

Child migrant and Child-friendly administrative justice procedures

Report of the “Child-Friendly Justice In Action” project
focusing on six European countries





Child-Friendly Justice In Action project

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DCI-Belgium is the lead partner of this project. The purpose of the work of DCI-Belgium is to protect and defend children's rights in Belgium and in other countries. DCI-Belgium is part of the Defence for Children International's Worldwide Movement, comprising a network of 35 National Sections and other associated members spread out across the globe. DCI's main interventions include: training, education and awareness raising; taking action when children's rights are being infringed and providing oversight and monitoring of Belgium's respect for the fundamental rights of children.

This publication is one of the intellectual outputs of the "Child-Friendly Justice In Action" project.

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GLOSSARY

Child

In this publication, we will use the term “child” in the sense of the first article of the International Convention on the Rights of the Child, which defines a child as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Unaccompanied child

An unaccompanied child is a child without the presence of a legal guardian. The UN Committee on the Rights of the Child defines unaccompanied children as those “who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”

Accompanied child

An accompanied child is considered as any child who, in any residence procedure, is accompanied by (a) parent(s) or legal guardian. European children accompanied by (a) parent(s) are also called accompanied children.

Child-friendly justice

Child-friendly justice is defined as follows by the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted on 17 November 2010:

“It means creating a justice system which guarantees the respect and the effective implementation of all children’s rights, giving due consideration to the child’s level of maturity and understanding and to the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”

Council of Europe

It is an International Organisation (IO) created in 1949, bringing together 47 Member States, including the 27 members of the EU, and with a legal personality recognised in public international law. The Council of Europe promotes the protection of human rights, the strengthening of democracy and the rule of law in Europe, through legal standards and tools aimed at strengthening cooperation and harmonisation of standards and practices between Member States.



INTRODUCTION

2.1 CHILD MIGRANTS AND EQUAL ACCESS TO JUSTICE

Justice is a key element for the stability of our societies. It affects persons in different areas of their life and therefore must be accessible and understandable to everyone. Whether they commit an offence, are victims of an offence or, for example, need to seek asylum because their lives are threatened in their countries, individuals may come into contact with the justice system.

Among the people who might be involved in judicial proceedings, children represent a large proportion¹. Yet, the justice system was not originally designed to meet this part of the population's needs and requirements. Lengthy proceedings, difficult terminologies and stressful environments are common descriptions used by people who come in contact with the law. These are opposite qualifications to the feelings of support, ease and fairness that should be triggered by interactions with the justice system, especially for children. To achieve this, conscious efforts must be made and initiatives contributing to this aim highlighted.

In recent years, children have been progressively recognised as having distinct needs and, thus, entitled to specific rights notably endorsed by the International Convention on the Rights of the Child (CRC) adopted by the General Assembly of the United Nations in 1989. In the context of justice, children's rights have been reinforced thanks to the Guidelines on Child-Friendly Justice, adopted by the Committee of Ministers of the Council of Europe² in 2010. These guidelines focus on several fundamental elements essential to making justice systems adapted to children (see chapter 3). They serve as a reference for Council of Europe's Member States in order for them to "adapt their judicial and non-judicial systems to the rights, interests and specific needs of children"³. Consequently, the Child-Friendly Justice Guidelines (CFJ Guidelines) aim to ensure that children's rights are fully respected in all justice proceedings including criminal, civil and administrative procedures.

Every year across the European Union, tens of thousands of children are involved in migration-related administrative justice procedures that determine the exercise of their rights. Almost 200.000 children⁴, whether accompanied or not, were involved in an asylum procedure across the twenty-seven European Member States in 2019. This represents almost one third of the total number of people seeking asylum in the European Union that year.

Ten years have now passed since the adoption of the CFJ Guidelines. This report aims to analyse administrative proceedings involving child migrants in six European countries in order to assess to which extent these proceedings take into account the CFJ Guidelines. Based on this analysis, we highlight inspiring practices and underline recommendations in order to foster respect for the rights of children who come into contact with administrative justice in the context of migration, with a particular focus on the application for international protection. This report is one of the intellectual outputs of the Child-Friendly Justice In Action project.

2.2 CHILD-FRIENDLY JUSTICE IN ACTION

As mentioned before, over the last years, the Council of Europe has championed an innovative approach in adopting various standards and guidelines in the field of child-friendly justice. They aim at improving the justice system and adapting it to the specific needs of children. However, these standards, still fairly recent, are not sufficiently disseminated and known among professionals working directly or indirectly with children in contact with the justice system.

To address these findings and support the effective implementation of the CFJ Guidelines, the European sections of the Defence for Children International Movement (DCI) set up the Child-Friendly Justice In Action (CFJ-IA) project in order to raise awareness on the CFJ Guidelines among justice professionals. This project, funded by the Erasmus+ programme of the European Commission, is also the first initiative of the Child-Friendly Justice European Network (CFJ-EN)⁵.

¹ According to Unicef, across the world, millions of children interact with justice systems every year, <https://www.unicef.org/protection/justice-for-children>

² Committee of Ministers of the Council of Europe, 17 November 2010, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

³ Preamble to the CFJ Guidelines.

⁴ Exactly 198,855 children, see online table "Asylum seekers and first-time asylum seekers by nationality, age and sex. Aggregated annual data (rounded)", Eurostat, website updated on 02-04-2020.

⁵ www.cfjnetwork.eu

The objectives of CFJ-IA are:

- ↳ To contribute to the adaptation of administrative proceedings involving child migrants applying for international protection in line with the principles of child-friendly justice;
- ↳ To promote quality work of professionals working in contact with child migrants; and
- ↳ To build a strong cooperation among civil society organisations through the CFJ-EN.

CFJ-IA is based on a methodology where the research material comes directly, on one hand, from professionals working in the field and, on the other hand, from children themselves. During the first phase of the project (September to December 2019), partners consulted professionals⁶ working in administrative proceedings involving unaccompanied foreign children (in Spain, France, Italy, Greece and The Netherlands) and accompanied foreign children (in Belgium). They conducted one-to-one interviews and/or asked the professionals to fill in a specific questionnaire to assess whether they are embracing a child-friendly approach in their daily work. The second phase (January to April 2020) focused on gathering the voice of children involved in administrative proceedings related to international protection applications. All six partners held participative workshops, organized interviews and asked voluntary children⁷ to fill in a child-friendly questionnaire in order to collect their opinion and experience of their administrative journey as part of their international protection application.

Each project partner developed a national report based on the results of these consultations and completed it with desk-based research. The present report summarizes findings from the national reports, highlighting key European common issues related to child-friendly justice principles, inspiring practices and final recommendations.

2.3 OBJECT AND TARGET AUDIENCE OF THIS REPORT

This document aims at raising awareness on child-friendly approaches in migration-related procedures concerning unaccompanied and accompanied foreign children applying for international protection. It can be used as an advocacy tool for human and children's rights organisations when addressing key stakeholders. It also includes informative material relevant to professionals in contact with child migrants (whether they are guardians, lawyers or professionals working in contact with child migrants involved in international protection procedures), highlighting key elements ensuring that child migrants can benefit from the best adapted justice system to their needs and requirements.

2.4 TOOLKIT FOR PROFESSIONALS

In addition to this report, project partners developed a specific tool for professionals. Designed to be as simple, clear and straightforward as possible, this tool helps professionals working with child migrants to integrate key elements enabling the mainstreaming of child-friendly principles into their work.

The structure of the toolkit for professionals is as follows:

- 1) Success factors identified as determining strategic elements enabling professionals to comply with the CFJ principles. The more success factors are reunited or observed, the more the professional meets the CFJ principles;
- 2) For each success factor, the tool outlines guiding questions aimed at removing obstacles analysed and encouraging a reflection among professionals;
- 3) For each success factor, there are examples of initiatives or best practices illustrating ways in which professionals have attempted to address key issues at hand.

This toolkit for professionals is available on the CFJ-EN website in five languages.

⁶ 113 professionals fully filled in the questionnaire and 135 partially filled in the questionnaire across the 6 partner countries.

⁷ Around 30 children were interviewed. Due to the measures taking place to fight the expansion of the COVID-19, partners sometimes had to resort to alternative ways to collect children's opinions

3.

CHILD-FRIENDLY JUSTICE GUIDELINES OF THE COUNCIL OF EUROPE

Inspired by many international standards, including the International Convention on the Rights of the Child and the European Convention on Human Rights, the CFJ Guidelines aim to ensure that in all procedures concerning them, children have their rights respected.

They lay down both general principles and specific rules which are essential to ensure that the rights to access to justice and to a fair trial are applied to all children in an effective way.

“ Justice should be child-friendly. It should not walk in front of them, because they may not follow. It should not walk behind them, so that they do not bear the responsibility of leading the way. It should simply walk beside them and be their friend. „⁸

PRINCIPLES OF CHILD-FRIENDLY JUSTICE



⁸ Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe from 2002 to 2012, excerpts from the preface to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, October 2011.

3.1 THE SCOPE OF THE GUIDELINES

All Member States of the Council of Europe, thus including EU Member States, have adopted these guidelines.

The guidelines should be applied in all justice proceedings in which a child (i.e. anyone under 18 years of age) is involved. It does not matter what status the child has in the proceedings: he or she can be an applicant, a victim, a witness, a perpetrator, etc.⁹ “Judicial proceedings” refers to all proceedings used by institutions and services involved in the implementation of the law. The CFJ Guidelines takes into account “all competent bodies and services involved in implementing criminal, civil or administrative law”.

Thus, the CFJ Guidelines also cover administrative proceedings related to migration. This includes, for example, procedures relating to the application for international protection, residence, family reunification, age assessment or the release of a child from administrative detention.

These guiding principles must be applied in concreto to each child in an adapted manner.

“ A child-friendly system protects the young from hardship, makes sure that they have a place and say, gives due consideration and interpretation to their words without endangering the reliability of justice or the best interests of the child. It is age-sensitive, tailored to children’s needs and guarantees an individualised approach without stigmatising or labelling children. ”¹⁰

3.2 A PRACTICAL INSTRUMENT RESULTING FROM AN INNOVATIVE DEVELOPMENT PROCESS

The CFJ Guidelines were drawn up by a group of specialists (bringing together professionals and experts in the field) and taking into account the results of consultations with children (3000 children across 25 countries via questionnaires).

These guidelines offer a practical tool for adapting procedures to the specific rights, needs and interests of children. The guidelines should therefore be fully integrated into the development and implementation of European Union policies.

3.3 CONTENT OF CFJ GUIDELINES

A child involved in proceedings has the right to be informed and to receive legal advice. He or she should, inter alia, be informed of his or her rights, the course of the proceedings and their likely duration, the existence of organisations that can provide the support he or she needs, the content of the decisions taken by the administration or the courts that concern him or her, etc. The information must be adapted to the child’s age and maturity and must be communicated to the child in an appropriate language. The information should be given to the child and to his or her parents or legal representatives.

Properly informing the child is a key element for justice to be truly child-friendly. It enhances meaningful child’s participation and it enables children to exercise their rights.

⁹ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, Octobre 2011, pages 8 and 9.

¹⁰ Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe from 2002 to 2012, excerpt from the preface to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, Octobre 2011.

The CFJ Guidelines provide for the implementation of special measures to protect the child's privacy and family life throughout the proceedings. Similarly, as the safety of children may be particularly at risk during proceedings, special measures must be adopted to protect it.

In order to ensure that children's rights are respected and implemented throughout these proceedings, the training of professionals working with and for children is paramount.

Regarding deprivation of liberty, the guidelines generally reiterate the provisions of the CRC, in particular that deprivation of liberty of children "should be a measure of last resort and for the shortest appropriate period of time"¹¹. Clarification is made concerning unaccompanied or separated children for whom deprivation of liberty "should never be motivated by a lack of residence status"¹². However, these provisions are general as the guidelines refer to all situations in which a child could be deprived of liberty (justice, institutions, etc.). In the field of migration, since 2010 a large number of international decisions and declarations¹³ have stated that deprivation of a child's liberty for migration-related reasons is contrary to the CRC. Therefore, the full implementation of the CFJ Guidelines today implies that no child should be detained for reasons related to his or her migration situation or that of his or her parents.

A child-friendly procedure is also a procedure in which the temporality (duration of the procedure and its stages), language, environment, and accessibility of remedies are adapted to the child. In all these procedures, the child must be able to benefit from appropriate legal advice and be able to express himself or herself, as well as have his or her views taken into account.

3.4 WHY ARE THE CFJ GUIDELINES FUNDAMENTAL TO THE RESPECT OF CHILD MIGRANTS' RIGHTS?

A child is first and foremost a child, regardless of his or her migration status or that of his or her parents. In this sense, he or she has rights (mainly under the CRC) which must be the starting point and the guiding thread of any action concerning him or her.

However, when a child finds her/himself involved in a migration process, she/he may also find her/himself involved in a multitude of proceedings - including applications for international protection, residency, age assessment, family reunification procedures, etc. These can deeply impact or potentially impair the child from exercising her/his rights, especially those rights historically connected with citizenship and or residency, such as the right to education and the right to health.

In addition, children in migration situations tend to present specificities that make the adaptation of procedures even more essential in order for them to exercise their rights. If the procedure is not adapted, there is a risk that these particularities become vulnerabilities. Indeed, often the degree of vulnerability of a child in a situation of migration is very much determined by the context in which she or he finds her/himself, including the institutional system. In other words, we could define the degree of vulnerability as the result of the relation between the child and the different levels of the surrounding context. For example, this is particularly the case if a child is not proficient in the language of the procedure, if he or she is unaccompanied or if he or she has experienced particular traumas before or during their migration journey.

Finally, the CFJ Guidelines aim to ensure that procedures are respectful of the physical and psychological integrity of children. A number of stages of the asylum-related procedures are particularly likely to affect children's integrity. This is true, for example, for the hearings conducted before the administrative authority responsible for examining an application for international protection, during which the child is requested to explain to the officer the reasons for his or her application for international protection. It can potentially lead to recounting traumatic events without creating the appropriate setting.

¹¹ Convention on the Rights of the Child, article 37 §b

¹² Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, §22

¹³ On the non-compliance of the detention of children on migration-related grounds with international standards, see: Nowak M. and others, The United Nations Global Study on children deprived of liberty, November 2019, from page 450 available online: <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>

3.5 ARE THE ADMINISTRATIVE JUSTICE PROCEDURES RELATED TO MIGRATION “CHILD-FRIENDLY”?

The desk and field research conducted as part of the CFJ-IA project allows us to identify a number of challenges. The findings presented herein come mainly from research conducted between 2018 and 2020 in Greece, Italy, Belgium, France, Spain and the Netherlands. In all of these countries, particular attention was paid to unaccompanied foreign children, with the exception of Belgium where the research focused specifically on accompanied children.

Generally speaking, in all these countries the guidelines have been found to be only partially implemented. In many respects, the child is seen and treated first and foremost as a migrant, and this is a major obstacle to the implementation of the guidelines and, more broadly, of children’s fundamental rights.

This partial implementation is based on deficiencies in the legal framework, unsatisfactory implementation of certain legal provisions in line with the guidelines, or inconsistent implementation of legal safeguards.

4.

EU MIGRATION LEGAL STANDARDS

The diversity of judicial systems in Europe is a major challenge. Despite the ratification and signature of the United Nations Convention on the Rights of the Child by all European countries, respect for children's rights in the field of justice is relatively heterogeneous.

There have been many positive developments in recent years. Agendas have become more focused on the realization of children's rights within the justice system. However, much work remains to be done to uphold child-friendly justice in all areas that directly or indirectly affect children, especially in the field of administrative justice.

This European report focuses on the application of child-friendly justice principles in administrative proceedings concerning applications for international protection. Indeed, greater respect for child-friendly justice principles is crucial when child migrants come into contact with actors as part of the international protection application process, as these children risk becoming double vulnerable, due to their age and asylum-seeking status. This vulnerability has been highlighted by the European Court of Human Rights in several judgments, including the *M.S.S. v. Greece and Belgium* judgment in which it considered that vulnerability is inherent to the status of the asylum seeker, due to his or her migratory background and the traumatic experiences he or she may have lived through beforehand. In *Tarakhel v. Switzerland*, the Court further clarified that the requirement of special protection for asylum-seekers is all the more important when the persons concerned are children, given their special needs and fragility.

The 1951 Geneva Convention¹⁴ remains the cornerstone of international refugee protection. Over time, regional instruments have complemented the international statutory protection of refugees offered by this Convention. In Europe, the development within the common territory of the free movement of persons (E.E.C., then Schengen and the E.U.) has made it necessary to develop a common asylum and immigration policy. Today, the European regional framework for international protection is governed by the Geneva Convention as interpreted by the Qualification Directive¹⁵. The Reception Conditions Directive¹⁶ defines common minimum standards for the reception of persons seeking international protection for all Member States. These include access to housing, food, health care and employment, as well as access to medical and psychological care. The directive also restricts the detention of vulnerable persons, including children. Finally, the Asylum Procedures Directive¹⁷ designs a common system of procedures for granting and withdrawing international protection. In particular, it posits that the Member States must ensure that interviews are conducted in a child-friendly manner¹⁸.

Despite these directives, the current system is such that asylum seekers are not treated uniformly throughout the EU. The refugee reception crisis of 2015 has highlighted the need for a reform of the Common European Asylum System. Several objectives for this reform have been set, which are focused clearly on the interests of the Member States as they seem to adopt a security-based approach rather than a human-rights based one:

- ↳ Making the system more efficient and more resistant to migratory pressures;
- ↳ Removing pull factors as well as secondary movements;
- ↳ Combating abuse and providing greater support to the most affected Member States.

Realities on the ground make data collection and analysis of migration data by age extremely challenging. Indeed, data collection on child migrants face various challenges including incomplete data and information, different definitions of age categories¹⁹ and different criteria for recording data. Yet migration data is crucial for policymakers.

¹⁴ Convention and Protocol Relating to the Status of Refugees, 1951, United Nations, Geneva

¹⁵ Qualification Directive 2011/95/EU of 13 December 2011, available online:
<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>

¹⁶ Reception Conditions Directive 2013/33/EU of 26 June 2013, available online:
<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:EN:PDF>

¹⁷ Asylum Procedures Directive 2013/32/EU of 26 June 2013, available online:
<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0060:0095:EN:PDF>

¹⁸ Asylum Procedures Directive 2013/32/EU of 26 June 2013, article 15 §3(e)

¹⁹ As explained by the Migration data portal organization "it is important to note that definitions of childhood have changed over time and often do not match what was historically seen as childhood even within the same country. Additionally, just as the concepts of "childhood and "adulthood" vary across cultures, the definitions and categories used by governments which collect information at border entry and exit points and during the asylum process also vary. For instance, in Europe, government policy documents interchangeably use different terminology, including "child", "minor", "unaccompanied child", "unaccompanied minor" and "unaccompanied migrant minor". Data on child migrants may be disaggregated into those who are accompanied, such as those who travel with their family members or guardians, and those who travel alone, either because they are unaccompanied or because they have been separated from their family or guardian during their journey". (<https://migrationdataportal.org/themes/child-and-young-migrants>)

According to Eurostat, in 2018, at EU level, child migrants, aged 18 years and under, accounted for 28% of the total migrant population. In 2019, there were 13.800 unaccompanied foreign children who sought international protection in the 27 Member States of the European Union (EU), nearly 20% fewer than in 2018 (16.800), continuing the downward trend that started after the peak year 2015 (92.000). The majority of these unaccompanied children were boys (85%). Two thirds were aged 16 or 17, while those aged 14 or 15 accounted for 22% of unaccompanied children and those under 14 for 11%²⁰. It is striking to notice that, in 2019, at EU level, unaccompanied children accounted for 7% of all applicants aged less than 18, which means that 93% of children are actually accompanied ²¹.

It is obvious that the migration situation differs from one country to another; specifically, intense pressure is exerted on countries on the borders of the European Union while other countries are confronted with the problems of migrant crossings or are destination countries. For example, in 2019, the highest number of asylum seekers considered as unaccompanied children was recorded in Greece (with 3,300 unaccompanied children, or 24% of all unaccompanied children registered in EU Member States), followed by Germany (2,700, 19%), Belgium (1,200, 9%) and the Netherlands (1,000, 8%). Although the overall number of unaccompanied children in Italy fell by 83% in 2019 as a consequence of the last political developments, the number is still significant. Though these country-specific realities should be kept in mind, there are common challenges, particularly in terms of respect for the rights of the child and the implementation of the principles of child-friendly justice, which deserve a common analysis.

²⁰ Eurostat, "Almost 14 000 unaccompanied minors among asylum seekers registered in the EU in 2019", press release, 28 April 2020, available online : <https://ec.europa.eu/eurostat/documents/2995521/10774034/3-28042020-AP-EN.pdf/03c694ba-9a9b-1a50-c9f4-29db665221a8>

²¹ *ibid*

5.

NATIONAL CONTEXTS

This chapter presents a summary of the key findings highlighted in the partners' national reports. The full national reports are available on the website of the Child-Friendly Justice European Network: www.cfjnetwork.eu.

BELGIUM

Targeted children Accompanied foreign children

Key findings from the Belgian report

- Accompanied foreign children are generally de facto invisible during the proceedings (neither heard nor consulted);
- Children lack appropriate information on their rights, on the proceedings and on what is at stake in the proceedings;
- Professionals involved in the proceedings (such as interpreters, lawyers and judges of the Council of Alien Law and Litigation) generally do not use a child-friendly language with children.

Stages of the procedure²²

Application	Refugee Status determination	Appeal	Onward appeal	Subsequent application
At the border: Federal Police On the territory: Immigration Office	Commissioner General for Refugees and Stateless Persons (CGRS)	Council of Alien Law and Litigation (CALL)	Council of State	Commissioner General for Refugees and Stateless Persons (CGRS) Immigration Office

FRANCE

Targeted children Unaccompanied foreign children

Key findings from the French report

- Professionals are not trained in the complex procedure of applying for asylum. Nor are they accompanied in this mission by legal advice. As a result, unaccompanied children who have fled countries in conflict are not encouraged to claim this protection;
- Unaccompanied children lack information about their rights;
- French Office for the Protection of Refugees and Stateless Persons (OFPRA) is not required to hear unaccompanied children unless it can prove that a child's situation is dissociated from that of the other members of his or her family;
- During appeals, the initial decision is not suspended, children are therefore no longer treated as children, but as adults. They are thus left without child protection measures pending the judge's decision, which can be very long;
- Long and cumulative delays in decisions affecting the unaccompanied children have an impact on children's stay;
- Whether they are present or not at the hearing, children do not have access to the documents concerning them (judge's order, results of medical examinations, social assessment report);
- The right to education is progressively less respected over the years;
- Institutions refuse some children to be accompanied by their trustworthy person.

Stages of the procedure²³

Application	Refugee Status determination	Appeal	Onward appeal	Subsequent application
At the border: Border Division, Office for the Protection of Refugees and Stateless Persons (OFPRA) On the territory: Prefecture / French Office for Immigration and Integration (OFII)	French Office for the Protection of Refugees and Stateless Persons (OFPRA)	National Court of Asylum (CNDA)	Council of State	French Office for the Protection of Refugees and Stateless Persons (OFPRA) The child welfare (L'ASE) for a child protection application.

²² Data gathered from the Asylum Information Database (AIDA)'s website consulted on May 2020, <https://www.asylumineurope.org/>

²³ Data gathered from the Asylum Information Database (AIDA)'s website consulted on May 2020, <https://www.asylumineurope.org/>

Targeted children Unaccompanied foreign children

Key findings from the Greek report

- Lack of appropriate accommodation for children;
- Many children are not registered by the authorities and are homeless. Consequently, they are not aware of their rights to legal support, to apply for asylum, to have a safe shelter, to family reunification, to education, etc;
- De facto detention of children under the context of “protective custody” until a safe facility is found;
- Difficulties to book an appointment to apply for international protection as it has to be done through an online application;
- Long delays throughout the international protection procedure;
- Many children do not feel comfortable during the asylum interview;
- Lack of administrative staff;
- Lack of interpreters;
- Lack of information on international protection procedures and deadlines (e.g.: interview process, family reunification possibility,...);
- Short timeframe to appeal a decision with different rules depending on applications submitted in the mainland or at the border (between 30 to 10 days);
- Lack of guardians;
- No specific CFJ guidelines for administrative officers.

Stages of the procedure²⁴

Application	Refugee Status determination	Appeal	Onward appeal	Subsequent application
At the border: Asylum service	Asylum service	Appeals Committees	Administrative Court of Appeal	Asylum service
On the territory: Asylum service				

²⁴ Data gathered from the Asylum Information Database (AIDA)’s website consulted on May 2020, <https://www.asylumineurope.org/>

Targeted children Unaccompanied foreign children

Key findings from the Italian report

- Important gap between law provisions²⁵ and practice which reveals an absence of concrete law application guidelines (for example: age assessment procedure);
 - Interpretation and implementation of the relevant rules are not well defined at the central level, which limits the power of an advanced normative framework;
 - Fragmentation and heterogeneity of procedures and practices at national level since each territory develops its own protocols and practices;
 - No child-friendly spaces, information, language or attitude from institutional actors;
 - No child-specific considerations (Country of Origin Information and specific child-related risks such as child labour, child exploitation,...) when assessing child application for international protection;
 - No child-centred methods or approaches from institutional actors influenced by economic and political considerations that are inconsistent with the Best Interest of the Child principle;
 - Key issues with the age assessment procedure which is still mainly done by medical examinations, namely anthropometric examination of the wrist, against the Italian law;
 - Lack of well-defined accountability mechanisms between institutional actors generating diffuse responsibility among them;
 - Lack of volunteer guardians who, however, play a crucial role in order to guarantee the respect of children's rights;
 - In general, there is no systematic cultural mediation or interpretation to ensure the effective understanding and participation of children;
 - Excessively long procedures;
- Training on the rights of the child is not systematically provided to the different institutional actors.

Stages of the procedure²⁶

Application	Refugee Status determination	Appeal	Onward appeal	Subsequent application
At the border: Border Police On the territory: Immigration Office, Police	Territorial Commissions for the Recognition of International Protection	Civil Court	Court of Cassation	Territorial Commissions for the Recognition of International Protection

²⁵ Data gathered from the Asylum Information Database (AIDA)'s website consulted on May 2020, <https://www.asylumineurope.org/>

²⁶ Data gathered from the Asylum Information Database (AIDA)'s website consulted on May 2020, <https://www.asylumineurope.org/>

SPAIN

Targeted children Unaccompanied migrant children and adolescents

Key findings from the Spanish report

- Organic law 4/2015 allows the express return to the bordering country which is contrary to human rights since it leaves the protection of the migrants to a third country;
- It is common for the unaccompanied children and adolescents to end up in the streets exposing them to great vulnerability;
- Difficulty for children and adolescents to provide the proper identification documents;
- Professionals lack specific training on children's rights;
- Lack of sociocultural mediators and interpreters in reception centres;
- During the determination of the age process, no legal support nor interpreter are provided leaving children clueless as to what is happening;
- Because of delays in the procedures many children reach the majority and have to leave the child protection system;
- Many children do not exercise their right to education because most of them are over 16 years old and have no longer the obligation to attend school.

Stages of the procedure²⁷

Application	Refugee Status determination	Appeal	Onward appeal	Subsequent application
At the border: Border Police	Office of Asylum and Refuge	National Court	Supreme Court	Office of Asylum and Refuge
On the territory: Office of Asylum and Refuge, Aliens' Office	Inter-Ministerial Commission on Asylum (CIAR)			

THE NETHERLANDS

Targeted children Unaccompanied foreign children

Key findings from the Dutch report

- Specialised training: although the employees of the Immigration and Naturalisation Service are specially trained, other professionals working – directly or indirectly – with minor asylum seekers are often not;
- The language used by the Immigration and Naturalisation Service is not appropriate to the children's age and understanding;
- Children lack information and time to get prepared to exercise properly their right to be heard;
- The child friendly rooms are not appropriate to children of all ages;
- Hearings can be long and emotionally intense;
- Informing children on their rights does not mean that children understand them effectively.

Stages of the procedure²⁸

Application	Refugee Status determination	Appeal	Onward appeal	Subsequent application
Immigration and Naturalisation Service	Immigration and Naturalisation Service	Regional Court	Council of State	Immigration and Naturalisation Service

²⁷ Data gathered from the Asylum Information Database (AIDA)'s website consulted on May 2020, <https://www.asylumineurope.org/>

²⁸ Data gathered from the Asylum Information Database (AIDA)'s website consulted on May 2020, <https://www.asylumineurope.org/>

6.

KEY EUROPEAN CHALLENGES AMONG THE CFJ-IA PARTNERSHIP

The following section describes the main challenges to the CFJ principles observed through the European research taking into account transversal and common concerns among the partners of the CFJ-IA project.

Each challenge is introduced through background information on the related issue and illustrated through situations described in the CFJ-IA national reports. This chapter is of crucial importance as it draws attention to issues to be addressed as a priority by European Union Member States and any professionals involved in migration administrative proceedings concerning a child. The recommendations developed in chapter 7 are based on the challenges raised in this section.

6.1 AGE ASSESSMENT: RELIABILITY AND RELEVANCE

According to article 25 of the directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection²⁹, Member States may use medical examinations to determine the age of unaccompanied children within the framework of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.

“Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result”³⁰.

One of the major issues highlighted by the project partners is precisely the reliability of bone tests. In Italy, age assessments continue to be based mainly on medical examinations, namely anthropometric examination of the wrist. However, as stated by the European Asylum Support Office (EASO), there is no age assessment method that can provide accurate results on the chronological age of the person³¹. Therefore, the lack of accurateness of the results of such examinations prevent this method to be considered as valid. Nonetheless, this method continues to be the main reference for age determination in Italy, which constitutes a violation of the child's procedural safeguards and a violation of the Law No 47 of 7 April 2017³². In Spain, it is common to produce different results for the same person according to the test performed. In France, bone tests to establish minority are still being used, despite strong civil society opposition³³.

Moreover, according to directive 2013/32/EU³⁴, Member States shall also make sure that the decision to reject an application for international protection by an unaccompanied minor who refused to undergo a medical examination shall not be based solely on that refusal. Despite that, in practice, it has been observed in France and Spain that the refusal to undergo a bone test can result in a refusal of protection.

According to the EASO, authorities must first examine any existing evidence, including statements and relevant indications, before deciding whether it is necessary to undertake further assessment³⁵. In Spain, the Prosecutor's Office does not consider documents such as the birth certificates or the family book valid. Consequently, the age assessment is being imposed on child migrants that have official and valid identification documents allowing them to reliably prove they are children.

²⁹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, article 25 §5, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=FR>

³⁰ Ibid

³¹ EASO practical guide on age assessment: second edition, 2018, page 34, consulted on June 2020, available at <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assessment-v3-2018.pdf>

³² Provisions on Protective Measures for Unaccompanied Foreign Minors, available in english: .

³³ “Les tests osseux pour déterminer l'âge des jeunes migrants devant le Conseil constitutionnel”, Le Monde, consulted on June 2020, available at: https://www.lemonde.fr/societe/article/2019/03/12/mineurs-et-rangers-les-tests-osseux-devant-le-conseil-constitutionnel_5434884_3224.html

³⁴ Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection, article 25 §5, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=FR>

³⁵ EASO practical guide on age assessment: second edition, 2018, page 32, consulted on June 2020, available at <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assessment-v3-2018.pdf>

The CFJ-IA Greek report showcases a situation where a police officer at the Evros borders estimated that an unaccompanied child, who claimed to be 17 years old, was actually 37 years old. The officer subsequently reported this age in the date birth section of the young applicant.

When he or she is not recognised as a minor of age, a child may face harsh consequences such as the exclusion from social protection, from the right to education and from reception facilities. This can lead to the “disappearance” of unaccompanied children who may end up in a context of social marginalization (such as in the streets or victims of traffickers).

6.2 SPEEDY AND DILIGENT JUSTICE: A DELICATE BALANCE

With regard to the duration of procedures, the time allowed to the asylum seeker to start the procedure or to appeal should be dissociated from the time limit within which a file is processed by the administration. While the first delay implies to leave sufficient time needed for the asylum-seeker to recover from an often traumatic journey and to prepare properly for the interview and in particular to have time to contact his or her lawyer, the second one should be as short as possible.

The CFJ Guidelines include, inter alia, the requirements of speed and diligence in the definition of child-friendly justice. The urgency principle is set out in guideline number 50 and recommends that “in all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law”. This is especially important as children have a different perception of time from adults: for example, one year of proceedings in a custody case may seem much longer to a 10-year-old or a 15-year-old person than to an adult. Furthermore, guideline number 53 states that in accordance with the law, judicial authorities should have the possibility to take decisions which are immediately enforceable in cases where this would be in the best interests of the child.

The EU Procedures Directive³⁶ provides that registration of the application for international protection must take place no later than three working days after the application is submitted. This deadline may exceptionally be extended to ten working days due to a high number of simultaneous applications³⁷. Moreover, the Directive provides that “Member States shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination³⁸” and, that, with some exceptions, “Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application³⁹”. Finally, the right to an effective remedy must be exercisable within a reasonable time, which does not render the exercise of this right impossible or excessively difficult⁴⁰.

The delay before an interview should leave time to the applicant to prepare. The Netherlands national report has highlighted that the interviews were taking place too early⁴¹. The hearings with the Immigration and Naturalisation Service should be postponed to a later moment in the asylum procedure, to avoid the child still being too overwhelmed by his or her journey and therefore unable to adequately present his or her situation. Moreover, the time limit for appealing against a negative decision should allow the applicant the necessary time to prepare his legal reasoning. A period of 10 days, as provided for in Greek legislation⁴², is very short for the child to appeal against the rejection of his or her application for international protection.

³⁶ Asylum Procedures Directive 2013/32/EU of 26 June 2013, article 6 §1, available online: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0060:0095:EN:PDF>

³⁷ Ibid, Article 6 §5

³⁸ Ibid, Article 31§2

³⁹ Ibid, Article 31§3

⁴⁰ Ibid, Article 46 §4

⁴¹ In the Netherlands, every asylum seeker is interviewed at least twice, with the exception of applications dealt with in the Dublin Procedure and the Accelerated Procedure. The first interview is designed to clarify nationality, identity and travel route. Two days later, in the second interview, the asylum seeker is requested to explain the reasons for fleeing his or her country of origin.

⁴² This deadline starts the next day after the date the minor is notified about his or her decision. In the majority of the cases children are informed about the decision when she/he goes to renew her/his “card of international protection applicant”.

The time limit within which a file is processed by the administration in the European countries targeted can take up to two years, and even more in case of appeal. For example, in Italy, the procedure can be extended from one to two years in case of appeal. In Greece, the law provides that the principle of safeguarding the best interests of the child must be strictly applied during the process of examining children's international requests. In practice, however, significant delays are being observed regarding the conduct of the asylum interviews. For instance, children that were registered and applied for international protection throughout 2019, have their interviews scheduled for 2021 or 2022. This practice directly violates the best interests of the child principle. Unaccompanied children in Greece even reported presenting themselves to their scheduled interview, only to find out that it was cancelled and that they would have to come back at another time.

“ I travelled from the Camp to the asylum office (two hours) and when I got there they told me that due to problems they had to change my date. And rescheduled it for two years later! I was devastated! Only with the help of the lawyer they changed my date for this year. If I did not have one, like so many other children, I would have to wait. ”

Unaccompanied child, 17 years old boy from Afghanistan, Greece

These long delays have major consequences for unaccompanied children who turn 18 while in this unstable situation. Here are two further examples:

In France, the age assessment procedure can take up to several months, preventing children from benefiting from the extension of social services after turning 18 years old. Indeed, when turning 18 years old, children who have entered the child protection system after 16,5 years of age will no longer be entitled to an extension, as they have to have received at least 18 months of support from the social assistance for children service to be eligible. Another consequence of this long process is that school registration is delayed.

In Spain, unaccompanied children and adolescents who reach the age of majority cease to be supervised by the administration. This has serious consequences for their immediate safety and care. They have to leave accommodation centres. They become powerless and greatly vulnerable. As they do not have a residence permit, they find themselves in an irregular administrative situation and risk being intercepted by the police and having their expulsion file opened and/or being detained in a Foreigners Internment Center. On the other hand, as they do not have a residence permit, they do not have a work permit and therefore do not have the financial means to survive. Consequently, they might find themselves in street situations or victims of prostitution and organized crime. Many embark on a new migration journey to countries in Central and Northern Europe. The majority of unaccompanied children arriving in Spain are on average between 16 and 18 years. The long delays in arranging guardianship and residence permits therefore mean that, in many cases, children reach the age of 18 years old and are forced to leave the child protection system without having resolved their administrative situation.

Finally, let's note some other consequences of these long delays faced by young unaccompanied asylum seekers.

Firstly, in some countries, such as in France, without a legal representative, the unaccompanied child cannot take several initiatives, such as administrative and medical appointments, as well as certain activities of school life.

The lengthy procedure to designate a guardian also impacts the possibility for the child to act in some areas. It is essential that children are informed of their rights and the time limits of the procedure. For example, in Greece, there is a three-month deadline from the day of registration for an unaccompanied child to proceed with family reunification. Some of them stay unregistered and uninformed about their right to family reunification and the three-month deadline. Most of the time, they miss this deadline, losing any opportunity of being reunited with family members residing in other EU countries.

“ After months of being unregistered, I finally managed to get registered and apply for family reunification. When I went to see my lawyer, they told me I had a three-month deadline to gather and submit all the necessary papers. I was shocked. ”

Unaccompanied child, Greece

Thirdly, attention should be paid to the length of the interviews. Sessions lasting 6 hours as it has been reported in Italy are not in line with the best interests of the child.

6.3 CHILD-FRIENDLY INFORMATION, ENVIRONMENT AND COMMUNICATION

The CFJ Guidelines also highlight children’s right to participation. This right includes the opportunity for children to be heard in proceedings that result in decisions affecting them and to have their views taken seriously into account by adults.

The right to information is intrinsic and necessary to the realization of the right to participation. Indeed, access to understandable information about the process and their rights is a necessary precondition for ensuring the effectiveness of children’s right to participation in the process. It is important for children to know as precisely as possible what will happen at the hearing and what the status of their opinion or statement will be.

Children’s right to be informed

Appropriate information is necessary to ensure effective participation that respects children’s rights. The information must enable children to know their rights and to understand the issues at stake and how the procedure is carried out.

Children involved in an application for international protection in the countries targeted in this report seem to not be well informed about their rights, the procedure and its possible outcomes. As is the case in Greece, the lack of information on the right to family reunification and the rights of the child is a major obstacle to the exercise of these rights.

“ The first time I had information about asylum was at the information session I attended from DCI. I was visiting a youth center that time so as to eat and wash my clothes and attend some activities. Nobody else informed me about anything. I was homeless and unregistered for months after I arrived in Greece. I did not even have access to the international protection procedure. I was an invisible person. I wish I had some information when I first arrived in Greece. ”

Former unaccompanied child, Greece

Also in France, the children deplore the fact that they did not receive any information about the rights that would have concerned them during the different stages of the procedures.

“ I would have liked to be informed. The most negative thing is this lack of consideration from social workers and judges. They do not explain you anything but put pressure on you? „

“ I had no idea what my rights were. My dream was to go to school with French people, but I wondered if I had that right. „

“ I found that I was not sufficiently informed, it was very long and my documents were questioned even though they had been validated earlier in the first departement. I should have known right away that I had right to a lawyer. „

Unaccompanied children, France

Several reasons for this lack of information can be identified. Firstly, although information materials are developed, they are not always accompanied by oral and personalized explanations. In addition, information is not always conveyed in a manner appropriate to the child's level of understanding or in his or her mother tongue. In the Netherlands, for example, research shows that although in most cases children have received information about their rights, they find it difficult to understand them in practice. Finally, many actors in the procedure believe that the information has been or will be delivered at another stage of the procedure and that this task is therefore in the hands of another person.

In Belgium, other specific factors could be identified with regards to accompanied children. Precisely because they are accompanied and not alone, they are not always identified as part of the application. The professionals and institutions involved in the procedure therefore do not systematically meet them or take them into consideration. Moreover, parents do not always have the necessary information to be able to inform their children.

In Italy, unaccompanied children submit the application to the Questura (police office) accompanied by an adult (the guardian or an educator of the accommodation centre). When providing information, officers normally refer directly to the adult without communicating the information to the child in an appropriate language. In such cases, the child is not considered as an active party subject of rights with agency but as a passive actor.

“ As a child you are often not informed about what will happen during such a conversation. The questions that are asked are very detailed. Often the questions were also complicated. If I did not know certain answers, I referred them to my lawyer, but this is not allowed. I had to answer the question. „

Unaccompanied child, Netherlands

Moreover, as is the case in Greece, it turns out that decisions are not always motivated. This leaves children in a state of misunderstanding.

Children's right to be heard

With regard to participation, research shows two main elements: children are not given the opportunity to participate or, when they are heard during the process, poorly adapted processes have negative consequences for them.

In Belgium, for example, it is common that if the child is young, participation is automatically excluded. Yet a child should not be prevented from being heard simply because of his or her age.

“ This week I went to the Immigration Office with an unaccompanied child, she was eight years old, so we were sure she wouldn't say anything (...). She told us a thousand things, she even defined xenophobia for us. It was unpredictable. ”

Lawyer, Belgium

An essential element for the child's participation is the adoption of clear language, which he or she understands and which is adapted to his or her level of maturity and cultural references. However, interviews with children do not always meet these requirements.

“ In judicial and administrative contexts, the cultural mediator or interpreter is often optional (i.e. not systematically provided). ”

Lawyer, Italia

“ For example, children are questioned about their religion or sexual orientation, whereas because of their age or cultural background, these are concepts they often do not understand. ”

Official of the administration responsible for examining applications for international protection, The Netherlands

Inadequate conditions and interactions with the child can have serious consequences for the child's physical and mental integrity (i.e.: being questioned about the reasons for an application for international protection can cause significant trauma to the child). The child's participation should be prepared and the questions and format of the hearing should be adapted. Children tend to give the answer that the interviewer seems to expect from them, and they do not always understand the consequences of their answers. Some unaccompanied children have the impression that they are being questioned, as if they have done something wrong. Others also noted that the interviews were very long, stressful and emotionally intense.

“ I cried a lot at the time, because I was telling things that were far too intense. I just wanted to sit down, do nothing, talk to no one. I’ve talked enough for today, nothing more now. ”

Former unaccompanied child, The Netherlands

6.4 LACK OF APPROPRIATE TRAINING FOR PROFESSIONALS

The Child-Friendly Justice Guidelines lay down that all professionals working with children should receive interdisciplinary training on the rights and needs of children of different age groups⁴³. Moreover, professionals having direct contact with children should be trained in communicating with them at all ages and stages of development, and with children that are in situations of particular vulnerability⁴⁴. Likewise, the Committee of the Rights of the Child stresses that particular attention should be paid to the training of officials working with separated and unaccompanied children and dealing with their cases. Specialised training is equally important for legal representatives, guardians, interpreters and others dealing with separated and unaccompanied children⁴⁵.

Throughout the procedure, children come into contact with those different professionals or volunteer guardians on whom the concrete and final implementation of the guidelines largely depends: the guardians, the lawyers, the social workers, the youth workers, the administrative agents in charge of the study of the application for international protection, the interpreter, the judge, etc. These people are the protectors of child-friendly justice because they implement it. Therefore, and in order to operate in the best possible conditions, they must receive clear guidance and support on how to effectively implement the CFJ Guidelines, and be adequately trained in child rights, child communication and child psychology. Adequate training has a direct impact on the most fundamental rights of children going through the procedure.

“ I wanted to apply for asylum, but my social counselor told me: you will be able to do it at 18 years old. he did not know that I could do it before and even without my birth certificate. ”

Unaccompanied child, France

Yet, the training of professionals is still deficient in most countries surveyed, and the professionals regularly express a desire to be better trained.

“ We would like the social worker to be closer, to reassure you, [to say] that he supports you, that he says words like don’t worry. ”

Unaccompanied child, France

⁴³ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, Octobre 2011, § 14

⁴⁴ Ibid § 15

⁴⁵ UN/C/CRC/No. 6, § 95

Absence of child-specific frameworks and guidelines

There is a lack of internal guidelines to adapt procedures to the needs of children in most of the administrations and jurisdictions dealing with the different stages of the application for international protection studied as part of this project. As for lawyers, there are also no common guidelines for their profession to develop the principles of child-friendly justice.

This results in a differentiated treatment of cases. Indeed, without guidelines, the consideration of the principles of child-friendly justice varies according to the professionals in charge of the cases and is a matter of personal initiative.

For instance, according to the Italian research, appropriate training of the different professionals and actors working with and for unaccompanied children is extremely variable and left to the discretion of each single individual or concerned organisation. Training on the rights of the child is not systematically provided to the different functions of the system. In fact, the use of child rights-based standards and international instruments by lawyers and judicial professionals is rare. They are seen as a generic and vague reference but not as instruments of positive law that can be effectively used in the concrete case.

“ It’s a bit like searching and experimenting, because there are not really any guidelines that I can rely on. [...] By reading cases from other countries, particularly England and the Netherlands, I try to find ways to conduct hearings [in a child-friendly manner]. ”

Litigation Judge, Belgium

The Convention on the Rights of the Child: knowledge and training

The Convention on the Rights of the Child (CRC) is still insufficiently known and used as a tool by the administrative officers, the lawyers and the decision makers.

“ Lawyers are, sometimes, unaware that the CRC even exists. Even if they do, they do not know how to include it in the legal reports they write and submit before the asylum office, when representing refugee children. There is an urgent need for more training sessions and seminars about CRC and CFJ principles. ”

Lawyer, Greece

There is a great disparity in training, and therefore knowledge, in children’s rights between the different professionals in contact with children. For example, in Belgium the initial training of judges and lawyers who are involved in procedures in contact with children does not automatically include a module on the rights of the child. And as in Greece, this kind of expertise is often a result of a personal initiative to expand their knowledge and not a result of an obligation by law.

“ The majority of my colleagues have never received any training on how to prepare a proper BIA report. ”
(*A best interest assessment written and submitted by a social worker/lawyer is required for the examination of the family reunification application.)*

Social worker, Greece

In Spain, the Foreign Police professionals do not attend specific training on children's rights. Due to the high turnover of staff in the Child Protection Centres, particularly the unaccompanied migrant children and adolescents' centres, and the high demand for jobs for these centres, it happens that, in many cases, professionals are hired without having specific work experience with this audience. Therefore, they do not know their particularities, conditions of vulnerability and needs, nor do they receive prior training on standards on the Rights of the Child to follow when conducting the first interviews. For the same reasons, they also do not know in depth the rights granted to children in the framework of the asylum and refuge procedure, or in the framework of the CRC.

This leads to a failure to give due consideration to children's rights. In Italy, for example, the territorial Commissions when examining a request made by a child, rarely assess and verify the existence of protection reasons that are child specific.

Communication and child psychology

The CFJ Guidelines state that in all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have⁴⁶. Of particular importance is the language used. The language should be appropriated to children's age and understanding⁴⁷.

A professional who is not trained, or who is insufficiently trained, does not have the keys, neither to assess the child's level of understanding and maturity, nor to adapt his or her language, which prevents him or her from adequately communicating clear and understandable information to the child on which the latter can base his or her decision to intervene or not in the procedure.

“ The slightly psychological side of knowing how to talk to a child, how to have accessible language is not at all easy for lawyers. We tend to talk in a very complicated way. And also about what to ask a child. Because for an adult, it's quite simple, we say, “explain to us your risks of persecution if you return”, but a child doesn't understand that. ”

Lawyer Belgium

In Italy, the findings suggest that institutional actors – namely law enforcement officers, social assistants of the Municipalities, members of the Territorial Commissions, Judges, etc. - tend to adopt an approach which is significantly less child-sensitive than the approach adopted by non-institutional actors such as guardians, social educators, cultural mediators or lawyers. This can be linked to the observation we made earlier on the differentiated treatment of cases caused by the lack of common implementation of the principles of child-friendly justice.

Regarding the interpreters, when one who speaks the mother tongue of the child is available, which is not always the case, there is no guarantee that the information communicated in a language that the child speaks is also communicated in a language that takes into account his or her level of understanding and maturity.

Unaccompanied children are still treated first and foremost as migrants rather than as children with specific needs and rights deriving from their situation of deprivation of parental care. This tends to be more pronounced in certain institutions like in police stations. The approach is often formal and standardized. Some professionals tend to talk to the adult who accompanies the child instead of creating the appropriate environment to communicate and interact with the child. Others do not respect the right to privacy and talk loudly about individual cases in front of others. Most children found the information that was provided quite abstract and the way the professionals asked their questions not very child appropriate.

⁴⁶ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, Octobre 2011, § 54

⁴⁷ Ibid § 56

*“ I noticed that as a child I was questioned in the same way as an adult.
This can be done differently! ”*

Former unaccompanied child, Netherlands

*“ Sometimes I feel that nobody cares about me. There were people that supported me
but others were treating me like a criminal. My application was so long.
I also believe that they could have different nicer rooms when interviewing children.
Registration process is like interrogation !”*

Former unaccompanied child, Greece

These findings are largely the result of a lack of training of professionals in child-friendly communication and child psychology. Training varies from one institution to another and even from one professional to another. In the Netherlands, although the employees of the Immigration and Naturalisation Service are specially trained, other professionals working – directly or indirectly – with minor asylum seekers are often not. In Belgium, protection officers of the asylum office (CGRS) who conduct interviews with children are trained to communicate better with them and are assessed by a supervisor and a specialized unit for minors. But as in the Netherlands, this is an exception since the other professionals consulted stated that they received very little training on the issue.

Furthermore, even when receiving specific training, it is sometimes not enough. Certain aspects such as communication with the child are often insufficient. For example, multiple sources indicate that the language used by the Immigration and Naturalisation Service of the Netherlands during interviews is not appropriate to the children's age and understanding. Children have difficulties understanding the questions asked and what kind of answers the Immigration and Naturalisation Service is seeking.

*“ The questions asked are not specifically designed for children. For instance, children are asked
about their religion and sexual orientation, while they often do not understand
these concepts due to their age and/or cultural background. ”*

Employee of the Dutch Council for Refugees, Netherlands

The insufficient training of the professionals is reflected in responses to the issue of whether workers are trained to encourage children to speak and also to ensure that children are heard during each administrative procedure interview.

In Belgium, unlike the other countries targeted in this report, the research focused on the situation of accompanied children.

The results show that for those children the lack of training has a particularly significant impact on their right to be heard. In a large number of cases, accompanied children are left aside by professionals who only refer to the parents. The children are not systematically heard or consulted. The procedure is not organized to facilitate their consideration, perhaps both a cause and consequence of professionals feeling ill-equipped or uncomfortable involving children in a procedure perceived as stressful and complicated. The opinion of a Magistrate interviewed as part of the project echoes this resistance:

“ He was there, shaking, he was really nervous and you could tell that he felt like he was carrying a lot of pressure and was thinking: ‘I need to convince the judge to help my parents’. We cannot place so much pressure on a child. ”

“ In contrast, another lawyer noted that depriving a child of the right to be heard, on account of the stress the procedure may induce and stakes at play, amounts to “ignoring reality. ”

“ ...these children are there and live the same thing as their parents. Some (...) are interviewed by the CGRS and it’s clear that this creates some level of pressure for children. But in the cases where that’s happened, it has almost always led to a positive decision. To say that children should not be heard because of the pressure experienced, I find this aberrant. ”

It is clear that professionals have conflicting views on ways to balance children’s right to be heard and the potentially negative impact of undergoing an individual interview. Or, in other words, whether participation is always in the best interests of the child. Rather than circumventing children’s right to be heard as a matter of principle or “precaution” taken to seemingly protect them, professionals should have sufficient knowledge and resources to use appropriate participation methods, direct or indirect, inducing the least amount of stress, and in ways that are transparent, clear and understood by children. Similar observations were noted in the Dutch national report, with DCI-NL concluding that the right to be heard is first and foremost a right of the child, not a duty of the child, and that overall, the administration of child-friendly justice should guide professionals and in turn, lead to the best outcomes for the child.⁴⁸

Training of an independent guardian for unaccompanied children

The CRC and other regional and international standards in the field of children’s rights provide for guardianship and legal representation for all unaccompanied foreign children⁴⁹. The guardian is the legal representative of the child and therefore accompanies him/her in all judicial and administrative proceedings. The guardian should play a key role in verifying that procedural guarantees are in place and, when needed, he or she should act to claim for their application or improvement, if necessary, with the support of a legal assistant. Guardianship is therefore recognised as a safeguarding element of a procedural nature. The guardian is the person who will help the child make his/her voice heard and taken into consideration in all decisions concerning him/her.

“ Probably, one of the moments in which I perceived that despite all the difficulties my role is useful is when I compared the situation between a child with a volunteer guardian and a child without it and I saw how having a guardian means to have more safeguards. ”

Volunteer guardian, Italy

⁴⁸ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, October 2011, § 46

⁴⁹ Including: General Comments No. 6 (2005) and No. 22 and 23 (2017) of the UN Committee on the Rights of the Child, the UN Guidelines for the Alternative Care of Children (2011) and the CoE Recommendation to Member States on effective guardianship for unaccompanied and separated children in the context of migration (December 2019), available online: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680993db7.

Across the EU, the appointment of a trained and impartial guardian is not always guaranteed. In many cases, children do not have a guardian or the appointment takes several months. The guardian is the one who promotes the best interests of the child and for this reason it is necessary that he or she is free from any conflict of interests that might arise. However, in many cases, guardians are not independent. Very often guardians are not properly selected, trained or do not receive ongoing support. Resources are often insufficient. Guardians are not always fully recognised by the other actors of the system and face difficulties to get involved in mechanisms of multi-agency cooperation and coordination. In many cases children do not distinguish guardians from other professionals of the system, mainly due to a lack of proper information. However, when a guardian is well-trained and available for the unaccompanied child, his or her presence is fundamental.

“ The guardians also help your thoughts. When you don’t have anyone to help you, you think a lot, you think about much bigger things than yourself. If you have a guardian, you find someone who says, ‘Don’t worry, I’m here’. The guardian gives you peace of mind. And it’s important because if you don’t have peace of mind, you go crazy. ”

Former unaccompanied child, Italy

6.5 LACK OF COOPERATION, LESS ACCOUNTABILITY

The high turnover of workers but also the lack of training, common guidelines, coordination and cooperation affect the smooth running of the proceedings and the possibility for children to know and exercise their rights.

A lack of mutual knowledge and coordination between the various professionals involved in these procedures and in contact with the child is noted as being in some respects a major obstacle to the implementation of the guidelines. Different institutional approaches, logics and priorities constitute a key obstacle for coordinated cooperation among actors. In decentralised states as in Italy, the fragmentation of procedures and practices throughout the territory is a main issue because it results in a system that works differently depending on the place the child finds him or herself.

This may also be fundamental for the information of the child for example. Indeed, as noted in Belgium, the various professionals interviewed do not always seem to be aware of the information to be provided to children and their role as informants. It appears that some information is not provided because these different professionals believe that the information has already been provided or will be at another stage of the procedure.

“ Are professionals realizing that our lives are in their hands? ”

Unaccompanied child, France

The multiplicity of actors around the child, who have different mandates, functions and tasks – and the lack of cooperation – can be perceived by children as a factor of confusion and fragmentation. The problem for these children who find themselves alone in a new context is to find a stable adult of reference with whom to establish a relationship based on trust that can accompany them throughout the entire procedure. Guardians are an important step forward towards this direction.

Furthermore, some partners, as it is the case in Italy, also note that the lack of well-defined accountability mechanisms gives place to a system of diffused responsibilities in which no one feels responsible for violations of standards or infringement of norms.

6.6 LACK OF SPECIALIZED PROFESSIONALS, MULTIPLE CONSEQUENCES

The negative effects of a lack of training on the implementation of the guidelines are generally compounded by a lack of staff. Various factors are responsible for this, but the lack of economic resources is certainly the most important one.

“ Some children are alone. I believe that it could be better for them if upon arrival to the country they had a social worker or lawyer or a person that could support them during the whole process. When you face such difficulties in your home country, during the journey etc your mind is not very well and it is difficult to understand all at once what you must do. ”

Unaccompanied child, 16 years old boy from Morocco, Greece

Cultural mediator and interpreter

In particular, there is a significant shortage of staff among guardians and interpreters. Yet these categories of professionals play a vital role in ensuring that the rights of children going through a procedure for international protection are respected.

In most EU countries, there is no systematic presence of cultural mediation or interpretation in the framework of administrative proceedings to ensure the effective understanding and participation of the child. Many children have testified that they were not able to express themselves in their mother language during the procedure. For example, in Spain, it has been reported that a cultural mediator or interpreter was not present on the weekends on the reception of children. This even appeared to happen during the week. This leads to a situation where other children have to perform the interpretation themselves.

“ At the asylum office they only had a Dari interpreter. I speak Pashto. When I mentioned I don't completely understand him, they told me he was the only one available and that Pashto and Dari are almost the same. There are similarities, of course, but they are definitely not the same language. ”

Unaccompanied child, Greece

“ I didn't understand anything, I didn't speak the language, I didn't have an interpreter ”

Unaccompanied child, France

Case workers

For case workers, the lack of staff results in insufficient time to prepare the child for the different stages of the procedure and to speak with her/him before the hearing in a child friendly environment so as to reduce their anxiety and to build a relationship of trust. One employee is forced to deal with multiple cases at once.

“ There are children waiting outside for hours, trying to get into the buildings and exercise their rights. They get in line from 2 or 3 am, trying to enter and ask for asylum. This can take months if they have no help from an NGO. ”

Case worker, Greece

Guardian

As legal representatives, guardians play a crucial role for unaccompanied young people in defending their rights. They support and accompany them while looking after their best interests. The guardianship system for unaccompanied children varies from a country to another. Sometimes it relies on voluntary tutors, citizens who will offer their time to fulfil this mission. In some situations, this role will be assumed by a magistrate, for example by the public prosecutor in Spain, or by a state institution.

Due to a lack of adequate funds, there is a wide gap between the national laws that generally require the registration and placement of a guardian for every unaccompanied child and their actual implementation in practice. As a consequence, one single guardian is often in charge of a big number of unaccompanied children which makes it hard for him or her to cover all the needs of a child and many children are left on their own.

For example, in Greece, the Prosecutors, who take the guardianship role until a guardian is appointed, are charged with many tasks and tend to overlook the cases of the children. Some NGOs attempt to fill the gap by appointing guardians. But in many cases these guardians have temporary contracts, and depend on projects and funding. This leads to the situation in which the State guardians are not able to push access to shelter and to launch the asylum procedures on behalf of the unaccompanied children⁵⁰.

“ I had a guardian, she was ok, but she also was responsible for many other children. She was not by my side and she did not have the time to explain to me what was going on and what I should do next. ”

Former unaccompanied child, Greece

Another problem in terms of conflict of interest was revealed in Italy. Indeed, most of the times the appointed institutional guardian is the Manager of the Residential Care Facility where the unaccompanied child is placed or Municipality Chief of Social Affairs or even the Mayor, which may easily lead to a situation of conflict of interest, where the best interests of the child clashes with the interests of the institution (which covers the costs related with the child's accommodation and reception conditions).

⁵⁰ At the moment, in Greece, the Juveniles Prosecutors act as the guardian of all unaccompanied children because the law on guardianship is not implemented yet.

Legal aid

Legal assistance from the outset of the administrative procedure is essential to ensure the rule of law and the child's right to information or to strengthen the child's participation. Unfortunately, research shows that in many ways children involved in migration-related administrative justice procedures do not have adequate access to legal aid.

Generally, legal assistance is not provided for at the first level of the procedure, yet at this stage, the child may be required to meet with immigration officials or to be heard by the administrative officials who will examine the application for international protection. This stage is therefore decisive in order to access their rights.

In several European countries targeted in the project, no state funded free legal aid is provided under law at first degree (hearing). That means that children who are not supported by an NGO are not legally represented. For example, in Greece, most of the children between 15 and 18 attend their asylum interview without being prepared and accompanied by a lawyer or a guardian.

“ I travelled from the Camp to the asylum office (2 hours) and when I got there they told me that due to problems they had to change my date. And rescheduled it for two years later! I was devastated! Only with the help of the lawyer they changed my date for this year. If I did not have one, like so many other children, I would have had to wait. ”

Unaccompanied child, Greece

6.7 ADMINISTRATIVE DETENTION OF CHILDREN

No child, whether alone or accompanied, should ever be detained for migration-related reasons. Such detention is indeed contrary to the CRC. The United Nations Global Study on children deprived of liberty, has shown the emerging international consensus on this prohibition of detention of children for purely migration-related reasons under various provisions of the CRC⁵¹. Indeed, and among other statements, all EU governments committed to ending detention of children for migration-related reasons and implementing community-based alternatives at the UN General Assembly on 19 September 2016 by signing the New York Declaration for Refugees and Migrants⁵².

Despite this, the statistics collected by the Fundamental Rights Agency⁵³ and the Quaker Council for European Affairs⁵⁴ show that the immigration detention of children remains a widespread practice in EU Member States. Children alone or with their families are detained every year for migration-related reasons across the Union. Detention of irregular migrants or asylum seekers under EU law arises in the context of enforcing decisions to return to their country of origin, to enforce Dublin transfers or as part of the reception procedure for those seeking international protection⁵⁵.

In Greece, in absence of appropriate shelters to accommodate the needs of unaccompanied children in need of international protection, the State has introduced the norm of “protective custody”. In accordance with this norm, unaccompanied children on the move are placed either in detention centres or police cells. Their detention is supposed to be for the purpose of their removal to a shelter and cannot exceed 45 days. However, there is no time limit for children who are under protective custody, since protective custody is not considered as detention. The name given to this system cannot water down the fact that this system organizes the detention of children for migration related reasons.

“ I am from Bangladesh and I could not get an appointment for registration. One day, the police caught me with no papers and took me to the police station. They put me in a cell with other children. I did not know what was happening and I was so scared. I was trying to ask them why they put me in prison, but they did not understand me, or even cared to understand . After two weeks, they moved me to another police station. Then to another. I was so confused and no one was telling me what is going on or what my options are. A boy that came to the cell had DCI's number and we called them from a cardphone inside the police station. A lawyer came to see us and she explained to us that we were under “protective custody”, because we are minors and homeless. The police never asked us if we wanted to apply for international protection. Now that I am registered and free, I wish I could go back to those policemen and tell them what they did was not good. Every police station should have an interpreter and the police officers should guide every minor that gets under protective custody in every step of the way. ”

16-year old boy from Bangladesh, Greece

51 “[...] these and other statements by international and regional authorities illustrate an emerging international consensus that the detention of children for purely migration-related reasons is prohibited under various provisions of the CRC”. (Nowak M. and others, The United Nations Global Study on children deprived of liberty, November 2019, p. 451, accessible on line: <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>)

52 For more information on the international consensus towards ending child detention see PICUM, Child Immigration Detention in the EU, Mars 2019, available on line : http://childreninmigration.eu/PICUM_policypaper_childimmigrationdetention.pdf

53 Fundamental Rights Agency, European legal and policy framework on immigration detention of children, 2017, p. 13, available on line <https://fra.europa.eu/en/publication/2017/european-legal-and-policy-framework-immigration-detention-children>

54 Quaker Council for European Affairs, Child Immigration Detention in Europe, 2018, available on line: http://www.qcea.org/wp-content/uploads/2018/09/CID-report_2018.pdf

55 In addition, de facto detention of asylum seekers, such as in hotspots, regularly occurs.

Also in Belgium, the migration policy does not seem to be moving towards ending detention of children for migration-related reasons. Despite the fact that Belgium was singled out by the Office of the High Commissioner for Refugees (UNHCR) and condemned by the European Court of Human Rights for this practice in 2009, a 2011 law, under the appearance of prohibition, explicitly legalises the detention of children in closed centres by providing for an exception in the case where the centre is “adapted to the needs of families with minor children”. This exception is dangerously largely extensible. For now, the Belgian Council of State suspended the Royal Decree⁵⁶ which constituted the legal basis for the detention of these families⁵⁷. However, this suspended act only concerns the law defining the conditions of such deprivation of liberty. The law⁵⁸ that authorises the detention of children in closed centres cannot be applied without this act, but a new decree could be adopted and the practice of detaining these children could resume.

Since 2012, France has been condemned six times by the European Court of Human Rights on the issue of detention of children. Each time it was related to children placed in detention with their parents, awaiting expulsion. Nine administrative detention centres in France are authorised to receive families.

As we can see, a large number of children are still detained in conditions that do not respect their fundamental rights as children and sometimes for long periods of time. This is sometimes due to structural reception problems, but also sometimes to political decisions contrary to international commitments made and consistent with the realization of children’s rights.

The absolute prohibition of detention of children on migration-related grounds, whether accompanied or unaccompanied must be incorporated into all relevant European standards in this area and adhered to by all EU Member States and at all times.

6.8 LACK OF APPROPRIATE ACCOMMODATION, LACK OF PROTECTION

The lack of housing adapted to the specific needs of children is noted in most of the targeted European countries. Reception in appropriate shelters is a frequent and common issue in European countries. The past years have undoubtedly shown a low level of preparation for large numbers of arrivals of refugees and migrants in most countries. The reception practice confirms that fluctuations in the numbers of arrivals continue to create important challenges for administrations such as inability to offer accommodation to new asylum seekers. It results in improvised emergency accommodation⁵⁹.

Before commenting on the consequences of the lack of adequate housing, we need to note that some children are in a limbo situation, invisible to the authorities. Invisible because they do not know how to register, or to apply for international protection or to request shelter. This situation exposes them to homelessness and all associated risks and dangers. This situation has been particularly highlighted in Athens, where hundreds of children reside in parks and in squats. To remedy this situation, DCI Greece makes requests for shelter on behalf of those children. But the National Centre for Social Solidarity takes months to find a place or does not reply at all to these requests. They justify this long delay by invoking the lack of adequate places for all the unaccompanied children in Greece.

Now, on the accommodation itself, let’s underline that the lack of adequate structures compromises the fulfilment of the European standards of reception⁶⁰. For some countries, shortages in reception capacity are a chronic problem, regardless of fluctuations in arrivals of people seeking protection. The Asylum information database has reported⁶¹ that some countries have systematically been unable to accommodate all asylum seekers on their territory and have embedded emergency accommodation as a permanent component of their system, thereby raising questions of systematic non-compliance with EU law.

⁵⁶ R.D. of 22 July 2018 amending the Royal Decree of 2 August 2002 laying down the regime and operating rules applicable to places located on Belgian territory, managed by the Immigration Office, where a foreigner is detained, placed at the disposal of the Government or maintained, pursuant to the provisions cited in Article 74/8, § 1, of the Act of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners, *Moniteur Belge*, 01/08/2018.

⁵⁷ Council of State Belgium, judgement number 244.190, 4 April 2019.

⁵⁸ Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners.

⁵⁹ See the Asylum information database report on the topic of reception, “Housing out of reach?” published in 2016 (available http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_wrong_counts_and_closing_doors.pdf, consulted 11.06.2020).

⁶⁰ The principle of reception of asylum seekers is enshrined in EU Directive 2013/33, as well as in the Charter of Fundamental Rights of the European Union, in particular Articles 1 and 18. In *M.S.S. v. Greece and Belgium*, the European Court of Human Rights held that the obligation to provide housing and decent material conditions to destitute asylum-seekers is part of positive law and falls on the authorities by virtue of the Reception Directive. It reiterated this reasoning in a subsequent judgment, the *Tarakhel* case in 2014. These two judgments specifically concerned persons who, under the Dublin Convention or the Dublin Regulation, were to be sent back to a country of the Union where the reception system had serious shortcomings, making it impossible to guarantee decent reception conditions for these persons.

⁶¹ See Reception report noted above.

For unaccompanied children, this means that the shelters in which they may be placed will not respond to their specific needs as children. The saturation of places and lack of adequate infrastructure impact their ability to access educational and support services. Here are a few examples:

In France, the number of arrivals is bigger than the number of places available, resulting in overcrowded establishments. This contributes to inappropriate reception conditions, such as the transformation of a meeting room into a dormitory to respond to the emergency. The lack of places in some departments leads the social services to place the unaccompanied foreign children in hotels where educational support is almost non-existent.

“ The hotel is not a place for children. Sometimes there were three, five, six of us in the room with bunk beds. We couldn't sleep ”

“ At the hotel there was nothing. It was just for eating and sleeping. As I don't like to stay enclosed between the four walls of a room, I would leave after lunch and come back for dinner. There was no one there for us. It was always open. It was a mess. If you come home at three in the morning no one tells you anything. Nobody cares about us. ”

Unaccompanied children, France

In Spain, due to the overcrowding situation of the emergency centres, the unaccompanied children and adolescents have to share rooms and sometimes even a bed. In most cases, they do not have spaces for leisure, free time and recreation. Nor is there a food and hygiene regime adapted. Their stay in the temporary shelters can reach up to nine months until they are transferred to a definitive reception centre that has facilities and spaces that are more adequate and adapted to children and adolescents.

In Greece, because of the lack of appropriate shelters, unaccompanied foreign children are placed either in detention centres, in safe zones within the Reception and Identification Centres or in refugee camps. Their detention is for the purpose of their removal to a shelter and cannot exceed 45 days. However, there is no time limit for children who are under protective custody, since protective custody is not considered as detention. In case the child is not placed in a safe facility, the Greek state cannot provide her/him with a social worker, thus the child is dependent on the availability of the NGOs.

These inadequate conditions of the shelters can lead to situations of violence. In Spain, relations of exploitation and power are frequent between the unaccompanied children themselves as well as between them and the professionals working in the centre.

Finally, homelessness also concerns children that have been registered. Indeed, in Greece, unaccompanied children on the move often run away from the safe zones or the refugee camps due to the humiliating living conditions and resort to the city of Athens in search of a better life. In Spain, homelessness is also an important problem affecting the unaccompanied children and adolescents. This reality occurs either because the provisional Reception Center where children and adolescents are housed, expels them from the centre without transferring them to the police or the Government Delegation; because it was not possible to achieve repatriation of children and adolescents to their country of origin; or because the Police itself leaves children and adolescents to their own fate. In the Netherlands, every year over 250 children go missing from state reception facilities. These children are registered as “left with unknown destinations”. There are signs that a significant number of missing child asylum seekers have ended up in detrimental situations where they may be subject to exploitation. In these situations, unaccompanied children remain in a street situation. Their vulnerability exposes them to great dangers among which trafficking and exploitation, including sexual exploitation.



RECOMMENDATIONS

A. CHILD-FRIENDLY ADMINISTRATIVE PROCEDURES

CFJ-IA partners observed that the CFJ Guidelines are only partially implemented in their countries. In many respects, the child is considered and treated first and foremost according to his/her administrative status rather than his/her minor age. This is a major obstacle to the implementation of the guidelines and, more broadly, of their fundamental rights. It is therefore essential to adapt procedures to children so that they are fully respectful of their needs and rights.

- A child must always and above all be considered as such. His or her rights must be respected regardless of his or her migratory situation or that of his or her parents;
- All the Member States of the European Union have ratified the CRC. The EU should also ratify the CRC in order to reiterate its commitment to the rights of the child, ensure their respect in all acts it adopts and strengthen monitoring at the supranational level;
- All European and national legislations governing or indirectly impacting on administrative justice procedures involving child migrants should be aligned with the Council of Europe Guidelines on Child-Friendly Justice, and clear and concrete efforts should be made by all the EU Member States to act in their respect;
- It is essential to ensure that, in practice, the implementation of these procedures complies with the CFJ Guidelines overall and at each stage. Therefore, beyond the legal framework, implementation tools must be developed as well as regular monitoring ensured.

B. CHILD-FRIENDLY INFORMATION

Children involved in migration-related administrative justice procedures are generally not sufficiently informed, including about their rights, or they are informed in a manner that is not sufficiently adapted and does not allow them to really understand the information and its implications.

Therefore, it is recommended:

- To ensure that all children involved in migrations-related administrative procedures, whether they are accompanied or not, receive child-friendly information, adapted to their age, maturity, capacities, language, gender and culture;
- To inform children about the reception conditions, international protection procedures, their file and the reasons of the rejection or the approval of their application, possible threats, key facilities and the culture of the country where they apply. They must also receive information about their rights to access to health, education, social protection, legal support, remedy;
- That trained professionals, who are in contact with child migrants, give information through different adapted ways such as information sessions and material (leaflets, mobile applications, etc.). The provision of information to the child cannot be limited to the handing over of information support. It must be accompanied by direct explanations;
- That, when relevant, an interpreter, trained in using a child-friendly language, is present at all stages of the proceedings and has neutral behaviour during hearings so as not to be assimilated to immigration officers.

Cultural mediation is a transversal competence aimed at facilitating a mutual understanding and, therefore, relations between people with a different cultural background. It does not consist of a mere translation and interpretation. Cultural aspects must be taken into account in order to make sure that the information is adapted to the child coming from a different background.

Therefore, it is recommended:

- To adjust the interview questions to be culturally sensitive;
- To ensure the presence of a cultural mediator whenever needed during the administrative proceedings.

C. LEGAL COUNSEL AND REPRESENTATION

The CFJ-IA research shows that in many ways children involved in migration-related administrative justice procedures do not have adequate access to legal aid.

Generally, legal assistance is not provided for at the first level of the procedure, yet at this stage the child may be required to meet with immigration officials or to be heard by the administrative officials who will examine the application for international protection. This stage is therefore decisive in order to access their rights.

Legal assistance from the outset of the administrative procedure is essential to ensure the rule of law and the child's right to information or to strengthen the child's participation.

Therefore, it is recommended:

- ↳ To ensure that children are assisted by a lawyer or legal adviser free of charge from the beginning of the administrative procedure and at every stage;
- ↳ To mainstream the presence of a legal independent adviser in institutions and reception centres where children, with or without their family, are hosted;
- ↳ To guarantee adequate training for these lawyers and legal advisers and to provide legal aid, which is in accordance with the requirements of advising and accompanying a child (time, particular procedures etc.).

D. GUARDIANSHIP

The appointment of a guardian for all unaccompanied children should be done as expeditiously as possible. The guardian should be appropriately trained and be impartial and independent; he or she should be in the position to act as a watchdog of the fulfilment of the rights of the child and determined to contribute to the child's integral protection and wellbeing.

National systems should ensure that guardians are able to:

- ↳ act as independent protector of the child's best interests;
- ↳ establish a close relation with the child, oversee the child's access to equal services and treatment as national children;
- ↳ make sure that the child feels respected and listened to, and that his/her opinions, thoughts and aspirations are given due weight by the different concerned actors;
- ↳ support the child in expressing him/herself and in understanding the world that surrounds him/her. In doing this, the guardian should adhere to a necessary multicultural perspective.
- ↳ accompany the child in all steps of the procedure and ensure the child's rights and coherent application of the child-friendly principles embedded in the law.

E. CHILDREN'S PARTICIPATION

The right of all children to participate in a meaningful way in all migration-related procedures affecting them must be guaranteed.

It is therefore necessary to:

- ↳ Make sure that the direct participation of the child in proceedings affecting him or her is a right systematized and guaranteed by law and that it is never an obligation, whether or not the child is accompanied;
- ↳ The child's participation in the procedure must be meaningful and in accordance with the implementation of his or her other rights. In that regard, the effectiveness of his or her rights to information and legal assistance are essential.

