

IMPLEMENTING THE COUNCIL OF EUROPE GUIDELINES ON CHILD-FRIENDLY JUSTICE IN PROCEDURES RELATED TO MIGRATION

Research Document for European Advocacy



Introduction

Across the European Union, every year tens of thousands of children are involved in migration-related administrative justice procedures that determine the exercise of their fundamental rights.

For example, in 2018, just over 197,000 children¹, whether with their families or unaccompanied, were involved in an asylum procedure in the EUⁱ (which represents only part of the children in migration situations).

When they are involved in migration, children are often involved in multiple procedures: application for residence, age assessment, family reunification etc. Research carried out in the framework of the ***Child-Friendly justice in action!*** project shows that these procedures are often not adapted to them.

In 2010, the Committee of Ministers of the Council of Europe adopted the Guidelines on

Child-Friendly Justice². These aim to ensure that all children's rights are fully respected in justice procedures. Ten years after their adoption, how have they been implemented in migration-related proceedings involving children in the EU?

These guidelines emanate from the Council of Europe and serve as a reference for its member states in order to "adapt their judicial and non-judicial systems to the rights, interests and specific needs of children"³. The European Union is also largely responsible for the implementation of these guidelines in migration-related procedures because of its competences in this field under Articles 77-80 of the Treaty on the Functioning of the EU.

The aim of this document is to provide an overview of the implementation of the Guidelines on child-friendly justice in migration procedures across the EU and to highlight strategies for improving it.

What is the Child-Friendly Justice European Network and the CFJ in action project?

This background document as well as the accompanying position paper and [webinar](#), were developed through research conducted as part of the European project *Child-Friendly Justice in action!* (2018-2020). This project aims to promote and strengthen the implementation of the Council of Europe guidelines on child-friendly justice in administrative procedures and administrative justice. It focuses mainly on migration-related procedures in which children, whether in families or unaccompanied, may be involved.

The *CFJ in action!* research involved documentary and field research in six European Union countries⁴ during which several professionals and young people were consulted. This document is mainly based on the findings of research carried out in Belgium, Italy, Greece, France, Spain and the Netherlands (by the Defence for Children International sections in each of these countries).

CFJ in action! coordinated by DEI-Belgium is also the first project carried out within the framework of the CFJ European Network, more information on the [website](#).

¹ Exactly 197,725 children, see table "Asylum seekers and first-time asylum seekers by nationality, age and sex. Aggregated annual data (rounded)", updated on 11-02-2020.

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 guidelines.

⁴ In Belgium, Spain, France, Greece, Italy and Czech Republic

1. What is child-friendly justice?

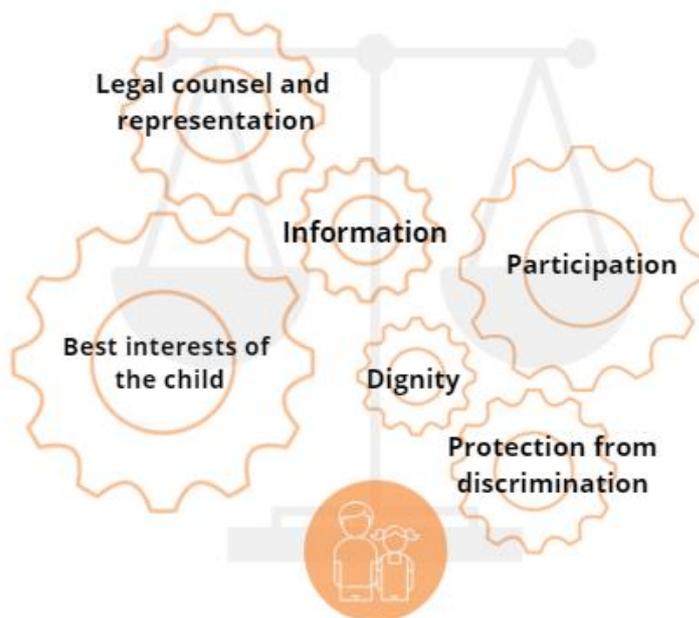
Inspired by many international standards, including the International Convention on the Rights of the Child and the European Convention on Human Rights, the guidelines aim to ensure that in all procedures concerning them, the rights of the child are respected.

