information and details on the implementation of the guidelines and the actions that should be implemented at EU and Member State level can be found in the Advocacy Research Paper entitled "Implementing the Council of Europe Guidelines on Child-friendly Justice in Migration Proceedings - European Advocacy Research Paper" and available online on the [Child Friendly Justice European Network website](#).

This document was produced thanks to research carried out as part of the "**Child-Friendly Justice In Action**" (CFJ-IA) project funded by the European Commission's Erasmus+ programme and coordinated by Defence for Children International - Belgium and Defence for Children International - World Service. This position paper was produced by DCI-Belgium, DCI-Italy and DCI-Greece.

It was supported by the Initiative for children in migration and co-funded by the European Programme for Integration and Migration (EPIM) and the H&M Foundation.

The contents of this document represent the views of the authors and are their sole responsibility.



With the support of:

*Initiative
for children in migration*

Co-funded by: