Ensuring the child's right to be heard and to participate in legal proceedings

Strategies and good practices

April 2026

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1. Introduction

This Compendium is intended for professionals involved in legal proceedings concerning children,[1] including judges, lawyers, prosecutors, probation officers, social workers, intermediaries, and other persons providing support to children in specific vulnerable situations. It is also intended for policymakers, and civil society organizations (CSOs) concerned with legal proceedings where children's rights are engaged.

The Compendium builds on the expertise of the International Commission of Jurists (ICJ) and the work carried out in collaboration with its partners in the VOICE project,[2] including: (i) the findings of the Baseline Study Report assessing children's participation in legal proceedings in Austria, the Czech Republic, Malta, the Netherlands, and Slovakia,[3] and (ii) discussions held during transnational workshops bringing together experts and practitioners with extensive experience in legal proceedings and child participation.[4] The Compendium is not intended to be exhaustive; it focuses on aspects addressed during these workshops.

Across Europe, around 2.5 million children are involved in legal proceedings annually.[5] Children may come into contact with the legal systems in various situations: (a) civil proceedings concerning family matters, including family separation disputes, adoption, and child protection proceedings; (b) administrative proceedings in relation to nationality or immigration issues, access to school, health and other public services, and public order offences; (c) criminal proceedings as victims, witnesses, suspects or accused persons; and (d) proceedings in which children are not directly involved, but where decisions may nevertheless affect their rights, such as cases concerning their parent or parents. Civil, criminal, and administrative proceedings, which are often already complex for adults, can be intimidating and difficult to understand for children. Therefore, legal systems must be adapted to meet children's specific needs to uphold and guarantee their rights.[6]

Children, like all persons, should have a say in decisions affecting them. Children are not only subjects of protection – they are human rights' holders. As such, they have the right to be heard in every decision that affects them. The right to be heard is key to guaranteeing children's rights and to fair procedures so that decisions can be made in their best interests. Owing to their age, however, they need an enhanced level of support in order to be able to effectively enjoy their rights. That is why the child's right to be heard and to participate must be subject to a careful analysis, and the exact manner of its application must be assessed on a case-by-case basis by professionals involved in legal proceedings concerning children.

Even where children participate or in some ways are involved in proceedings that affect them, this does not necessarily constitute effective participation or full enjoyment of the right to be heard and to participate, nor does it ensure that their views be genuinely taken

[1] This Compendium will use the international law definition of a "child" set out in Article 1 of the Convention on the Rights of the Child (CRC): "every human being below the age of eighteen years."

[2] The VOICE (Be Seen Be Heard - Empowering Child VOICEs in Legal Proceedings) Project aims to promote the effective realization of children's right to be heard and to participate in judicial proceedings across Austria, the Czech Republic, Malta, the Netherlands, and Slovakia, in compliance with Article 12 of the CRC and the EU Strategy on the Rights of the Child. The projected started in January 2025 and will last until December 2026; it is carried out by the ICJ, in cooperation with the Nederlands Juristen Comité voor de Mensenrechten (NJCM), Forum for Human Rights (FORUM), aditus foundation, and Österreichische Juristenkommission (OJK).

[3] ICJ, ÖJK, NJCM, aditus, FORUM, Baseline Study on the Participation of Children in Legal Proceedings: Austria, the Czech Republic, Malta, the Netherlands, and Slovakia, May 2025. The research draws on interviews with legal experts, justice professionals, and children themselves. The baseline has not been published publicly but was made available to the project participants.

[4] See, ICJ, EU: Ensuring the child's voice is heard in legal proceedings, 20 May 2025, website (accessed 16 July 2025); ICJ, EU: Procedural safeguards for migrant children must not regress under the Pact on Migration and Asylum, 19 September 2025 (accessed on 23 September 2025); ICJ, EU: Children with disabilities have the right to participate in legal proceedings, 17 November 2025, website (accessed on 26 November 2025).

[5] European Parliamentary Research Service (EPRS), Briefing on child-friendly justice, March 2025, p. 2.

[6] Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010, p. 9.

into account. In many instances, children are still not adequately heard. A Council of Europe (CoE)-led consultation involving 3721 children across Europe found that only about half of the children involved in legal proceedings felt that they were asked for their opinion, and only 36 per cent considered that their views were taken seriously.[7] As a result, there is a need to close the divide between legal provisions and their implementation in practice.

The situation is more acute for children with specific needs and vulnerabilities, including children facing intersecting forms of discrimination, such as children with disabilities,[8] children in alternative care, and migrant and refugee children, including unaccompanied and/or separated children. For example, the European Union Agency for Asylum (EUAA) has reported that most EU Member States lack established procedures to assess the best interests of the child in asylum cases.[9] Proceedings that are not adapted to children's needs may cause further trauma, and lead to revictimization.[10]

The legal proceedings to which this Compendium refers vary in nature and scope. Some legal proceedings discussed here pertain directly to the enforcement of criminal law, while others concern primarily civil or administrative law contexts. The broad focus of the Compendium is intended to facilitate the sharing of information, strategies, and experience among practitioners from different legal fields. This comparative perspective may assist professionals in identifying approaches that can be adapted from one legal context to another, contributing to more child-sensitive legal systems.

This Compendium sets out guiding principles on the rights of the child in legal proceedings under international human rights law and standards (Section 2). It provides an overview of procedural rights and safeguards and, for each, identifies the relevant international legal standards, gaps in implementation identified in the participating countries, and good practices developed in response (Section 3). The concluding section presents cross-cutting recommendations (Section 4).

[7] CoE's Group of Specialists on Child-Friendly Justice (CJ-S-CH), Listening to children about justice: Report of the Council of Europe consultation with children on Child-Friendly Justice, 5 October 2010, p. 28. See also CoE, Child Participation Assessment Tool, website (accessed on 8 December 2025). The CoE has developed the Child Participation Assessment Tool (CPAT), which provides a structured methodology for supporting States in measuring the implementation of the child's right to participate.

[8] Disability is produced by the interaction between an "impairment" and the reality faced by persons with disabilities in society, which includes, legal, social, environmental, attitudinal and other barriers. The Convention on the Rights of Persons with Disabilities (CRPD) describes disability as an "evolving concept" and indicates that, among others, "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." See Recital (e) and Article 1 CRPD.

[9] EUAA, Practical guide on the best interests of the child in asylum procedures, 2019, p. 7.

[10] CoE, Strategy for the Rights of the Child (2022-2027) – Children's Rights in Action: from continuous implementation to joint innovation, March 2022, p. 33.

2. Guiding principles in international human rights law and standards on children's rights in legal proceedings

This Section provides an overview of the international and EU legal framework outlining the guiding principles guaranteed in international human rights law and standards and underlying all children's rights, including procedural rights and guarantees of children involved in legal proceedings.

2.1. International and EU human rights framework overview

A range of international human rights treaties, while not specific to children, apply to everyone and are therefore relevant to children as well.[11] Several of these treaties also contain provisions specifically addressing the rights of children.[12] These treaties include, for example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The adoption of the United Nations Convention on the Rights of the Child (CRC)[13] in 1989 marked an important step by explicitly recognizing children as individual rights-holders. Almost all States are parties to the CRC, which is the most comprehensive international legal instrument setting out children's rights,[14] and has been complemented by three Optional Protocols.[15] The Convention establishes the Committee on the Rights of the Child (CRC Committee), tasked with monitoring its implementation.[16] The CRC Committee issues General comments that offer interpretative guidance on the Convention's provisions, and that address specific issues and rights.[17] The Committee also considers periodic State reports, and, where applicable, individual communications and inquiries, contributing to the development of authoritative interpretations of the treaty's provisions.[18]

Article 6 of the European Convention on Human Rights (ECHR) guarantees that everyone has the right to a fair trial. While the ECHR does not include child-specific provisions, it includes a safeguard clause providing that nothing in the Convention is to be interpreted as limiting or derogating from human rights guaranteed under domestic laws or other international instruments.[19] The ECHR is interpreted by the European Court of Human Rights (ECtHR), the judicial organ of the Council of Europe, ordinarily, as a "living instrument", that is, dynamically, in the light of present-day conditions and responsive to

[11] See, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); International Convention on the Protection of All Persons from Enforced Disappearance (CED); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of Persons with Disabilities (CRPD); European Convention on Human Rights (ECHR); International Covenant on Civil and Political Rights (ICCPR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).

[12] Article 25 CED; Article 16 CEDAW; Articles 3, 4, 7, 8, 16, 18, 23, 24 and 30 CRPD; Articles 14, 23 and 24 ICCPR; Article 10 ICESCR; Articles 4, 17, 29, 30 and 45 ICRMW.

[13] United Nations (UN) Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

[14] Apart from the United States of America, all other States are parties to the CRC. Information about the status of ratification/accession to the UN treaties can be found at: OHCHR, Status of ratification interactive dashboard, website (accessed 25 March 2026).

[15] Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OP1 CRC); Optional Protocol to the CRC on the involvement of children in armed conflict (OP2 CRC); Optional Protocol to the CRC on a Communications Procedure (OP3 CRC).

[16] Article 43 CRC.

[17] See the full list of (joint) General comments and recommendations: Office of the UN High Commissioner for Human Rights (OHCHR), UN Treaty Body Database, website (accessed 17 July 2025).

[18] Article 44 CRC; Articles 13 and 14 OP3 CRC.

[19] Article 53 ECHR.

the evolution of human rights.[20] The Court examines applications from individuals,[21] but also inter-State applications, lodged by a State against another State party to the Convention.[22] The ECtHR has referred to the best interests of the child and to the CRC,[23] and has developed standards relevant to children's involvement in legal proceedings.

States Parties to the European Social Charter (ESC)—a treaty of the CoE that guarantees fundamental social and economic rights—and the Revised ESC must take appropriate measures to ensure "the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities."[24] The implementation of the ESC is overseen by the CoE European Committee of Social Rights (ECSR), which has consistently recalled that the ESC is a living instrument and should be interpreted in light of relevant international instruments, including the CRC.[25]

At EU level, the Charter of Fundamental Rights of the European Union (EU Charter) guarantees, among others, the right to an effective remedy and to a fair trial before "an independent and impartial tribunal previously established by law",[26] and contains specific provisions on children. Article 24 enshrines the principle of the best interests of the child and affirms the right of children to express their views freely, with those views being taken into consideration in matters affecting them, in accordance with their age and maturity.[27] The rights of the child are reflected across various areas of EU secondary law.[28] In civil law, this includes the Regulation on matrimonial matters and matters of parental responsibility and on international child abduction (EU Brussels IIb Regulation).[29] In criminal law, key instruments include the Directive on the rights, support and protection of victims of crime (EU Victims' Rights Directive) and the Directive on procedural safeguards for children who are suspected or accused persons in criminal proceedings (EU Procedural Safeguards Directive).[30] Under the EU Pact on Migration and Asylum, which is expected to be implemented from 12 June 2026, the Common European Asylum System (CEAS) includes provisions concerning children across several legislative instruments, including: the Regulation on asylum and migration management (EU Asylum and Migration Management Regulation), the Regulation on the common procedure for international protection (EU Asylum Procedure Regulation), the Regulation on the return border procedure (EU Return Border Procedure Regulation), the Regulation on the screening at the external borders (EU

[20] *Tyrer v. The United Kingdom*, ECtHR, Application No. 5856/72, Judgment of 25 April 1978, para 31. For an overview of the different topics covered by ECtHR case law, see ECtHR, Knowledge Sharing platform, website.

[21] Article 34 ECHR.

[22] Article 33 ECHR.

[23] See e.g. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, ECtHR, Application No. 13178/03, 12 October 2006, para 83; *Adamkiewicz v. Poland*, ECtHR, Application No. 54729/00, Judgment of 2 March 2010, para 106; *Söderman v. Sweden*, ECtHR, ECtHR, Application No. 5786/08, 12 December 2013; *Blokhin v. Russia*, ECtHR, Application No. 47152/06, Judgment of 23 March 2016, para 195; *Waresiak v. Poland*, ECtHR, Application No. 58558/13, Decision of 10 March 2020, paras 87-89; *R.B. v. Estonia*, ECtHR, Application No. 22597/16, Judgment of 22 June 2021, para 83; *V.I. v. the Republic of Moldova*, ECtHR, Application No. 38963/18, Judgment of 26 March 2024, para 135.

[24] Article 17 ESC.

[25] See e.g. *OMCT v. Ireland*, ECSR, Collective Complaint No. 18/2003 Decision of 7 December 2024; *ICJ v. the Czech Republic*, ECSR, Complaint No. 148/2017, Decision of 20 October 2020; *ICJ and ECRE v. Greece*, ECSR, Complaint No. 173/2018, Decision of 26 January 2021.

[26] Article 47 EU Charter.

[27] Article 24 EU Charter.

[28] This Compendium does not examine each piece of secondary legislation for every guiding principle or procedural safeguard discussed in Sections 2 and 3. Nonetheless, it should be noted that these EU provisions may or may not fully comply with the international human rights standards described in this section.

[29] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (EU Brussels IIb Regulation).

[30] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (EU Victims' Rights Directive); Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspected or accused persons in criminal proceedings (EU Procedural Safeguards Directive).

Screening Regulation), the Regulation on the situations of crisis and force majeure (EU Crisis Regulation), the Regulation on Eurodac (EU Eurodac Regulation), the Directive on the reception of applicants for international protection (EU 2024 Reception Conditions Directive), the Regulation on the qualification of beneficiaries of international protection (EU Qualification Regulation), and the Regulation on the Resettlement and Humanitarian Admission Framework (EU Resettlement Framework Regulation).[31] The Court of Justice of the European Union (CJEU), within the limits established by the EU Treaties, is responsible for interpreting EU law and ensuring its uniform application, including in relation to the rights set out in the EU Charter.

Both the CoE's Strategy for the Rights of the Child and the EU Strategy on the Rights of the Child promote child-friendly justice.[32] Child-friendly justice refers to justice systems that are accessible, age-appropriate, and responsive to the specific needs of children.[33] It requires adaptation of legal procedures to the child's age, maturity and understanding, and to the specific circumstances of the case, so as to ensure effective access to justice and enable meaningful participation by children in proceedings affecting them.

The best interests of the child and the right to be heard and to participate are among the CRC's four guiding principles, alongside non-discrimination and the right to life, survival, and development.

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[31] The EU Pact on Migration and Asylum is a set of legislative texts that were approved by the EU Parliament on 10 April 2024 and adopted by the Council on 14 May 2024. While the final texts entered into force on 11 June 2024, full implementation of the EU Pact will commence on 12 June 2026 (apart from the EU Resettlement Framework Regulation). See Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (EU Asylum and Migration Management Regulation); Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (EU Asylum Procedure Regulation); Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148 (EU Return Border Procedure Regulation); Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (EU Screening Regulation); Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 (EU Crisis Regulation); Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (EU Eurodac Regulation); Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (2024 EU Reception Conditions Directive); Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (EU Qualification Regulation); Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147 (EU Resettlement Framework Regulation).

[32] CoE, Strategy for the Rights of the Child (2022-2027) – Children's Rights in Action: from continuous implementation to joint innovation, March 2022; Publications Office of the EU, EU Strategy on the Rights of the Child, 24 March 2021.

[33] Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010, p. 9. These Guidelines, though not legally binding *per se*, are referred to by courts and apply across the full spectrum of EU law, including asylum procedures, reception and detention conditions, child abduction cases, civil matters, and criminal proceedings. According to the Guidelines, "'child-friendly justice' refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and 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."

2.2. The best interests of the child

The best interests of the child principle must be a primary consideration in all actions concerning children undertaken by "public or private social welfare institutions, courts of law, administrative authorities or legislative bodies", according to Article 3 of the CRC.[34] It is also enshrined in Article 24(2) of the EU Charter and in secondary EU legislation.[35] The best interests of the child is a substantive right, a fundamental interpretative legal principle, as well as a rule of procedure according to which in any decision that is to be made, which will affect a specific child, an identified group of children or children in general.[36] The decision-making process must be based on an assessment of all elements of a child's or children's interests in a specific situation.[37]

The CRC Committee has stated that: "[t]he principle requires active measures throughout government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions (…)."[38]

The CRC Committee in its General comment No. 14 identified several elements to be considered when assessing the child's best interests:[39]

a. The child's views […]
b. The child's identity […]
c. Preservation of the family environment and maintaining relations […]
d. Care, protection and safety of the child […]
e. Situation of vulnerability […]
f. The child's right to health […]
g. The child's right to education […]

It is especially important that "**child justice systems"**[40] give particular weight to the "child's best interests as a primary consideration, as well as to the need to promote the child's reintegration into society."[41] In its General comment No. 24, the CRC Committee emphasizes that, "the reaction to an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child), as well as to the various and particularly the long-term needs of the society."[42] The Committee has further recalled that an adult's judgment of a child's best

[34] Article 3 CRC: "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 2. States Parties undertake to ensure the child such protection and care as is necessary for their well-being, taking into account the rights and duties of their parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

[35] In civil law, see e.g. Recital 19 EU Brussels IIb Regulation. In criminal law, see e.g. Articles 1 and 22 EU Victims' Rights Directive; Article 7 EU Procedural Safeguards Directive. In the CEAS, see e.g. Article 23 2013 EU Reception Conditions Directive; Article EU Asylum and Migration Management Regulation; Article 22 EU Asylum Procedure Regulation; Recital 5 EU Return Border Procedure Regulation; Articles 10(2)(a) and 13(1) EU Screening Regulation; Recital 8 EU Crisis Regulation; Article 14 EU Eurodac Regulation; Article 26 2024 EU Reception Conditions Directive; Article 20(5) EU Qualification Regulation; Article 5 EU Resettlement Framework Regulation.

[36] CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paras 1-6.

[37] CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration.

[38] CRC Committee, General comment No. 5 (2003) on general measures of implementation of the CRC, para 12.

[39] CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para 52.

[40] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 8. According to the CRC Committee, "child justice systems" refer to the "the legislation, norms and standards, procedures, mechanisms and provisions specifically applicable to, and institutions and bodies set up to deal with, children considered as offenders."

[41] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 76.

[42] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 76.

interests cannot override the obligation to respect all of the child's rights under the Convention.[43]

The CRC Committee and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW Committee) have addressed the best interests of the child in migration-related proceedings in a joint General comment, affirming that: "the best interests of the child should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning the entry, residence or return of a child, placement or care of a child, or the detention or expulsion of a parent associated with his or her own migration status."[44] The Committees have stated that the child's best interests principle extends to **administrative proceedings** affecting children, including but not limited to "education, care, health, the environment, living conditions, protection, asylum, immigration, [and] access to nationality."[45]

In **civil proceedings**, including proceedings relating to "adoption or divorce, decisions regarding custody, residence, contact or other issues which have an important impact on the life and development of the child, as well as child abuse or neglect proceedings", the child's best interests must be a primary consideration.[46]

The ECHR does not expressly refer to the best interests of the child principle, the ECtHR has, however, incorporated the principle into its case-law,[47] in particular in the context of the right to respect for private and family life under Article 8 ECHR.[48]

Best interests include the right to be heard and to participate

Assessment of a child's best interests must include respect for the child's right to express their views freely, and due weight must be given to these views in all matters affecting the child. The more the child knows, has experienced and understands, the more their views become determinative of their best interests, including with respect to children in conflict with the law.[49]

Situations of vulnerability

Children are not a homogenous group but individuals undergoing a continuous process of development. Children must therefore be treated as individuals, with careful consideration of their specific needs. Every child is different, has varying needs and vulnerabilities, and

[43] CRC Committee, General comment No. 13 (2011): The right of the child to freedom from all forms of violence, para 61; CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para 4.

[44] Joint General comment No. 3 (2017) of the CMW Committee and No. 22 (2017) of the CRC Committee on the general principles regarding the human rights of children in the context of international migration, para 30. See also Joint General comment No. 4 (2017) of the CMW Committee and No. 23 (2017) of the CRC Committee on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, para 15. See also *H.M. v. Spain*, CRC Committee, Communication No. 115/2020, View of 31 May 2021, para 12(9); *W.M.C. v. Denmark*, CRC Committee, Communication No. 31/2017, View of 28 September 2020.

[45] CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para 30.

[46] CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para 29.

[47] See e.g. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, ECtHR, Application No. 13178/03, 12 October 2006, para 83; *Adamkiewicz v. Poland*, ECtHR, Application No. 54729/00, Judgment of 2 March 2010, para 106; *Söderman v. Sweden*, ECtHR, ECtHR, Application No. 5786/08, 12 December 2013; *Blokhin v. Russia*, ECtHR, Application No. 47152/06, Judgment of 23 March 2016, para 195; *Waresiak v. Poland*, ECtHR, Application No. 58558/13, Decision of 10 March 2020, paras 87-89; *R.B. v. Estonia*, ECtHR, Application No. 22597/16, Judgment of 22 June 2021, para 83; *V.I. v. the Republic of Moldova*, ECtHR, Application No. 38963/18, Judgment of 26 March 2024, para 135.

[48] See further CoE, *The best interests of the child – A dialogue between theory and practice*, March 2016, pp. 105-116.

[49] CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paras 43-44.

these have to be taken into consideration as well, on an individual basis. According to the CRC Committee, "(t)he best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation. Authorities and decision-makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child's uniqueness. An individualized assessment of each child's history from birth should be carried out, with regular reviews by a multidisciplinary team and recommended reasonable accommodation throughout the child's development process."[50] The best interests of the child and all the elements that need to be assessed in connection with it must be a primary consideration when the individual assessment is undertaken by practitioners. In other words, the rights of the child must be given priority when adopting a decision affecting the child.

Proceedings involving parents or relatives

Children who are not parties to the proceedings must nevertheless have their best interests taken into account where such proceedings concern, involve, and/or affect them. Article 3 of the CRC requires that the best interests of the child shall be a primary consideration in all actions "concerning" children. The CoE Guidelines require Member States to "guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them."[51] The best interests of the child have to be a primary consideration in civil, administrative, and criminal proceedings in which parents or relatives are parties, and in which the child's rights or interests may be affected as a result.