They lay down both general principles and specific rules which are essential to ensure that the rights to access to justice and to have 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. She should simply walk beside them and be their friend. »⁵

Principles of Child Friendly Justice



⁵ Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe from 2002 to 2012, excerpt from

the preface to the Council of Europe Guidelines on child-friendly justice

The scope of the guidelines

All member states of the Council of Europe, including therefore the EU member states, have adopted these guidelines. The EU, which has an important competence in this area, must therefore act to implement them.

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.⁶. "Judicial proceedings" refers to all proceedings used by institutions and services involved in the implementation of the law. The original version of the Guidelines is very clear: "all competent bodies and

services involved in implementing criminal, civil or administrative law".

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

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

"It [child-friendly justice] treats children with dignity, respect, care and fairness. It is accessible, understandable and reliable. »⁷

A practical instrument resulting from an innovative development process

Ultimately the result of political negotiations, the 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 were consulted in 25 countries via questionnaires).

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

⁶ Guidelines, Part I. *Scope and purpose*

⁷ Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe from 2002 to 2012, excerpt from

the foreword to the Council of Europe Guidelines on child-friendly justice

Content of 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 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 prerequisite for justice to be truly child-friendly and for the child's **participation to be meaningful** and enable the exercise of his or her rights.

The 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 procedures, the training of professionals working with and for children is central.

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". Clarification is made concerning unaccompanied or separated minors for whom deprivation of liberty "should never be motivated by a lack of residence status". 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, a large number of international⁸ decisions and declarations since 2010 have stated that deprivation of a child's liberty for migration-related reasons is contrary to the Conventionⁱⁱ. Therefore, the implementation of the 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 thus be able to express himself or herself and have his or her views taken into account.

⁸ 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>

2. Why is the implementation of the Guidelines fundamental to the respect and implementation of the rights of children affected by migration in particular?

A child is always and above all 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 is affected by migration, exercising his or her rights (in particular to education, health, protection, etc.) is strongly conditioned by procedures. The child is often involved in a multitude of procedures, including applications for international protection, residency, and procedures to assess his or her age, family reunification, etc.

In addition, children in migration situations may have specificities that make the adaptation of procedures even more essential for the exercise of their rights. The risk if the procedure is not adapted is 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 from the relation between the child and the different levels of the surrounding context. For example, this is particularly the case if they are not proficient in the language of the procedure, if they are unaccompanied, if they have experienced particular traumas before or during their migration journey.

Finally, the guidelines aim to ensure that procedures are respectful of the physical and psychological integrity of children. However, a number of stages of the asylum-related procedures are particularly likely to affect children's integrity. This is true, for example, of hearings conducted before the administrative authority responsible for examining an application for international protection, which leads the child to explain to the officer the reasons justifying their application for international protection, and therefore potentially traumatic events.

3. The role of the EU in administrative and legal procedures affecting children in migration situations

The EU has an important competence in the field of migration-related administrative procedures and administrative justice that may concern children, mainly as a result of Articles 77-80 of the Treaty on the Functioning of the EU (TFEU).

These competences have therefore justified the adoption of European standards that regulate these procedures, in particular: the "qualification" directive (Directive 2011/95/EU), the "procedures" directive (Directive 2013/32/EU), the "reception" directive (Directive 2013/33/EU), the Dublin III Regulation (Regulation no. 604/2013), the Eurodac Regulation (Regulation no. 603/2013). All these directives and regulations make up

the Common European Asylum System. Other European standards also have a direct impact on children's rights in migration-related procedures, such as the Return Directive (Directive 2008/115/EC) or the EU-Turkey Agreement of 18 March 2016.

It is therefore important that all these standards comply with the guidelines and encourage their implementation by Member States in all these procedures.

The EU also has a more general role in the implementation of the Guidelines on child-friendly justice as it has competences in the organisation of judicial cooperation in criminal and civil matters (TFEU, Articles 82-86).

4. Are administrative and administrative justice procedures related to migration "child-friendly"?

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

Generally speaking, in all these countries the guidelines are only partially implemented.

In many respects, the child is seen first and foremost as a migrant, rather than as a child, and this is a major obstacle to the implementation of the guidelines and, more broadly, of their 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.

➤ ***Adapt procedures to children so that they are 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 guarantee its commitment to the rights of the child and their respect in all the acts it adopts;
- All European and national legislation governing or indirectly impacting on administrative and administrative justice procedures involving migrant children must respect and include the Council of Europe Guidelines on child-friendly justice;
- It is essential to ensure that, in practice, the implementation of these procedures complies with the guidelines overall and at each stage. Thus, beyond the legal framework, implementation tools must be developed and the necessary means granted.

➤ ***Children in families are too often invisible in the proceedings.***

Despite recent efforts, the procedures do not take children in families sufficiently into account and are not sufficiently adapted to their needs and rights. They are often poorly informed, are not encouraged to participate and their best interests are not taken into account.

"What happens a lot with accompanied children, if they haven't filed an asylum application of their own, is that they are not really taken into account⁹. Judge of the Council for Alien Law Litigation in Belgium

➤ ***Respecting the rights of accompanied children in the procedure***

- Administrative and administrative justice procedures involving families must also comply with the guidelines;
- Decisions taken in these procedures must be issued after taking into account the best interests of the child or children concerned.

⁹ Defence for Children International (DCI) - Belgium, National Report resulting from the research "Child Friendly Justice in Action" available

from September 2020 on the website www.cfjnetwork.eu

➤ ***The children, accompanied or not, are not sufficiently informed.***

Children involved in migration-related administrative or judicial proceedings 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.

In the Netherlands¹⁰, for example, research shows that despite the fact that in most cases children have received information about their rights, they find it difficult to understand them in practice. In Belgium, little information is

provided to children involved with their families in an application for international protection¹¹.

Information and children's understanding of this information is crucial to the exercise of their rights. In Greece¹², for example, the lack of information on family reunification often results in the three-month time limit, within which the application can be submitted by the minor, being exceeded. As a result, their application is considered overdue thus not being accepted by the other country.

➤ ***Guaranteeing the right to information***

Ensure that all children involved in migration-related procedures are informed in a language they can understand, that is clear and appropriate to their level of maturity and particular situation, about, inter alia: their rights; the steps, actors and time limits of the procedure; the possible consequences of the procedure; the support that might be available to them during the procedure.

With this in mind:

- All legal standards governing migration-related procedures should protect the right to information of any child involved and ensure his access to legal assistance from the beginning of the administrative procedure;
- All legal standards governing migration-related procedures must guarantee the presence of an interpreter or cultural mediator at each stage of the procedure where this is necessary, and adequate resources must be provided (it is therefore necessary in specific contexts to increase the number of interpreters or cultural mediators involved);
- Children accompanied by their parents must also be able to receive appropriate information;
- The initial or in-service training of the professionals involved (judges, lawyers, administrative officials, interpreters, etc.) should address communication with and information provision to the child;
- Child-friendly information materials should be made available to professionals. However, the provision of information to the child cannot be limited to the handing over of an information support. It must be accompanied by direct explanations.

¹⁰ Defence for Children, The Netherlands, National Report from the research "Child Friendly Justice in Action" available from September 2020 at www.cfjnetwork.eu.

¹¹ Defence for Children International (DCI) - Belgium, National Report resulting from the research "Child Friendly Justice in Action" available

from September 2020 on the website www.cfjnetwork.eu

¹² Defence for Children International (DCI) - Greece, National Report from the research "Child Friendly Justice in Action" available from September 2020 at www.cfjnetwork.eu.

➤ ***Their right to be heard and to express their views is not effective.***

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, ill-adapted processes have negative consequences on them.

In Belgium, for example, it is common that, if the child is young, his or her participation is automatically excluded. However, "A child should not be prevented from being heard simply because of his or her age."¹³, the authority should be able to refuse to hear a child who wishes to participate only on the basis of the best interests of the child. In Belgium, this is what a lawyer commented: "*This week I went to the Immigration Office with an unaccompanied child, she was 8 years old, so we were sure she would not tell anything (...). She told us a thousand things, she even defined xenophobia for us. It was unpredictable*"¹⁴.

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, as an Italian lawyer points out, for example: "*In judicial and administrative contexts, the cultural mediator or interpreter is often optional (meaning that it is not ensured on a permanent basis)*"¹⁵. In the Netherlands, an official from the administration in charge of examining applications for international protection refers to the unsuitability of interviews with children conducted by the immigration services: "*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.*"¹⁶

Inadequate conditions and interactions with the child can have serious consequences for their physical and mental integrity, being interviewed about the reasons for an application for international protection can cause significant trauma to the child. Finally, the child's participation must be prepared and the questions and format of the hearing adapted. Children tend to give the answer that the interviewer seems to expect from them, and they do not always understand what the consequences of their answers might be.

¹³ Guideline No. 47

¹⁴ Defence for Children International (DCI) - Belgium, National Report resulting from the research "Child Friendly Justice in Action" available from September 2020 on the website www.cfjnetwork.eu

¹⁵ Defence for Children International (DCI) - Italy, National Report resulting from the research "Child

Friendly Justice in Action" available from September 2020 on www.cfjnetwork.eu.

¹⁶ Defence for Children, The Netherlands, National Report from the research "Child Friendly Justice in Action" available from September 2020 at www.cfjnetwork.eu.

- ***Ensure the right of all children to participate in a meaningful way in all migration-related proceedings affecting them***

For this, it is necessary to :

- Ensure that the direct participation of the child in proceedings affecting him or her is a right organized 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 minor'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 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 training of professionals in contact with children.

➤ **Lack of access to legal aid**

Research shows that in many ways children involved in migration-related administrative and 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 Greece, and in other European

countries, we note that "*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*"¹⁷.

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.

➤ **Ensuring access to appropriate and quality legal assistance from the outset of the procedure**

For this, it is necessary 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;
- Mainstream the presence of a legal independent adviser in institutions and reception centres where children, with or without their family, are welcomed or hosted;
- 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.).

¹⁷ Defence for Children International (DCI) - Greece, National Report from the research "Child

Friendly Justice in Action" available from September 2020 at www.cfjnetwork.eu.

➤ **The best interests of the child: an element not sufficiently taken into account, or even forgotten, in migration-related procedures**

A fundamental principle of the CRC is that the best interests of the child shall be a primary consideration "over all other considerations in all matters affecting the child directly or indirectly"¹⁸.

However, we note that the best interests of the child are not necessarily assessed in administrative and administrative justice procedures related to migration. An official of the administration responsible for taking the decision on international protection in Greece emphasizes: "*The majority of my colleagues have never had training on the preparation of a best interest assessment report*"¹⁹.

These decisions, although they directly concern children, whether issued by an administration or a court, generally do not contain

explanations on the consideration of the best interest of the child. "*The majority of my colleagues do not take the CRC into account when they take a decision on an asylum application. In fact, only a few do*"²⁰, reported an official of the administration in charge of assessing applications for international protection in Greece.

Furthermore, it has been observed that often, the way the asylum procedures work, instead of supporting children taking into consideration their best interest, in practice further deepen their trauma. Along the whole asylum process the right of recovery (art 39 CRC) and rehabilitation should be implemented. All procedures must be held aiming to recovery children's existing trauma.

➤ **Assessing the best interests of the child and ensuring that they are taken into account as a primary consideration in any decision affecting 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 along the whole asylum process. Indeed, these proceedings should "promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts".

¹⁸ Guidelines, B. 1

¹⁹ Defence for Children International (DCI) - Greece, National Report from the research "Child Friendly Justice in Action" available from September 2020 at www.cfjnetwork.eu.

²⁰ Defence for Children International (DCI) - Greece, National Report from the research "Child Friendly Justice in Action" available from September 2020 at www.cfjnetwork.eu.

- **Age assessment procedures as they are implemented today do not respect the rights of the child.**

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.

Moreover, in many EU countries there is an excessive use of these procedures, which are

used even when the child has genuine identity documents. In Spain *"the age assessment test is applied to unaccompanied foreign minors who have official and valid identity documents that allow them to reliably prove that they are minors"*²¹.

➤ **Age assessment**

European and national legislation must ensure that:

- 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. If the child has documents establishing his or her minority (family record book, birth certificate, etc.), the test should be ordered only after the competent authority has 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 minor should benefit from appropriate care;
- A medico-social 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 medico-social 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 Council of Europe's Guidelines on child-friendly justice. 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.

²¹ Defenza de los niños y niñas (DNA) - España, National Report from the research "Child Friendly

Justice in Action" available from September 2020 at www.cfjnetwork.eu.

➤ **The length of the proceedings is inappropriate: they are often too long**

The guidelines provide that, while respecting the rule of law, proceedings involving children should not be too lengthy.

However, it is regularly observed that proceedings, particularly asylum proceedings, are often way too long. They can last several years, and are therefore incompatible with the well-being and peaceful development of the child. The excessive length of proceedings is particularly detrimental to adolescents who will become adults while their proceeding has not yet been completed. A long time taken to appoint a guardian is also highly prejudicial for an unaccompanied minor.

On the other hand, as DCI – The Netherlands points out in their national report²², it is worth

noting that haste in proceedings can also be detrimental. Too short delays for appealing or lodging an application can prevent access to rights. In addition, a hearing may be premature in relation to the psychological trauma suffered by the child.

➤ ***Ensuring that the duration of proceedings is respectful of the rights and needs of the child***

Administrative and administrative justice proceedings involving children should not be unduly delayed and should be dealt with promptly and diligently. 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 not be too short in order to allow the child and his or her lawyer enough time to file them;
- 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.

²² Defence for Children, The Netherlands, National Report from the research "Child Friendly Justice in

Action" available from September 2020 at www.cfjnetwork.eu

➤ **Protection from discrimination**

The right to be protected from discrimination is a fundamental principle of child-friendly justice. The administrative and administrative justice procedures studied revealed discrimination in some respects. Equal treatment is sometimes undermined by

discontinuity in the implementation of standards in the territories. In Belgium, for example, lawyers note divergences in case law between the Dutch-speaking and French-speaking chambers of the Aliens Litigation Council.

➤ **Ensuring that procedures are non-discriminatory**

- The child's participation in proceedings should not be subject to a strict age limit set by law; the maturity of each child should be considered;
- An application submitted by a minor should not be treated in a stereotypical manner according to his or her region of origin, an individual analysis including an assessment of the best interests of the child should be established at all times.

➤ **Detention of children on migration-related grounds**

Across the Union, children alone or with their families are detained every year for migration-related reasons and therefore the fundamental rights of these children are not respected.

respect their fundamental rights as children and for long periods of time. Some are held in "protective custody", which can exceed 45 days.

In Greece, a large number of unaccompanied minors are detained in conditions that do not

➤ **Prohibit the deprivation of liberty of children on migration-related grounds**

No child, whether alone or accompanied, should be detained for migration-related reasons. Such detention is indeed contrary to the International Convention on the Rights of the Child²³. 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. All EU Member States should also absolutely prohibit this practice.

²³ Concernant la non-conformité de la détention d'enfants pour des motifs liés à la migration aux standards internationaux et les alternatives à la détention voir : Nowak M. et autres, *The United Nations Global Study on children deprived of liberty*, Novembre 2019, extrait de la 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 » accessible en ligne : <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx> et PICUM, dans la cadre de la Initiative for Children in Migration, *Child Immigration Detention in the EU*, Mars 2019, disponible en ligne : http://childreninmigration.eu/PICUM_policypaper_childimmigrationdetention.pdf

➤ **Lack of accommodation for children during the procedure**

While accommodation is not directly included in the Council of Europe guidelines, the lack of suitable accommodation emerged in the course of the research as a fundamental aspect in assessing the procedures and how much child-friendly they are. Indeed, the lack of accommodation or the totally inadequate accommodation observed in several countries has a strong impact on the procedure and the rights of the child during the procedure.

"The lack of accommodation in some departments leads the social services to place unaccompanied minors in hotels, where they receive almost no educational support" Extract from the research report in France²⁴.

In Greece, *"Due to the lack of suitable homes, unaccompanied foreign minors are placed either in detention centres, in insecure areas within reception and identification centres or in refugee camps."* Research also reports a large number of unaccompanied minors who are homeless throughout the country.²⁵ These hundreds of children are in a limbo situation, not knowing how to register and apply for international protection and access to housing thus staying invisible by the authorities and exposed to all kinds of dangers and exploitation in the absence of a legal guardian provided by the State.

➤ **Ensuring access to adequate accommodation to guarantee the rights of the child throughout the procedure**

Ensuring the right to accommodation for all children is an essential basis for making the requirements of the Guidelines on Child-friendly Justice effective. This implies that:

- European and national legislation 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 presumption being minority, the child must be accommodated in the same way as other minors.

²⁴ Defence for Children International (DCI) - France, National Report resulting from the research "Child Friendly Justice in Action" available from September 2020 on the website www.cfjnetwork.eu

²⁵ Defence for Children International (DCI) - Greece, National Report from the research "Child Friendly Justice in Action" available from September 2020 at www.cfjnetwork.eu.

➤ **The training of professionals is often not systematic or complete.**

Throughout the procedure, children come into contact with different professionals on whom the concrete and final implementation of the guidelines is largely based: the guardian, the lawyer, the administrative agents in charge of the study of the application for international protection, the interpreter, the judge, etc.

It is therefore essential that these professionals have the necessary resources to implement the Guidelines on child-friendly justice in their interactions with the child.

The training of professionals is still deficient in most EU countries, and they regularly express a desire to be better trained.

In Italy, "*The training and supervision of professionals involved in administrative procedures concerning unaccompanied children is extremely variable and is left to the discretion of each individual or organisation concerned*"²⁶.

"The psychological side of knowing how to talk to a child, how to have accessible language, etc., is not at all easy for lawyers. We tend to speak in a very complicated way" Belgian lawyer²⁷

In addition, the lack of staff has a serious impact on the implementation of the guidelines. In Spain, for example, cultural mediators or interpreters are not present during weekends in reception centres. Nor are they always present during the week either, which leads to situations where another minor has to play the role of interpreter.

A lack of mutual knowledge and coordination between the various professionals involved in these procedures and in contact with the child is also noted as being in some respects a major obstacle to the implementation of the guidelines. Indeed, this may be fundamental for the information of the child for example.

➤ **Ensure the training and availability of the professionals involved**

The training of professionals involved in administrative and administrative justice procedures related to migration and concerning children should be generalised, compulsory and include, inter alia, instruction on:

- the rights of the child and the principles of child-friendly justice;
- the psychology of the child and particularly of children affected by migration;
- communication with the child;
- assessment of the best interests of the child.

Training should be organised in such a way as to be multidisciplinary, involve children directly and include practical exercises and role-playing.

²⁶ Defence for Children International (DCI) - Italy, National Report resulting from the research "Child Friendly Justice in Action" available from September 2020 on www.cfjnetwork.eu.

²⁷ Defence for Children International (DCI) - Belgium, National Report resulting from the research "Child Friendly Justice in Action" available from September 2020 on the website www.cfjnetwork.eu

➤ **The appointment of an appropriately trained and independent guardian for unaccompanied children is not always ensured.**

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 minors²⁸. 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 safeguard element of a procedural nature. The guardian is the one who will help the child to make his voice heard and taken into consideration in all decisions that concern her or him.

“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”.

Says a volunteer guardian in Italy.

Across the EU, the appointment of a trained and impartial guardian is not always ensured. 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 but, 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.

➤ **Ensure the timely appointment of independent trained guardians for every unaccompanied child**

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 guarantor of the child's best interests;
- establish a close relation with the child, oversee the child's access to equal services and treatment than 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 trans-cultural perspective.
- accompany the child in all steps of the proceeding and ensure the minor's rights and coherent application of the child-friendly principles embedded in the law.

²⁸ 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 .

Based on this research document a position paper was developed “Strengthening the rights of the child in administrative and judicial proceedings related to migration: Implementing the Council of Europe guidelines on child-friendly justice “ it can be downloaded from the [Child Friendly Justice European Network website](#).

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