In order for children's participation to be meaningful and consistent with the effectiveness of their other human rights, it is necessary:

- ↳ To ensure that all children can adequately prepare themselves for hearings with the help of a legal adviser or lawyer, and with medical and psychological assistance when necessary;
- ↳ To ensure the presence of an interpreter or cultural mediator when necessary;
- ↳ To enable the presence of a trustworthy person, to guarantee the presence of the child's lawyer and to guarantee the presence of the guardian if the child is unaccompanied;
- ↳ That the questions asked to the child are culturally appropriate to the child's maturity and level of understanding;
- ↳ That the hearings duration is appropriate to the child and that the hearings take place in an environment that can guarantee respect for the child's private and family life, as well as physical and psychological integrity;
- ↳ That the courtrooms and hearing rooms are in line with a child-friendly environment;
- ↳ That the legal framework ensures that statements made by the accompanied child that contradict those of his or her parents are not used against the parents or as grounds for rejecting the application;
- ↳ To respect the physical and psychological integrity of the child;
- ↳ To guarantee the appropriate training of professionals in contact with children.

F. APPROPRIATE ACCOMMODATION

Ensuring the right to accommodation for all children is an essential basis for making the requirements of the CFJ Guidelines effective. This implies that:

- ↳ European and national legislations must guarantee the right of every child, accompanied or unaccompanied, to be accommodated in conditions that allow respect for his or her rights, including his or her right to safety, regardless of his or her migration status or his or her parents' status;
- ↳ States must make sufficient financial resources available to ensure that an adequate number of accommodation units are available;
- ↳ The need to accommodate a child or the lack of accommodation shall in no case justify the deprivation of liberty;
- ↳ Pending the results of an age assessment test, the child must be accommodated in the same way as other children.

G. AGE ASSESSMENT

Across the EU, age assessment continues to be mainly based on medical examinations that are neither reliable nor respectful of the child-friendly justice principles.

- ↳ Age assessment tests, which, inter alia, result in making the duration of the procedure longer and/or being an obstacle to access to rights, are only allowed in cases of serious doubt about the minority of age. If the child has documents establishing his or her minority of age (family record book, birth certificate, etc.), the test should be ordered only after the competent authority proved that the document is not adequate;
- ↳ While waiting for the result of the age assessment, the person who declares himself or herself as a child should benefit from appropriate care;
- ↳ A socio-medical age assessment model should be favoured. This assessment must be carried out in an appropriate environment, respect a multidisciplinary approach involving duly trained professionals, involve, when necessary, the presence of a cultural mediator, use the least invasive means possible and respect the presumed age, sex and physical and mental integrity of the person. No socio-medical examination likely to compromise the psychological or physical integrity of the person shall be carried out;
- ↳ Age assessment procedures must in all respects comply with the CFJ Guidelines. Therefore, medical-type procedures whose reliability is widely questioned by scientists around the world do not meet the requirements of the rule of law;
- ↳ Children should have the right to appeal the result of the age assessment.

H. PRIVACY AND CONFIDENTIALITY

Provisions of a safe and friendly environment that respect children's right to privacy and special needs must be ensured:

- ↳ The interview and waiting rooms must be appropriate to children of all ages;
- ↳ The confidentiality of the exchanges must be ensured, through the setting of specialized child-friendly spaces in the different places where a child is being interviewed.

I. THE BEST INTERESTS OF THE CHILD

In order to ensure that, in all proceedings affecting one or more children, their best interests are assessed and taken into account as a primary consideration in any decision, it is necessary, inter alia, that:

- ↳ All competent and concerned authorities adopt a holistic approach in order to take due account of all interests involved, including the psychological and physical well-being and the legal, social and economic interests of the child;
- ↳ All professionals competent for taking a decision in proceedings which may affect one or more children are adequately trained in assessing the best interests of the child;
- ↳ All administrative or judicial decisions are duly motivated, taking into account the best interests of the child or children concerned;
- ↳ European and national legislations comply with this requirement;
- ↳ Particular attention should be paid to the implementation of article 39 of the CRC throughout the 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 conflict".

J. TRAINING OF PROFESSIONALS

In order to ensure that the principles of child-friendly justice are applied and that the rights of children, in particular as provided for in the International Convention on the Rights of the Child (CRC), are respected throughout the procedure, the professionals involved should receive adequate training.

Therefore, all professionals concerned should receive training on:

- ↳ children's rights at the national, regional and international levels and the principles of child-friendly justice;
- ↳ fundamental knowledge of psychological issues related to children, especially children in migration situations;
- ↳ children's communication needs and levels;
- ↳ how to improve contact with the child;
- ↳ how to assess and determine the best interests of the child.

The training should be organized in such a way as to be multidisciplinary as well as to include practical cases, role-plays, testimonies and interactive sessions. The possibility to have the participation of voluntary children should be explored.

In order to ensure follow-up and continuity in the processing of international protection applications involving children, we encourage the various professionals involved to cooperate throughout the procedure, while respecting the requirements of professional secrecy.

K. DURATION OF THE PROCEDURES

Administrative justice proceedings involving child migrants should not be unduly delayed and should be dealt with promptness and diligence. To this end:

- ↳ The legislation governing these proceedings must guarantee short and reasonable time limits;
- ↳ Administrations and courts must be provided with sufficient resources, including human resources, to meet these deadlines;
- ↳ The time limits for filing an application or an appeal should allow the child and his or her lawyer enough time to prepare it;
- ↳ Between each stage of the proceeding, sufficient time must be allowed for the child to be duly informed and to prepare his or her intervention;
- ↳ Timeframes should be flexible if necessary to ensure that the child's participation is meaningful (for example, medical support may be required before involvement in a proceeding in order to protect the child's psychological integrity);
- ↳ Accelerated proceedings at the border or in a transit zone do not meet the requirements of child-friendly justice and should therefore not be applied to children.

L. DETENTION

No child, whether alone or accompanied, should be detained for migration-related reasons. Such detention is indeed contrary to the CRC.⁶²

⁶² On the non-compliance of the detention of children on migration-related grounds with international standards and alternatives to detention, please see: Nowak M. and others, The United Nations Global Study on children deprived of liberty, November 2019, extract from page 451, «... these and other statements by international and regional authorities illustrate an emerging international consensus that the detention of children for purely migration-related reasons is prohibited under various provisions of the CRC » available online: <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>



INSPIRING PRACTICES

“Child specific” reasons for protection

Child specific reasons for protection include child labour, child exploitation, the denial of the right to education and child rights violations in general. These elements should be taken in consideration when assessing the specific situation of a child and when verifying the child’s story before granting the most suitable status of international protection, as has been found in Italy. Only this would enable to ensure the most protective permit.

Effective presence of a guardian

The presence of a guardian ensures higher standards in terms of child-friendly justice practices. It also has an important function of integration of all the different components of the system. Finally, it can have a deterrent effect on malpractices of other actors.

Presence of legal advisors in residential care facilities

In some residential care facilities in Italy, there are legal advisors who deal with the administrative practices related mainly with residence permits: they support the child in applying for international protection, in verbalizing the request; they accompany the child to the status determination institution and facilitate contact with the lawyer in case of appeal. Legal advisors have an important information role towards the children but also the guardians and the residential care facility staff.

Informal ways to build trust with children

As observed in Belgium and the Netherlands, immigration officers try to comfort the child while walking from the waiting room to the interview room. Some interviewers already begin connecting with the child in the waiting room by asking them casual questions. For instance: “Nice football shoes! Do you like football? Did you also play football in [your country of origin]?” Sometimes the interviewer also enables the interpreter to connect with the child. Although this is not standing practice, since the interpreter is formally only permitted to translate the exact words used by the participants, it is a way to put children at ease, in particular because the child and interpreter may share the same culture.

Child-friendly information guides for accompanied and unaccompanied children

The Commissioner General for Refugees and Stateless Persons (CGRS), the Belgian institution responsible for determining the refugee status, published the “Guide for accompanied children in the asylum procedure in Belgium⁶³” and the “Guide for unaccompanied minors who apply for asylum in Belgium⁶⁴”. They are encouraging examples of child-specific tools designed to explain the Belgian administrative procedures for international protection application to children.

Guide for parents or guardians accompanied by children

The CGRS also published a guide for parents or guardians accompanied by minor children⁶⁵. This guide informs parents or guardians about the right of accompanying children to be heard.

⁶³ Available here : https://www.cgra.be/sites/default/files/brochures/asiel_asile_-_minors_-_guided-foreign-minors_-_eng.pdf

⁶⁴ Available here : https://www.cgra.be/sites/default/files/brochures/brochure_unaccompanied-foreign-minor_2017_english_1.pdf

⁶⁵ The right to be heard – For parents and guardians accompanied by minor children, available here : https://www.cgra.be/sites/default/files/brochures/asiel_asile_-_minors_-_parents-accompanied-by-minor-children_-_eng.pdf

Specific website for asylum seekers

Fedasil, the Belgian federal agency for the reception of asylum seekers, has set up an online information platform⁶⁶ that provides asylum seekers in Belgium with reliable information on different elements of their migratory journey. This site is available in twelve languages, eight of which have audio support. It covers the following topics: asylum and procedure; housing; living in Belgium; return; work; unaccompanied minors; health; and studies. However, it is regrettable that the accompanied child is not included among the proposed topics.

Hearing rooms

The CGRS has recently acquired rooms specially designed for hearing children under 16 years of age. These have colourful furniture that makes a more comfortable, welcoming and less formal climate for hearing children. They include a small lounge with armchair, chairs and coffee table as well as a set of educational tools adapted to help the child share his or her story and emotions.

Consideration of the child's place in hearings before a judge

It was observed that an appeal judge in Belgium took specific measures at the beginning of the hearing in order to make sure that the child is adequately placed (not hidden behind other adults, for instance). This type of small adaptation could foster child's participation.

Possibility of reviewing the minutes of the hearing

Lawyers have the opportunity to react to the hearing report of the CGRS Protection Officer in Belgium. Currently the lawyer has eight days to propose changes to the hearing report.

Legal clinic

The Université Libre de Bruxelles offers these law students the opportunity to deal with practical cases, thus giving asylum seekers the possibility of receiving free legal aid.

Audiovisual recording of the hearings

The audiovisual recordings of the interviews can act as a positive nudge to improving direct contact between the child and the person interviewing him or her.

Accountability and Child-friendly judgements

Some judges make efforts in order to publish judgements that are adapted to children. Helen Stalford and Kathryn Hollingsworth published an article⁶⁷ examining how and why the form and presentation of judicial decisions is an important aspect of children's access to justice. These offer practical examples as to how to ensure child-friendly information is dispensed and the best chances that the reasons behind a decision taken by the justice system, are clearly understood by the child they apply to.

⁶⁶ A This platform is available here : <https://www.fedasilinfo.be>

⁶⁷ "This is about you and your future": Towards Judgements for Children", Helen Stalford and Kathryn Hollingsworth, *Modern Law Review*, 14 May 2020, available online: <https://onlinelibrary.wiley.com/doi/full/10.1111/1468-2230.12536#XujsVNQadPU.linkedin>

English edition

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