The CRC Committee provides that "[i]n **criminal cases**, the best interests principle applies to children […] affected by the situation of their parents in conflict with the law."[52]

In **asylum and migration-related proceedings**, the CRC and CMW Committees have stressed that "States parties should assess and determine the best interests of the child at the different stages of migration and asylum procedures that could result in the detention or deportation of the parents due to their migration status. Best-interests determination procedures should be put in place in any decision that would separate children from their family, and the same standards applied in child custody, when the best interests of the child should be a primary consideration."[53] The ECtHR has adopted a similar approach: "[w]here children are involved, their best interests must be taken into account [...]. On this particular point, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance [...]. Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight."[54] A 2025 decision of the CJEU concerning return procedures also confirmed that national courts have an *ex officio* obligation to assess the right to family life and the best interests of the child in proceedings involving parents.[55]

2.3. The right to be heard and to participate

States have obligations under Article 12 of the CRC to respect and protect a child's right to be heard and to participate.[56] Such obligations require that a child be given the opportunity and means to present their views and have those views given due weight when decisions

[50] CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paras 1 and 76.
[51] Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010, p. 10.
[52] CRC Committee, General comment No. 14 (2013) on the right of the child to have their best interests taken as a primary consideration, para 28
[53] Joint General comment No. 3 (2017) of the CMW Committee and No. 22 (2017) of the CRC Committee on the general principles regarding the human rights of children in the context of international migration, para 32(e).
[54] *Jeunesse v. the Netherlands*, ECtHR, Application No. 12738/10, Judgment of 3 October 2014, para 109.
[55] *GB v. Minister van Asiel en Migratie*, CJEU, C-313/25 PPU [Adrar], Judgment of 4 September 2025.

are being made which will have an effect on them. This right is also set out in the EU Charter on Fundamental Rights.[57]

The CRC Committee has elaborated on the obligation of States to ensure the child's right to express their views freely in "all matters affecting the child" and give due weight to those views. The Committee has stated that, "[t]his principle, which highlights the role of the child as an active participant in the promotion, protection and monitoring of their rights, applies equally to all measures adopted by States to implement the Convention."[58]

Article 12(1) of the CRC requires States to assure to every child capable of forming their own views, the right to express those views freely in all matters affecting the child, with those views being given due weight in accordance with age and maturity. Article 12(2) provides, in particular, that the child shall be afforded the right to be heard and to participate in any judicial or administrative proceedings affecting them, either directly or through a representative or appropriate body, in a manner consistent with procedural rules of national law.[59] The right to be heard and the right to participate are equally reflected in the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime of the UN Economic and Social Council,[60] and in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.[61] With respect to Article 12 of the CRC, the ECtHR found that the same considerations apply *"mutatis mutandis* in any judicial or administrative proceedings affecting children's rights under Article 8 of the ECHR. In particular, in such cases it cannot be said that the children capable of forming their own views were sufficiently involved in the decision-making process if they were not provided with the opportunity to be heard and thus express their views.[62]

In its General comment No. 12, the CRC Committee affirmed that, "[a] child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate."[63] The CRC Committee emphasized that Article 12 "imposes no age limit on the right of the child to express her or his views." It underlined that:

- "First… full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences;
- Second, it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter;
- Third, States parties are also under the obligation to ensure the implementation of this right for children experiencing difficulties in making their views heard. For instance, children with disabilities should be equipped with, and enabled to use, any mode of communication necessary to facilitate the expression of their views. Efforts must also be made to recognize the right to expression of views for minority, indigenous and migrant children and other children who do not speak the majority language;

[56] Article 12 CRC: "1. States Parties shall assure to the child who is capable of forming their own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

[57] Article 24(1) EU Charter.

[58] CRC Committee, General comment No. 5 (2003) on general measures of implementation of the CRC, para 12.

[59] CRC Committee, General comment No. 12 (2009): The right of the child to be heard, para 1.

[60] UN Economic and Social Council (ECOSOC), Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Resolution 2005/20, 22 July 2005, para 21.

[61] Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010.

[62] *M. and M. v. Croatia*, ECtHR, Application No. 10161/13, Judgment of 3 September 2015, para 181.

[63] CRC Committee, General comment No. 12 (2009): The right of the child to be heard, para 34.

- Lastly, States parties must be aware of the potential negative consequences of an inconsiderate practice of this right, particularly in cases involving very young children, or in instances where the child has been a victim of a criminal offence, sexual abuse, violence, or other forms of mistreatment. States parties must undertake all necessary measures to ensure that the right to be heard and to participate is exercised ensuring full protection of the child."[64]

The concept of evolving capacities recognizes that a child's capacities are not static and must be taken into account, including when assessing the child's best interests and when determining what weight should be given to the child's views. The CRC Committee has emphasized that, "evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children's autonomy and self-expression."[65] It has also recalled that parents and others should provide "direction and guidance" in a child-centred manner, "through dialogue and example, in ways that enhance children's capacities to exercise their rights, including their right to participation (Article 12) and their right to freedom of thought, conscience and religion (Article 14)."[66]

In the context of **child justice systems**,[67] children suspected or accused of offences have the right to be heard and to participate directly, not only through a representative, at all stages of proceedings, starting from first contact with the competent authorities.[68] The child has the right to remain silent and no adverse inference should be drawn from a decision to exercise this right.[69]

The ECtHR addressed whether a child must always be heard directly by a court in *Sahin v. Germany.*[70] The Court held that domestic courts are not required to hear a child directly in every custody case; rather, "this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned."[71] The Court accepted that a child's views may, in appropriate circumstances, be conveyed indirectly, including through professionals, such as psychologists. In *N.Ts. and others v. Georgia,* the Court indicated that domestic bodies must provide reasons for any decision not to hear a child directly, in particular, where the child is capable of forming their own views.[72] The CJEU has similarly recognized that, "it is not a necessary consequence of the right of the child to be heard that a hearing before the court of the Member State of origin take place, but that right does require that there are made available to that child the legal procedures and conditions which enable the child to express his or her views freely and that those views are obtained by the court."[73]

To exercise the right to be heard and to participate effectively, children must have access to legal assistance, information, interpretation and communication support, where needed (see Section 3).

Children with difficulties in making their views heard

The CRC Committee has made clear that, in ensuring the child's right to be heard, States Parties have an obligation to ensure the effective exercise of this right for children who

[64] CRC Committee, General comment No. 12 (2009): The right of the child to be heard, para 21.

[65] CRC Committee, General comment No. 7 (2006) on implementing child rights in early childhood, para 17.

[66] CRC Committee, General comment No. 7 (2006) on implementing child rights in early childhood, para 17. See also CRC Committee, Statement on article 5 of the CRC, 11 October 2023.

[67] For the definition of "child justice systems", see footnote 40 above.

[68] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 3.

[69] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 45.

[70] *Sahin v. Germany*, ECtHR, Application No. 30943/96, Judgment of 8 July 2003.

[71] *Sahin v. Germany*, ECtHR, Application No. 30943/96, Judgment of 8 July 2003, para 73.

[72] *N.Ts. and others v. Georgia*, ECtHR, Application No. 71776/12, Judgment of 2 February 2016, para 80.

[73] *Joseba Andoni Aguirre Zarraga v. Simone Pelz*, CJEU, Case C-491/10 PPU, Judgment of 22 December 2010, paras 61-66; *Sagrario, Joaquín, Prudencio v. Subdelegación del Gobierno en Barcelona*, CJEU, Case C-63/23, Judgment of 12 September 2024.

experience difficulties in making their views heard.[74] In this regard, the Committee refers expressly to children with disabilities and to children belonging to a minority, and/or to children with an indigenous and/or migrant background. The views of the child must be given due weight in accordance with the child's age and maturity. For this, the child's capacities need to be assessed and, where appropriate, it should be communicated to the child how those views were taken into account and how they influenced the outcome of the process.[75]

For children with disabilities, the CRPD expressly requires States Parties to ensure access to justice, including through the provision of "procedural and age-appropriate accommodations" as provided by Article 13 CRPD.[76]

The Lundy's Model of Participation

The model of participation developed by Professor Laura Lundy, as included in the Ireland's National Strategy on Children and Young People's Participation in Decision-Making 2015-2020 (see Figure 1 below) provides a practical way of conceptualizing Article 12 of the CRC.[77] It identifies four interconnected elements for effective participation: voice, space, audience and influence. In practice, children must be provided with a safe environment in which they can express their views, their views must be heard by the relevant decision-makers, and children must be able to know that their views have been taken seriously in consideration in any decision or action affecting them.

Figure 1: Lundy's Model of Participation[78]



This model provides a way of conceptualising Article 12 of the UNCRC which is intended to focus educational decision-makers on the distinct, albeit interrelated, elements of the provision. The four elements have a rational chronological order:

- **SPACE:** Children must be given safe, inclusive opportunities to form and express their view
- **VOICE:** Children must be facilitated to express their view
- **AUDIENCE:** The view must be listened to.
- **INFLUENCE:** The view must be acted upon, as appropriate.

[74] CRC Committee, [illegible] 21.

[75] CRC Committee, [illegible] 28.

[76] Article 13 CRPD: "1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. 2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff." See also Committee on the Rights of Persons with Disabilities (CRPD Committee), General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, para 81; UN Special Rapporteur on the Rights of Persons with Disability, International Principles and Guidelines on Access to Justice for Persons with Disabilities, August 2020, Principle 7. These principles and guidelines were endorsed by the ICJ, see p. 5.

[77] Laura Lundy, Voice is not enough: Conceptualizing Article 12 of the UNCRC, British Educational Research Journal, Vol. 33, No. 6, 2007, pp. 927-942. See Ireland Department of Children and Youth Affairs, National Strategy on Children and Young People's Participation in Decision-Making 2015-2020, 17 June 2015, p. 21.

[78] Ireland Department of Children and Youth Affairs, National Strategy on Children and Young People's Participation in Decision-Making 2015-2020, 17 June 2015, p. 21.

Figure 2: Lundy's Voice Model Checklist for Participation[79]



To implement the Lundy Model of Participation into practice, professionals need training and concrete guidance on how to engage effectively with children.[80] Practical measures include: (i) professionals being trained to formulate single, clear and age-appropriate questions, avoiding questions that may confuse or pressure the child; (ii) children are given adequate time and space to respond, without interruption or haste; (iii) explaining to children that it is acceptable to say that they do not know or cannot remember and that there are no "right" or "wrong" answers; (iv) and training to recognize and interpret non-verbal communication.[81]

2.4. The non-discrimination principle

In accordance with international law, including the CRC,[82] the rights of children must be secured without discrimination. Children may face multiple and intersecting forms of discrimination, "for example on the basis of gender, sexual orientation and gender identity/expression, disability, race, ethnicity, indigenous status, immigration status and other minority status."[83]

General comment No. 25 of the CRC Committee on children's rights in the digital environment states that States should "take proactive measures to prevent discrimination on the basis of sex, disability, socioeconomic background, ethnic or national origin,

[79] Ireland Department of Children and Youth Affairs, National Strategy on Children and Young People's Participation in Decision-Making 2015-2020, 17 June 2015, p. 22.
[80] The Participation People - Youth Engagement & Consultation Specialists, The Lundy Model of Participation Checklist, 27 January 2023, website (accessed 20 February 2026).
[81] For more guidance on communication, see: ICJ, Practical Handbook for Lawyers when Representing a Child: Training Materials on Access to Justice for Migrant Children, Module 6, Avril 2018; ICJ, How to Communicate and Work with Children Subject to Alternatives to Detention Training Materials on Alternatives to Detention for Migrant Children, April 2022.
[82] Article 2 CRC.
[83] CRC Committee, General comment No. 21 (2017) on children in street situations, para 26.

language or any other grounds, and discrimination against minority and indigenous children, asylum seeking, refugee and migrant children, lesbian, gay, bisexual, transgender and intersex children, children who are victims and survivors of trafficking for sexual exploitation, children in alternative care, children deprived of liberty and children in other vulnerable situations."[84]

States must ensure that children are be treated with without discrimination equality both in law and in practice and must eliminate both direct and indirect discrimination against children.[85] The obligation of States is to respect and ensure the rights set forth in the CRC to each child within their jurisdiction without discrimination of any kind. This non-discrimination obligation requires States to identify individual children and groups of children, whose effective enjoyment of rights may require special measures.[86] The CRC Committee has emphasized that the right to non-discrimination is not only a negative obligation but "also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the CRC. This may require positive measures aimed at redressing a situation of real inequality."[87]

The concept of **inclusive equality**, developed by the CRPD Committee, is instructive as to how to structure the necessary proactive, positive measures to tackle discrimination against children in vulnerable situations, including systemic discrimination.[88] Inclusive equality seeks to capture the multidimensional nature of substantive equality:

> "Inclusive equality is a new model of equality developed throughout the Convention. It embraces a substantive model of equality and extends and elaborates on the content of equality in:
> (a) fair redistributive dimension to address socioeconomic disadvantages;
> (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality;
> (c) a participative dimension to reaffirm the social nature of people as members of social groups and full recognition of humanity through inclusion in society; and
> (d) an accommodating dimension to make space for difference as a matter of human dignity."[89]

As General comment No. 6 of the CRPD Committee on equality and non-discrimination shows, the implementation of inclusive equality may rely on the obligation relating to accessibility and the provision of reasonable accommodation, procedural accommodations and specific measures.[90]

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[84] CRC Committee, General comment No. 25 (2021) on children's rights in relation to the digital environment, para 11.

[85] Discrimination is prohibited under a number of international legal instruments: CEDAW; Articles 2 and 10 ICESCR; Articles 2, 3, 24 and 26 ICCPR; Article 2 CRC, Article 1 ICERD; Article 1 CEDAW; Article 5 CRPD; Article 14 ECHR; Part V Article E ESC.

[86] CRC Committee, General comment No. 5 (2003) on general measures of implementation of the CRC, para 12.

[87] CRC Committee, General comment No. 14 (2013) on the right of the child to have their best interests taken as a primary consideration, para 40. In its General comment No. 21, the CRC Committee used with reference to the quoted paragraph of General comment No. 14, the notion of "substantive inequality" instead of "real inequality". CRC Committee, General comment No. 21 (2017) on children in street situations, para 12.

[88] The definition of systemic discrimination was formulated by the UN Committee on Economic, Social and Cultural Rights, General comment No. 20 (2009): Non-discrimination in economic, social and cultural rights, para 12: "The Committee has regularly found that discrimination against some groups is pervasive and persistent and deeply entrenched in social behaviour and organization, often involving unchallenged or indirect discrimination. Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups and privileges for other groups." See also CRC Committee, General comment No. 21 (2017) on children in street situations, para 12. The CRC Committee, in its General comment No. 11 (2009) on indigenous children and their rights under the Convention, paras 58-59, sets out that Article 28 of the CRC states that "States parties shall ensure that primary education is compulsory and available to all children on the basis of equal opportunity." In order to ensure that the aims of education are in line with the Convention, States parties are responsible for protecting children from all forms of discrimination as set out in article 2 of the Convention and for actively combating racism."

[89] CRPD Committee, General comment No. 6 (2018) on equality and non-discrimination, para 11.

[90] See further ICJ, *Model Bench Book on rights of persons with disabilities in criminal proceedings*, August 2024.

Accessibility is an *ex ante*, proactive, systemic duty concerning systems and processes. It requires that the built environment, public transport, as well as information and communication services are available and usable for all persons with disabilities on an equal basis with others. In the context of communication services, accessibility includes the provision of social and communication support. Accessibility duties relate to groups and must be implemented gradually but unconditionally.[91]

Reasonable accommodation is an *ex nunc*, reactive duty which relates to individuals. It consists of an obligation to adopt a "modification or adjustment which is necessary and appropriate where it is required in a particular case to ensure that a person with a disability can enjoy or exercise her or his rights" on an equal basis with others.[92] It should be determined in dialogue with the person concerned. The reasonableness of an accommodation concerns its "relevance, appropriateness and effectiveness for the person with a disability". Reasonable accommodation may be refused only where it would impose a disproportionate or undue burden on the duty bearer.[93] The duty to provide reasonable accommodations includes a proactive obligation on justice actors to anticipate needs and provide accommodations even in the absence of a request.[94]

Procedural accommodations refer to the context of access to justice. They should be distinguished from reasonable accommodation and are not limited by a disproportionality test. An example is "the recognition of diverse communication methods of persons with disabilities standing in courts and tribunals. Age-appropriate accommodations may consist of disseminating information about available mechanisms to bring complaints forward and access to justice using age-appropriate and plain language."[95] States have an obligation to determine what accommodations are required and make them available, including where the person concerned does not request them.[96]

Specific measures are positive measures that involve preferential treatment of persons with disabilities over others "to address historic and/or systematic/systemic exclusion from the benefits of exercising rights."[97] They aim to "accelerate or achieve de facto equality of persons with disabilities".[98] Such measures are usually temporary in nature, although in some contexts permanent measures may be required, depending on the circumstances.[99]

Although these concepts were explicitly formulated in relation to the rights of persons with disabilities, they may be understood more widely as tools to give effect to equality and non-discrimination, no matter its grounds. For instance, the CRC Committee has called for specific measures and an accessible environment,[100] including with respect to attitudes.[101] The UN Human Rights Committee (HRC) has concluded that specific measures (affirmative actions) are sometimes necessary to "diminish or eliminate conditions, which cause or help to perpetuate discrimination prohibited by the Covenant," while "as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the

[91] CRPD Committee, General comment No. 6 (2018) on equality and non-discrimination, paras 29(a) and 40-42.
[92] CRPD Committee, General comment No. 6 (2018) on equality and non-discrimination, para 25.
[93] CRPD Committee, General comment No. 6 (2018) on equality and non-discrimination, paras 23, 24 and 25(a)-(b).
[94] CRPD Committee, General comment No. 6 (2018) on equality and non-discrimination, para 24(b).
[95] CRPD Committee, General comment No. 6 (2018) on equality and non-discrimination, paras 23(d) and 25.
[96] CRPD Committee, General comment No. 6 (2018) on equality and non-discrimination, para 25.
[97] CRPD Committee, General comment No. 6 (2018) on equality and non-discrimination, para 25(c).
[98] CRPD Committee, General comment No. 6 (2018) on equality and non-discrimination, para 28.
[99] CRPD Committee, General comment No. 6 (2018) on equality and non-discrimination, para 29.
[100] "Temporary special measures", CRC Committee, General comment No. 21 (2017) on children in street situations, para 27.
[101] CRC Committee, General comment No. 21 (2017) on children in street situations, para 27: "States should also sensitize professionals, the private sector and the public to the experiences and rights of children in street situations with the aim of positively transforming attitudes. States should support creative, artistic, cultural and/or sports programmes led by, or involving children in street situations that help to address misconceptions and break down barriers with professionals, communities – including other children – and wider society through visible mutual dialogue and interaction."

Covenant" as opposed to prohibited discrimination.[102] The UN Committee on Economic, Social and Cultural Rights (CESCR) has similarly recognized the need to adopt specific special measures "to attenuate or suppress conditions that perpetuate discrimination."[103] The special measures are legitimate provided that "they represent reasonable, objective and proportional means to redress *de facto* discrimination and are discontinued when substantive equality has been sustainably achieved."[104]

Other international standards stress the importance of procedural accommodations for children that take account of the child's particular vulnerability and needs.[105] For instance, the Council of Europe Guidelines on child-friendly justice guarantee protection from discrimination and provide that "[s]pecific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions."[106]

The Special Rapporteur on the independence of judges and lawyers has stated that, "[t]he principle of non-discrimination is especially relevant when justice systems are dealing with particularly vulnerable groups of children, such as street children, children belonging to minorities, migrant children or asylum seekers, children with disabilities, or child soldiers, who may require particular attention, protection and skills from the professionals interacting with them, especially lawyers, prosecutors and judges."[107]

In relation to the **child justice systems**,[108] General comment No. 24 provides that: "[s]afeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress. In particular, gender-sensitive attention should be paid to girls and to children who are discriminated against on the basis of sexual orientation or gender identity. Accommodation should be made for children with disabilities, which may include physical access to court and other buildings, support for children with psychosocial disabilities, assistance with communication and the reading of documents, and procedural adjustments for testimony."[109] Contact with the justice system should not result in stigmatization of the child, which may lead to further harm. The CRC Committee has stated that diversion from the criminal justice system should be available from the earliest stages of the justice process and children's human rights and legal safeguards should be fully respected and protected.[110]

2.5. Right to life, survival and development

Article 6 of the CRC enshrines the obligation of States Parties to recognize the child's inherent right to life and to ensure to the maximum extent possible, the survival and development of the child. The CRC Committee has indicated that "development" is to be understood in the broadest sense as a holistic concept, embracing the child's physical,

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[102] HRC, CCPR General comment No. 18 (1989): Non-discrimination, para 10.

[103] CESCR, General comment No. 20 (2009): Non-discrimination in economic, social and cultural rights, para 9.

[104] CESCR, General comment No. 20 (2009): Non-discrimination in economic, social and cultural rights, para 9.

[105] See Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010; Gabriela Knaul, Report of the Special Rapporteur on the independence of judges and lawyers, 1 April 2015; CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system.

[106] Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010, paras D(1)-(2).

[107] Gabriela Knaul, Report of the Special Rapporteur on the independence of judges and lawyers, 1 April 2015, para 24.

[108] For the definition of "child justice systems," see footnote 40 above.

[109] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 40.

[110] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, paras 14, 15 and 16.

mental, spiritual, moral, psychological, and social development. Implementation measures should be aimed at achieving the optimal development for all children.[111]

The Human Rights Committee has emphasized that the right to life "concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity."[112] It further defined the duty to protect life as a duty to "take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity."[113]

Similarly, the CRC Committee has underlined that the right to life also encompasses the right to a life in dignity. In the context of children in street situations, the Committee has recalled that the duty to fulfil the child's right to life, survival and development requires States to design and implement holistic long-term strategies based on a rights-based approach to secure the child's development to their fullest potential. The CRC Committee has also indicated that severe deprivation, including absolute poverty, can fall within the scope of Article 6 as it "threatens children's survival and their health and undermines their basic quality of life."[114] The right to life, survival and development is therefore broader than the protection of life narrowly understood, and includes the conditions necessary for a life in dignity, including basic living conditions.

Implementation of the right to life, survival and development must respect the child's individuality and the reality of their situation. The Committee has stressed that "States' obligations under article 6 necessitate careful attention being given to the behaviours and lifestyles of children, even if they do not conform to what specific communities or societies determine to be acceptable, under prevailing cultural norms for a particular age group."[115]

This broad understanding of the right to life seems close to the concept of the "right to a life project" developed in the case-law of the Inter-American Court of Human Rights, initially in the context of the right to remedies. The CRC Committee has referred to the jurisprudence of the Inter-American Court of Human Rights, including its judgment in "Street Children" (*Villigrán-Morales et al. v. Guatemala*), in which the Court ruled that "every child has the right to harbour a project of life that should be tended and encouraged by the public authorities so that it may develop this project for its personal benefit and that of the society to which it belongs."[116] In the Committee's view, "this conception of the right to life extends not only to civil and political rights but also to economic, social and cultural rights. The need to protect the most vulnerable people – as in the case of street children – definitely requires an interpretation of the right to life that encompasses the minimum conditions for a life with dignity."[117]

The right to development is linked to the right to be heard and to participate. In its General comment No. 12, the CRC Committee "notes the importance of promoting opportunities for the child's right to be heard, as child participation is a tool to stimulate the full development of the personality and the evolving capacities of the child consistent with article 6."[118]

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[111] CRC Committee, General comment No. 5 (2003) on general measures of implementation of the CRC, para 12.

[112] HRC, General comment No. 36 (2019) on the right to life, para 3.

[113] HRC, General comment No. 36 (2019) on the right to life, para 26.

[114] CRC Committee, General comment No. 21 (2017) on children in street situations, paras 30 and 32.

[115] CRC Committee, General comment No. 21 (2017) on children in street situations, para 31.

[116] *"Street Children" (Villigrán-Morales et al.) v. Guatemala*, Inter-American Court of Human Rights, Judgment of 19 November 1999 (Merits), para 191.

[117] CRC Committee, General comment No. 21 (2017) on children in street situations, para 29.

[118] CRC Committee, General comment No. 12 (2009): The right of the child to be heard, para 79.

3. Procedural rights and guarantees of children in legal proceedings

Children involved in legal proceedings are rights-holders, entitled to exercise their right to a fair trial in the context of fair proceedings. The right to be heard and to participate requires procedural safeguards that ensure meaningful and informed participation. Because of their age and position in proceedings, children may require enhanced procedural protections throughout proceedings.[119] Appropriate procedural safeguards for children in all decision-making affecting them are an integral part of the child's right to have their best interests taken as a primary consideration. The CRC Committee has emphasized that, "[t]o ensure the correct implementation of the child's right to have his or her best interests taken as a primary consideration, some child-friendly procedural safeguards must be put in place and followed. As such, the concept of the child's best interests is a rule of procedure […]."[120] The procedural rights guaranteed under international human rights law have specific application in cases involving children and should be adapted to them.

This section outlines some of the most important procedural safeguards. It is not intended to be exhaustive. It focuses on key issues raised and discussed during the workshops organized in the course of the VOICE project.[121] It should be noted that, in 2024, the CRC Committee initiated the drafting of a General comment on children's rights to access to justice and effective remedies, which is still at the draft stage as of this compendium's publication.[122]

This section provides an overview of the applicable legal standards, identifies gaps reported in the five participating countries in meeting those standards, and highlights good practices developed in response. These examples are intended to provide practical guidance and inspiration for legal and justice professionals across the EU seeking to enhance procedural safeguards for all children.

3.1. Access to legal assistance

3.1.1. International legal standards

Lawyers play a crucial role in ensuring respect for and protection of the rights of all persons, including children. The availability of effective legal assistance often determines whether a person can access relevant proceedings or participate in them in a meaningful way.[123] Access to legal assistance has both substantive and procedural dimensions. Article 47 of the EU Charter provides that "[e]veryone shall have the possibility of being advised, defended and represented."

A lawyer representing a child should explain to the child their rights and relevant procedures and ensure that their views are heard and considered.[124] Therefore, lawyers

[119] OHCHR, Report on Access to justice for children, 16 December 2013, para 8.

[120] CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para 85.

[121] See, ICJ, EU: Ensuring the child's voice is heard in legal proceedings, 20 May 2025, website (accessed 16 July 2025); ICJ, EU: Procedural safeguards for migrant children must not regress under the Pact on Migration and Asylum, 19 September 2025 (accessed on 23 September 2025); ICJ, EU: Children with disabilities have the right to participate in legal proceedings, 17 November 2025, website (accessed on 26 November 2025).

[122] CRC Committee, Draft general comment No. 27 on children's right to access to justice and to an effective remedy, 1 February 2024, website (accessed on 30 March 2026).

[123] HRC, General comment No. 32 (2007): Article 14, Right to equality before courts and tribunals and to fair trial, para 10.

[124] FRA, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 2015, p. 38.

need specific knowledge and training on children's rights and on communication with children.[125]

Access to legal assistance is typically a requisite for the right to a fair hearing, and is indispensable in **criminal trials or those proceedings where the individuals concerned are liable to be deprived of their liberty or to other limitations of certain rights**.[126] The UN High Commissioner for Human Rights, in a Report on Access to justice for children, notes that "as children are usually at a disadvantage in engaging with the legal system, whether as a result of inexperience or lack of resources to secure advice and representation, they need access to free or subsidized legal and other appropriate assistance to effectively engage with the legal system. Without such assistance, children will largely be unable to access complex legal systems that are generally designed for adults. Free and effective legal assistance is particularly important for children deprived of their liberty."[127]

a. Criminal proceedings

Legal assistance should be guaranteed to children facing criminal charges before judicial, administrative or other public authorities that may results in convictions, criminal records or deprivation of liberty.[128] In its General comment No. 24, the CRC Committee has underlined the importance of legal assistance for children in conflict with the law.[129] It also indicated that "appropriate assistance" other than legal assistance, may be provided for children who are diverted to programmes or are in a system that do not result in convictions, criminal records or deprivation of liberty, providing that such assistance is given by a well-trained person with sufficient legal knowledge of the child justice process.[130] The CRC Committee has further emphasized that legal and other appropriate assistances should be guaranteed to the child "from the outset of the proceedings, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted."[131]

Similar standards have been enunciated by the ECtHR in its case law regarding State obligations under the ECHR. The Court held that children in conflict with the law find themselves in a particularly vulnerable position in criminal investigations, particularly during any questioning by the police.[132] Thus, "the authorities must take steps to reduce, as far as possible, the child's feelings of intimidation and inhibition and ensure that he has a broad understanding of the nature of the investigation, of what is at stake for him, including the significance of any penalty which may be imposed as well as of his rights of defence and, in particular, of his right to remain silent."[133] Provision of legal assistance by a lawyer from the initial stages of police questioning is an essential safeguard. The Court has emphasized that the role of legal assistance is:

> "among other things, to help to ensure respect of the right of an accused not to incriminate himself. Indeed, this right presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. It is further important to protect the accused against coercion on

[125] CRC Committee, General comment No. 12 (2009): The right of the child to be heard, para 49.

[126] Article 14(3)(d) ICCPR.

[127] OHCHR, Report on Access to justice for children, 16 December 2013, para 40.

[128] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, paras 49 and 52. See also Article 14(3)(b) ICCPR; UN Special Rapporteur on the rights of persons with disabilities, International Principles and Guidelines on Access to Justice for Persons with Disabilities, August 2020, Principle 6.

[129] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, paras 49-53.

[130] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 52.

[131] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 49.

[132] *Blokhin v. Russia*, ECtHR, Application No. 47152/06, Decision of 23 March 2016.

[133] *Blokhin v. Russia*, ECtHR, Application No. 47152/06, Decision of 23 March 2016, para 195. See also, *Panovits v. Cyprus*, ECtHR, Application No. 4268/04, Judgment of 11 December 2008, para 67; *Martin v. Estonia*, ECtHR, Application No. 35985/09, Judgment of 30 May 2013, para 92; *S.C. v. the United Kingdom*, ECtHR, Application No. 60958/00, Judgment of 15 June 2004, para 9.

> the part of the authorities and contribute to the prevention of miscarriage of justice and ensure equality of arms. Accordingly, in order for the right to a fair trial to remain sufficiently "practical and effective", Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as soon as a suspect is questioned by the police […] In view of the particular vulnerability of children, and taking into account their level of maturity and intellectual and emotional capacities, the Court stresses in particular the fundamental importance of providing access to a lawyer where the person in custody is a minor."[134]

The right to legal assistance during police questioning applies not only to children who have reached the age of criminal responsibility, but also for children below that age where they are subjected to formal proceedings and may face severe measures when suspected of having committed an unlawful act. The ECtHR emphasized that, "on no account may a child be deprived of important procedural safeguards solely because the proceedings that may result in his deprivation of liberty are deemed under domestic law to be protective of his interests as a child and juvenile delinquent, rather than penal."[135]

The assistance by a lawyer must be effective in practice and not merely formal.[136] The ECtHR found that a "manifest failure" by a child's lawyer to represent the child properly, coupled with factors such as the child's age and the seriousness of the charges, can require the trial court to take steps to ensure that the child receives adequate legal assistance.[137]

Both the CRC and the ECHR standards require that to ensure fair trial rights for children in conflict with the law, children must have access to legal assistance from the very first contact with law enforcement officials. This is also the position of the ECSR as set out in its decision on the merits of the collective complaint of *ICJ v. the Czech Republic*. The Committee found a violation of the right of the child to social protection on two grounds:[138] (i) failure to provide obligatory legal assistance from the very first contact with law enforcement authorities, in particular during police questioning; and (ii) failure to provide diversion and restorative justice measures. The Committee reiterated that the vulnerability of children below the age of criminal responsibility must not be considered as a legitimate reason to deprive them of meaningful participation in the proceedings or subject them to less beneficial treatment than criminally responsible children and adults. On the contrary, States must take effective measures to compensate for this vulnerability and enable the child to practically and effectively participate in the proceedings as well as to access the non-judicial options for dealing with the consequences of an unlawful act.

The CRC Committee has emphasized that, in custody, "there is to be no restriction on the child's ability to communicate confidentially and at any time with [their] lawyer."[139] The ECtHR has ruled that, in custody, the "lawyer must be able to confer with his or her client in private and receive confidential instructions."[140]

According to the UN Guidelines on Access to Legal Aid in Criminal Justice Systems, female lawyers should be available to represent girls if they so request or if the case or subject matter is of a nature to make such representation important.[141]

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[134] *Blokhin v. Russia*, ECtHR, Application No. 47152/06, Decision of 23 March 2016, para 198-199. See also *Panovits v. Cyprus*, ECtHR, Application No. 4268/04, Judgment of 11 December 2008, paras 64-66; *Salduz v. Türkiye*, ECtHR, Application No. 36391/02, Decision of 27 November 2008, paras 50-55.

[135] *Blokhin v. Russia*, ECtHR, Application No. 47152/06, Decision of 23 March 2016, paras 50-55.

[136] *Panovits v. Cyprus*, ECtHR, Application No. 4268/04, Judgment of 11 December 2008, para 84; *Salduz v. Türkiye*, ECtHR, Application No. 36391/02, Decision of 27 November 2008, paras 60 and 63.

[137] *Güveç v. Türkiye*, ECtHR, Application No. 70337/01, Judgment of 20 January 2009, para 131.

[138] *ICJ v. the Czech Republic*, ECSR, Complaint No. 148/2017, Decision of 20 October 2020.

[139] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 95.

[140] *Beuze v. Belgium*, ECtHR, Application No. 71409/10, Judgment of 9 November 2018, para 133.

[141] UN Office on Drugs and crime (UNODC), UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, June 2013, Guideline 9.

b. Asylum and migration-related proceedings

According to the EUAA, a "legal adviser" or "qualified lawyer/legal professional" provides "legal assistance, speaks on behalf of the child and legally represents him or her in written statements and in person before asylum or other legal proceedings as provided in national law."[142] The EUAA considers it "good practice to ensure that the child has access to legal aid services free of charge at all stages of the asylum procedure. The child's legal advisor should also be given the opportunity to attend any interview of the child. Overall, the child should be accompanied in the interviews, unless the child prefers otherwise and it is possible to accommodate such a request."[143]

Given their experience in proceedings before immigration authorities, lawyers should always work in cooperation with other professionals supporting the child and should be aware of their heightened role and importance in ensuring the effective protection of the rights of children in asylum and migration proceedings.

3.1.2. Human rights concerns

The obstacles children face in securing legal assistance reflect gaps in national legal frameworks in the implementation of this substantive and procedural right. In many justice systems, children are assisted through the proceedings by parents, legal guardians, or guardians *ad litem* rather than by qualified lawyers. This may result in inadequate legal support, including because parents or legal guardians may lack the necessary legal knowledge or understanding of the proceedings.

In addition to gaps in securing legal assistance, concerns arise regarding the quality of legal assistance in the five participating countries. Children reported negative experiences with lawyers and described not receiving enough explanation with regard to their cases or what to expect in the proceedings.[144] Difficulties in understanding proceedings may lead to fear, confusion, and disengagement. The lack of child-friendly and age-appropriate explanations compromises trust and the effectiveness of legal assistance.

Another persistent issue identified relates to the capacity of lawyers to respond to children's needs. Continued and specialized training are insufficient or unavailable in many EU Member States.[145] Lawyers are often ill-equipped to identify rights violations, request appropriate accommodations, or communicate in ways that reflect a child's evolving capacities.

a. Criminal proceedings

The absence of legal assistance in criminal proceedings is reported as common in *Slovakia* and *the Czech Republic*. In *Slovakia*, child suspects and accused below the age of criminal responsibility, as well as child victims, are not guaranteed access to legal assistance and may instead be represented by their parents or legal guardians.[146] In *the Czech Republic*, child victims are often expected to find a lawyer without support or guidance, and may not be provided with legal assistance unless they themselves choose a lawyer.[147]

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[142] EUAA, *Practical guide on the best interests of the child in asylum procedures*, 2019, p. 12.
[143] EUAA, *Practical guide on the best interests of the child in asylum procedures*, 2019, p. 21.
[144] See e.g. the Czech Republic and the Netherlands. Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 22 and 30. See also CoE's Group of Specialists on Child-Friendly Justice (CJ-S-CH), Listening to children about justice: Report of the Council of Europe consultation with children on Child-Friendly Justice, 5 October 2010.
[145] See e.g. Austria, the Netherlands and Malta. Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 7, 29, 36.
[146] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 51-52. See e.g. District Court in Žiar nad Hronom, No. 9P/47/2020, Decision of 11 January 2021.
[147] Forum for Human Rights, Victims of Crime with Disabilities in Czechia, 2022, pp. 41, 47-49.

Another reported concern is the lack of timely access to legal assistance at early stages of the proceedings. Legal assistance for children may be delayed until proceedings are already underway. In *Slovakia*, for example, child suspects are appointed a lawyer only after criminal charges have been brought against them, leaving them without legal assistance at the initial point of contact with the police.[148] In its Concluding observations on Slovakia, the CRC Committee expressed concern that "[c]hildren can undergo initial questioning without the presence of their lawyers, parents or other trusted persons."[149]

b. Asylum and migration-related proceedings

In practice, legal assistance may be less accessible for accompanied children who are often less informed of their right to have a lawyer. For example, in *the Czech Republic*, accompanied children seeking asylum or residence—who are not placed in alternative care facilities—rely mainly on non-governmental organizations (NGOs) for legal support, despite their entitlement to services, of which they may not be aware.[150]

c. Custody, care and child protection proceedings

In custody, care and child protection proceedings, reliance on guardianship[151] may in practice impede access to professional legal assistance. In *Slovakia*, for instance, appointment of a guardian *ad litem*—a person who may not be qualified or entitled to provide legal assistance as outlined in Section 3.5 below—does not guarantee access to legal assistance by a lawyer.[152]

3.1.3. Good practices

Lawyers should act in a child-friendly manner and use language that the child can understand. For example, where legally precise terminology would be confusing, a lawyer may use a simpler term that conveys the meaning of the procedural step concerned where the simpler term is likely to be more understood by the child.

To support specialized expertise, lawyers assisting children in *the Netherlands* are required to complete specialized training.[153] In addition to an initial qualification, lawyers must undertake continuous professional development, including at least ten hours of refresher training per year on child-specific procedures and standards.[154]

A relationship of trust between children and their lawyers is essential for effective communication and participation. In *the Netherlands* children have the right to request a lawyer of their choice in criminal proceedings.[155]

3.2. Access to legal aid

3.2.1. International legal standards

Children should have access to legal aid so that they can obtain legal assistance at no cost where required. The best interests of the child should be a primary consideration in

[148] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 52.

[149] CRC Committee, Concluding observations on the combined third to fifth periodic reports of Slovakia, 20 July 2016, para 56(d).

[150] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 23.

[151] See Section 3.5 below.

[152] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 47. See further Section 3.5 on access to guardianship.

[153] Sections 9c and 9j Act on Advocates of the Netherlands; Articles 4(4)-(13) Legal Profession By-law of the Netherlands; Article 6b and Annex 5 Legal Aid Board's Registration Requirements of the Netherlands.

[154] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 33.

[155] Sections 51c, 489 and 502 Code of Criminal Procedure of the Netherlands.

decisions on legal aid affecting children. The CoE Guidelines on child-friendly justice affirms that, "[c]hildren should have access to free legal aid, under the same or more lenient conditions as adults."[156] The right to legal aid is guaranteed by Article 47 of the EU Charter which provides that, "[l]egal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."

Children in **criminal proceedings** should be provided with free legal aid. The CRC Committee recommends that, "States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities."[157] This approach is reflected in Principle 11 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and in the Global Study on Children Deprived of Liberty.[158] The CRC and CMW Committees have stated that children in migration-related proceedings have the right to free legal advice and representation.[159] Children affected by other **administrative and civil proceedings** should also have access to free legal support.

3.2.2. Human rights concerns

Access to legal aid is often limited, and many children do not receive free legal assistance when they require it. Children may be dependent on parents or other relatives to pay for and/or request a lawyer, which may undermine both access to justice and the independence of legal assistance. In *the Netherlands*, for example, children do not have the right to request free legal aid themselves in youth protection proceedings due to the fact that they have no legal standing in most such proceedings.[160]

Another major concern is that children may not be informed about their right to access or apply for free legal aid. In *the Czech Republic*, for instance, children above the age of criminal responsibility receive free legal aid in criminal proceedings only if they have formally applied for it.[161] In *Slovakia*, conditions for child victims to receive free legal representation require: 1) an application, 2) a compensation claim, 3) demonstration of insufficient resources to cover the representation costs, and 4) a judicial decision determining that free legal representation is necessary to protect the interests of the child victim.[162]

A further concern arises in respect of the limited availability of legal aid lawyers. In *the Netherlands* and *the Czech Republic* low remuneration and heavy caseloads may discourage lawyers from taking on legal aid cases involving children.[163]

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[156] Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010, p. 16.

[157] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 51.

[158] UNODC, UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, June 2013, Guideline 11; UN General Assembly, Global study on children deprived of liberty, 11 July 2019, para 107.

[159] Joint General comment No. 3 (2017) of the CMW Committee and No. 22 (2017) of the CRC Committee on the general principles regarding the human rights of children in the context of international migration, para 32(c); Joint General comment No. 4 (2017) of the CMW Committee and No. 23 (2017) of the CRC Committee on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, paras 16 and 17(f).

[160] NJCM, Het NJCM heeft bedenkingen bij het wetsvoorstel ter versterking van de rechtsbescherming in de jeugdbescherming, 20 March 2025, website (accessed on 18 November 2025).

[161] Section 33(2) Criminal Procedure Code of the Czech Republic. See e.g. Constitutional Court of the Czech Republic, No. II. ÚS 1411/2020, Decision of 1 September 2020.

[162] Section 47(6) Criminal Procedure Act of the Czech Republic.

[163] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 32-33. See e.g. Vojtěch Gavriněv, Advokáti ex offo přestávají hájit zranitelné oběti zločinů. Stát jim neplatí, seznamzpravy.cz, 29 January 2024, website (accessed on 18 November 2025).

3.2.3. Good practices

Despite shortcomings and inconsistencies, some national frameworks guarantee mandatory free legal representation for child suspects and accused,[164] child victims and witnesses,[165] and unaccompanied children seeking asylum.[166]

3.3. Access to information

3.3.1. International legal standards

As noted below (see Section 3.6), the child's right to a fair trial and fair proceedings must be practical and effective. To that end, children must be provided with adequate information in a form the child can understand, relating to: 1) the subject matter of the proceedings; 2) the course of the proceedings and the child's rights engaged in and by the proceedings; and 3) possible outcomes and their implications for the rights of the child and their situation. Provision of adequate and understandable information is an integral part of the child's effective participation.[167] As the CRC Committee explained, "[t]he realization of the right of the child to express her or his views requires that the child be informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child, and by the child's parents or [legal guardian]. The child must also be informed about the conditions under which she or he will be asked to express her or his views. This right to information is essential, because it is the precondition of the child's clarified decisions."[168] Information may concern both procedural and substantive matters.

The CoE's Guidelines on child-friendly justice provide that: "[c]hildren should be provided with all necessary information on how effectively to use the right to be heard. However, it should be explained to them that their right to be heard and to have their views taken into consideration may not necessarily determine the final decision."[169] In addition, "[j]udgments and court rulings affecting children should be duly reasoned and explained to them in language that children can understand, particularly those decisions in which the child's views and opinions have not been followed."[170]

Information provided to children must be age-appropriate and adapted to the needs of children. It should be presented in formats, manners and language that children can understand.[171] The right to translation and interpretation is an important element of the right to information. Where a child is illiterate, information should be provided orally or in

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[164] See e.g. Sections 42a(1)(a) and 89c(1) Juvenile Justice Act of the Czech Republic; Article 43(1) Legal Aid Act of the Netherlands.

[165] See e.g. Section 51a(2) Criminal Procedure Code of the Czech Republic. Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 7.

[166] See e.g. the Netherlands. Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 32.

[167] CRC Committee, General comment No. 12: The right of the child to be heard, 20 July 2009, para 3. In its General comment No. 12, the CRC Committee comment stressed that, "a widespread practice has emerged in recent years, which has been broadly conceptualized as 'participation', although this term itself does not appear in the text of article 12. This term has evolved and now is widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes."

[168] CRC Committee, General comment No. 12: The right of the child to be heard, 20 July 2009, para 25.

[169] Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010, para 48.

[170] Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010, para 49.

[171] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 48; European Parliament resolution of 5 April 2022 on the protection of the rights of the child in civil, administrative and family law proceedings (2021/2060(INI)), para H. See also *S.E.M.A. v. France*, CRC Committee, Communication No. 130/2020, View of 25 January 2023, paras 8(6)-(7).

another format the child can understand, including for example graphic supports and images. The Council of Europe encourages the use of child-friendly materials.[172]

In **criminal proceedings**, Article 40(2)(b)(ii) of the CRC guarantees the child's right to be informed promptly and directly of charges, and, where appropriate, through parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of the defence.

Specific case of children with disabilities

Article 21 of the CRPD requires States to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, including by: "(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost. (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions."[173] Article 9 of the CRPD further requires States to promote "appropriate forms of assistance and support to persons with disabilities to ensure their access to information."

The CRPD Committee has pointed out that: "[p]ersons with intellectual and psychosocial disabilities as well as deaf-blind persons face barriers when attempting to access information and communication owing to a lack of easy-to-read formats and augmentative and alternative modes of communication."[174] The CRPD Committee has found violations where information was not made available to a person with an intellectual disability in an accessible format.[175]

Examples of necessary adjustments for access to information can be found in the International Principles and Guidelines on Access to Justice for Persons with Disabilities, such as: "[ensuring] that information about justice systems and procedures can be accessed by various methods, including, as appropriate and needed: (1) Sign language; (2) Audio guides; (3) Telephone line advice and referral services; (4) Accessible websites; (5) Induction loop, radio or infrared systems; (6) Amplification devices and document magnifiers; (7) Closed captioning; (8) Braille; (9) Easy Read and plain language; (10) Facilitated communication."[176]

Children with disabilities may face compounded and intersectional barriers in accessing information, where factors such as the age and evolving capacities of the child intersect with disability-related barriers.[177] They are particularly at risk of exclusion from legal proceedings where information is not provided in formats that are both child-friendly and accessible in light of their impairment. Both the CRC and CRPD Committees have clarified that States must ensure that information is provided in accessible formats adapted to the child's age and disability.[178] The CRC Committee has stressed that, "[a]ccess to information […] enables children with disabilities to live independently and participate fully in all aspects of life. […] Children with disabilities should also be provided with the appropriate

[172] Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010, p. 11-12.

[173] Article 21(a)-(b) CRPD.

[174] Article 9(2)(f) CRPD.

[175] *Medina Vela v. Mexico*, CRPD Committee, Communication No. 32/2015, View of 15 October 2019, para 10(5).

[176] UN Special Rapporteur on the Rights of Persons with Disability, International Principles and Guidelines on Access to Justice for Persons with Disabilities, August 2020, Principle 4, p. 18.

[177] CRC Committee, General comment No. 9 (2006): The rights of children with disabilities, para 5.

[178] CRC Committee, General comment No. 9 (2006): The rights of children with disabilities, para 37; CRPD Committee, General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, para 75.

technology and other services and/or languages, e.g. Braille and sign language, which would enable them to have access to […] new information and communication technologies and systems."[179]

3.3.2. Human rights concerns

In many countries, children receive little information about legal proceedings, and even less in a form that is appropriate to their age and level of understanding.[180] Information about rights is only provided in writing at the beginning of proceedings. There are rarely systematic follow-up and explanations of what is happening and why. In *the Netherlands*, children have widely reported that they did not fully understand the criminal and asylum proceedings to which they were parties.[181] Similarly, research conducted in *Malta* indicates that there is no consistent approach to ensuring that child suspects and accused receive adequate information.[182]

In relation to communication from courts, children may have contact with judges only when their views are sought but then receive little or no information about the outcome or the reasons for the decision. Judges often choose to communicate decisions to the child's representative rather than to the child. For example, in *Slovakia*, guidelines of the Ministry of Justice on child participation note repeated failures by courts to meet obligations to inform children of the reasons for placement in alternative care facilities or transfer to other facilities.[183] In *Malta*, there are no mechanisms within care and protection proceedings to ensure that decisions affecting children are explained to them in a manner they can understand.[184]

Children with disabilities may face additional and specific barriers. In some contexts, there is a failure by State authorities to provide all information in accessible formats. Legislation and administrative regulations in many EU Member States provide only general duties to inform children in legal proceedings about their rights, without specific provision for the needs and rights of children with disabilities. The CRPD Committee has expressed concern about the limited availability of information in accessible formats in proceedings in *Austria* and *Malta*.[185] In *Slovakia*, there is no legislation requiring the provision of easy-to-read materials, braille, or other accessible forms of information.[186]

3.3.3. Good practices

a. Criminal proceedings

In *Slovakia*, the Ministry of the Interior established Information Offices for Victims of Crime aimed at providing accessible social, psychological, and legal counselling to all victims,

[179] CRC Committee, General comment No. 9 (2006): The rights of children with disabilities, para 37.

[180] See e.g. the Czech Republic, the Netherlands, Slovakia. Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 12-13, 22, 29-31, 45-46.

[181] See Stephanie Rap, Betekenisvolle participatie van vluchtelingenkinderen in de asielprocedure, 8 September 2021, website (accessed on 18 November 2025); Defence for Children Nederland, *Wachten tot het overgaat: Wat jongeren doen én nodig hebben bij een delict dat schaamte of angst oproept*, Februari 2022; Eva Huls, Wafaa Abdelhadi, *Startnotitie De Individuele beoordeling van minderjarigen in het strafrecht*, Defence for Children – ECPAT, January 2025, p. 45.

[182] EU Fundamental Rights Agency (FRA), *Children as Suspects or Accused Persons in Criminal Proceedings – Procedural Safeguards*, June 2022.

[183] Ministry of Justice of Slovakia, Metodika participačné práva dieťaťa, 2024, p. 53.

[184] Malta Foundation for the Wellbeing of Society, *Child Participation Assessment Tool (CPAT): Country report – Malta*, p. 40.

[185] CRPD Committee, Concluding observations on the combined second and third periodic reports of Austria, CRPD/C/AUT/CO/2-3, 28 September 2023, paras 33-34; CRPD Committee, List of issues prior to submission of the combined second and third periodic reports of Austria, CRPD/C/AUT/QPR/2-3. 12 October 2018, para 28; CRPD Committee, Concluding observations on the initial report of Malta, CRPD/C/MLT/CO/1, 17 October 2018, paras 31-32.

[186] FORUM, Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the Criminal Justice System in Slovakia, March 2023, p. 17.

including children. Since 1 February 2023, these offices have been permanently integrated into the Ministry's organizational structure.[187] The offices operate regionally and collaborate with external experts. Their core activities include: (i) providing information to victims, (ii) providing professional assistance to victims, (iii) cooperating and exchanging information with other victim support entities and organizations, and (iv) implementing awareness-raising activities to enhance victim protection.[188]

b. Asylum and migration-related proceedings

In asylum and migration cases, practice in *the Netherlands* has placed emphasis on direct communication with children. On 20 August 2025, the Council of State in *the Netherlands* (*Raad van State*) ruled that immigration authorities must inform all children, including those under the age of 15, of their right to be heard and to participate and must ask whether they wish to exercise that right.[189] A 2025 pilot programme in the District Court of Amsterdam introduced a procedure enabling children to be heard in immigration proceedings regarding residence applications in which they are involved.[190] The Court sends a letter to children aged 8 and above informing them of their right to be heard and to participate. These letters are drafted in child-friendly language, explain that participation is voluntary, and include a QR code linking to the "Talking to the Judge" information resource. Hearings take place in a child-friendly setting in which the judge speaks directly with the child, explains what information may be shared with other parties, and distinguishes between confidential and non-confidential information. In addition, judges provide a brief explanatory letter alongside the judgment to assist the child to understand the outcome. Judges, clerks, lawyers, and administrative staff have reported positive experiences, while noting that the approach requires additional time and resources.[191] Although the District Court of The Hague is not participating in the pilot, judges have increasingly drafted decisions in more child-friendly language.[192]

c. Custody, care and child protection proceedings

Child-friendly judgments help children understand court decisions that affect them. In some jurisdictions, courts communicate directly with children, rather than relying exclusively on lawyers, parents or guardians. In *Austria*, civil and family courts are required to directly notify children aged over 14.[193] In *the Czech Republic*, courts are required to serve decisions directly on children over 15.[194]

Notable examples come from *the Netherlands,* where judges either write the entire judgment in child-friendly language,[195] address the child directly in the judgement itself,[196] or write a separate letter to the child concerned, which is also included in the judgment.[197] In these examples, judges acknowledged the child's wishes and explained the reasons for the decision in clear and age-appropriate language.

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[187] Act No. 458/2022 amending Act No. 583/2008 Coll. on the prevention of crime and other antisocial activities, 29 November 2022.

[188] Ministry of the Interior of the Slovak Republic, Informačné kancelárie, website (accessed on 31 March 2026).

[189] 202404661/1/V1, 202403148/1/V3, and 202404064/1/V3, Council of State of the Netherlands, 20 August 2025.

[190] De Rechtspraak, Kinderen krijgen stem in beroepsprocedure afgewezen verblijfsaanvraag, 25 June 2025, website (accessed on 12 December 2025).

[191] ICJ, EU: Children with disabilities have the right to participate in legal proceedings, 17 November 2025, website (accessed on 26 November 2025).

[192] AWB 23/15019, AWB 24/78, AWB 24/704, AWB 23/15021, AWB 24/76, District Court of the Hague (rechtbank Den Haag), Judgment of 5 June 2025. See also Defence for Children – ECPAT Netherlands, Judge prioritizes child-friendly justice in legal proceedings involving a rooted child, 29 April 2025, website (accessed on 3 September 2025).

[193] Para 15 Non-Contentious Proceedings Act of Austria.

[194] Section 50b(4)(b) Code of Civil Procedure of the Czech Republic.

[195] C/10/563825 / JE RK 18-3802, Rotterdam District Court, Judgment of 31 January 2019.

[196] C/18/222884 / FA RK 23-2071, District Court of Northern Netherlands, Judgment of 27 June 2023.

[197] C/10/705348 / JE RK 25-1721, Rotterdam District Court, Judgment of 27 August 2025.

3.4. Access to interpretation and communication support

3.4.1. International legal standards

Everyone is entitled to understand and to be understood in all legal processes and procedures to ensure that access to justice is effective for all. The right to interpretation is safeguarded by several international instruments, including Article 14(3)(f) of the ICCPR, Article 13 of the CRPD and Article 6(3)(e) of the ECHR.

Article 40(2)(b)(vi) of the CRC guarantees the right of a child to free assistance of an interpreter in **criminal proceedings**. The CRC Committee has further clarified that, "a child who cannot understand or speak the language used in the child justice system has the right to the free assistance of an interpreter at all stages of the process. Such interpreters should be trained to work with children".[198] It has further stated that, "State parties should provide adequate and effective assistance by well-trained professionals to children who experience communication barriers".[199] The Committee has thus adopted a wide approach covering not only children who speak foreign or minority languages, but also children who face communication barriers due to other reasons. This establishes a basis for ensuring that all children are provided with the procedural accommodations necessary to understand proceedings and to be understood in them. The CRC and CMW Committees have also emphasized that children in **immigration proceedings** "should be guaranteed the right to […] be assisted without charge by a translator and/or interpreter."[200] Although explicitly formulated in relation to criminal, asylum and migration-related proceedings, the CRC and CMW Committees support a broader understanding of the need for interpretation and communication support to enable children to participate effectively in all proceedings, including all **civil and administrative proceedings**.

Interpretation should be available not only for a child's interaction with authorities but also for communication between the child and the child's lawyer, guardian, and other relevant professionals participating in legal proceedings.

Specific case of children with disabilities

Article 2 of the CRPD defines "communication" to include languages, display of text, braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology. It also defines "language" to include spoken and signed languages and other forms of non-spoken languages. Article 4(1)(g) of the CRPD requires States to undertake or promote research and development pertaining to the availability and use of new communication technologies, suitable for persons with disabilities.

International Guidelines on Access to Justice for Persons with Disabilities require that justice processes must provide the technical and other support necessary for persons with disabilities to use any form of communication necessary for their full participation, including:[201] "(i) Assistive listening systems and devices" (useful in case of hearing

[198] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 64.

[199] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para 65.

[200] Joint General comment No. 4 (2017) of the CMW Committee and No. 23 (2017) of the CRC Committee on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, para 17(d).

[201] UN Special Rapporteur on the Rights of Persons with Disability, International Principles and Guidelines on Access to Justice for Persons with Disabilities, August 2020, Guidelines 3(2)(e), p. 16.

disabilities);[202] "(ii) Open, closed and real-time captioning, and closed caption decoders and devices" (useful in case of hearing disabilities);[203] "(iii) Voice, text and video-based telecommunications products" (useful in case of hearing disabilities); "(iv) Videotext displays" (useful in case of hearing disabilities);[204] "(v) Computer-assisted real-time transcription" (useful in case of hearing disabilities); "(vi) Screen reader software, magnification software and optical readers" (useful in case of visual disabilities) and;[205] "(vii) Video description and secondary auditory programming devices that pick up audio feeds for television programmes" (useful in case of hearing disabilities).

3.4.2. Human rights concerns

Access to communication tools, technical support, and interpretation and translation services is often limited in EU Member States, and shortcomings may disproportionately affect children with disabilities, migrant children and children facing multiple vulnerabilities.[206]

A recurring difficulty within national justice systems is the absence of formalized and reliable mechanisms for early identification of disability in proceedings.[207] Some children may be unaware of a disability or of the relevance of reporting their disability in legal proceedings.[208] Without an established mechanism for identification of disability, children may not be granted the essential technical and communication support needed for their full participation, such as reasonable accommodations, procedural accommodations, and specific measures outlined in Section 2.4.

Even where disabilities are identified, communication and interpretation services are reported to be inadequate including because they are not adapted to the age and impairment of the child.[209] In such cases, a disability can even prevent a child from being heard at all. The CRPD Committee has raised concern about limited availability of sign language interpreters, as well as the insufficient provision of braille signage and other accessible means, modes and formats of communication, in its concluding observations on *Austria*, *the Czech Republic, Malta* and *Slovakia*.[210]

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[202] See National Institute on Deafness and Other Communication Disorders, Assistive Devices for People with Hearing, Voice, Speech, or Language Disorders, website (accessed on 20 August 2025).
[203] See DO-IT, What is the difference between open and closed captioning?, website (accessed on 20 August 2025).
[204] See National Disability Navigator Resource Collaborative, Computer Aided Real-Time Transcription (CART), website (accessed on 20 August 2025).
[205] See American Foundation for the Blind, Screen Readers and Screen Magnifiers: An Introduction to Computer Accessibility Software, website (accessed on 20 August 2025).
[206] ICJ, *Model Bench Book on the rights of persons with disabilities*, August 2026, p. 135; ICJ, Event Report: Transnational exchange workshop on Child-Friendly Justice and Procedural Rights, May 2025, p. 6; ICJ, Event Report: Transnational exchange workshop on procedural rights of migrant and refugee children in legal proceedings, September 2025, pp. 3-4; ICJ, Event Report: Transnational exchange workshop on inclusive considerations for children with disabilities in legal proceedings, November 2025. See e.g. the Czech Republic, and Malta. Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 17, 23, 36 and 54.
[207] ICJ, *Model Bench Book on the rights of persons with disabilities*, August 2026, p. 17.
[208] ICJ, EU: Children with disabilities have the right to participate in legal proceedings, 17 November 2025, website (accessed on 26 November 2025).
[209] See e.g. Austria, the Czech Republic, the Netherlands, Slovakia. Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 9, 24-25, 34, 45, and 54.
[210] CRPD Committee, Concluding observations on the combined second and third periodic reports of Austria, CRPD/C/AUT/CO/2-3, 28 September 2023, paras 33-34; CRPD Committee, Concluding observations on the initial report of the Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, paras 17-19; CRPD Committee, Concluding observations on the initial report of Slovakia, CRPD/C/SVK/CO/1, 17 May 2017, paras 61-62; CRPD Committee, List of issues prior to submission of the combined second and third periodic reports of Austria, CRPD/C/AUT/QPR/2-3. 12 October 2018, para 28; CRPD Committee, Concluding observations on the initial report of Malta, CRPD/C/MLT/CO/1, 17 October 2018, paras 31-32.

a. Criminal proceedings

In *Austria*, persistent barriers reported include the absence of sign language interpreters during pre-trial stages.[211] In *the Czech Republic*, communication support for children with disabilities in criminal proceedings is largely absent, with the only explicitly recognized accommodation being the use of communication systems for "deaf" and "deaf-blind" persons in courtrooms.[212] In *Slovakia*, as well, there is no legislative obligation for courts to provide sign language interpretation, braille transcription, or augmentative or other accessible forms of communication.[213]

b. Asylum and migration-related proceedings

In asylum and migration-related proceedings, some justice systems may not sufficiently take account of children's native languages, cultural expression, or non-verbal communication. The EUAA has reported that the implementation of interpretation rights is hindered by shortages of trained and qualified interpreters, particularly for less widely spoken languages.[214] *Slovakia* is reported to face a shortage of qualified interpreters in asylum cases, with many interpreters also lacking training in communication with children.[215] Some proceedings reportedly relied on interpretation into English, rather than Slovak, creating additional barriers to communicate effectively with lawyers, authorities, and other professionals. In *the Netherlands* an interview with a child indicated that where a child demonstrated a basic level of Dutch, interpretation support was deemed unnecessary.[216]

3.4.3. Good practices

Effective participation requires that every child can communicate in a language they understand and speak easily. This entails providing procedural information in accessible formats and ensuring that every interview or hearing with a child takes place with the assistance of a qualified interpreter where needed. Interpretation should not be understood as word-for-word translation alone. It should also include communication in a manner adapted to the child's age and evolving capacities, the child's disability-related needs, and the child's modes of cultural and personal expression.

The responsibility to secure accessible communication conditions should not fall on children, but lies with the legal systems. In its report on child-friendly justice, the FRA has noted that: "[t]he research makes clear that children heard by trained professionals are less frightened and intimidated. They are also more appropriately informed, meaning that they can make better use of their rights and be less influenced by others in their statements. This underlines the importance of training for all professionals in contact with children, as well as of clear, consistent standards and guidelines on how to inform, hear and support children throughout proceedings."[217]

Child-friendly communication also requires cooperation among a range of actors, including judges, lawyers, psychologists, social workers and law enforcement personnel. Training initiatives, for example those developed by Coram Children's Legal Centre, provide guidance on rights-based and child-focused communication approaches in settings

[211] Monitoring-Ausschuss, Stellungnahme zum Nationalen Aktionsplan Behinderung 2022–2030, May 2022.
[212] FORUM, Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the Criminal Justice System in Czechia, March 2023, p. 37.
[213] FORUM, Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the Criminal Justice System in Slovakia, March 2023, p. 17.
[214] EUAA, Asylum Report 2024: Annual Report on the Situation of Asylum in the EU, June 2024, p. 172.
[215] ICJ, Event Report: Transnational exchange workshop on procedural rights of migrant and refugee children in legal proceedings, September 2025.
[216] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 30.
[217] FRA, *Child-friendly justice: Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States*, 2017, p. 55.

including justice, detention, and residential care.[218] For instance, justice professionals should adopt a calm, reassuring and friendly tone, use simplified language suited to the child's age, and avoid technical or legal terminology that may cause distress or misunderstanding.[219] Such approaches emphasize the importance of building trust with children. The Zero Abuse Project provides additional guidance and best practices for interviewing children with disabilities in the context of child maltreatment or abuse.[220]

Examples of good practice have been identified at national levels in **criminal proceedings**. In *Austria*, the Juvenile Justice Act requires judges, public prosecutors and district attorneys dealing with juvenile cases to receive training in pedagogy and to acquire knowledge relevant to child-sensitive practice, including in social work, psychology, psychiatry and criminology.[221] In *the Czech Republic*, the Victims Act guarantees that child victims be interviewed by specially trained professionals who are required to apply a vulnerability-sensitive and individualized approach.[222] In **custody, care and child protection proceedings**, CSOs *in the Netherlands* contribute to the design of training modules by ensuring that the perspectives of victims inform the their content.[223]

Technical communication support

Professionals involved in legal proceedings concerning children should, at all stages, ensure that children have the technical and other support necessary to use any form of communication necessary for their full participation. One approach is the use of visual and play-based methods. Children may use role-play, objects, or drawings to communicate experiences and express family relationships. Signs, symbols, pictures, and play materials, such as puppets, toys, or storybooks, may be used to represent people, places and emotions.[224] Such methods may assist children to communicate about sensitive topics, including migration, foster care, loss, or trauma.

Disability rights organizations have developed communication tools relevant for persons with disabilities, including children. They include: augmentative and alternative communication pictograms,[225] communication boards,[226] easy-to-read guidelines,[227] and social stories.[228]

Artificial intelligence (AI) tools may also support communication. The UN Secretary-General has recognized AI's potential to improve access to justice, including through digital assistants (chatbots)[229] designed to enhance speech or language outputs.[230] The use of AI in this context requires a cautionary approach; AI tools remain underregulated and may

[218] Coram Children's Legal Centre, EU Project: Unlocking Children's Rights – Strengthening the capacity of professionals in the EU to fulfil the rights of vulnerable children, Training materials, 2016, website (accessed on 18 August 2025).

[219] FRA, *Child-friendly justice: Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States*, 2017, p. 113.

[220] Zero Abuse Project, *Interviewing Children with Disabilities : A Practical Guide for Forensic Interviewers*, 2022.

[221] Para 30 Juvenile Justice Act of Austria.

[222] Sections 20(1) 20(2), 20(3) Victims Act of the Czech Republic.

[223] See e.g. Experienced Experts (ExpEx), website (accessed on 1 September 2025); Platform HOPE, website (accessed on 1 September 2025).

[224] See e.g. Makaton, website (accessed on 18 August 2025); Pyramid Educational Consultants, website (accessed on 18 August 2025).

[225] Aragonese Center of Augmentative and Alternative Communication (ARASAAC), website (accessed on 26 November 2025). The Augmentative and Alternative Systems of Communication (AAC) are ways of expression different from spoken language, that aim at increasing and/or compensating for the difficulties of communication and language of many people with disabilities.

[226] Access Ability Australia (AAA), Communication Board: Workshops and Meetings, website (accessed on 26 November 2025). Communication boards use symbols to share ideas, wants, needs, and thoughts, assisting individuals with communication challenges. They are typically used with persons with intellectual disabilities, autism spectrum, learning disabilities, traumatic brain injuries, dementia, or deafness.

[227] Mencap, Am I making myself clear? Mencap's guidelines for accessible writing, 2002.

[228] Autism Services, Education, Resources and Training (ASERT), How to Create a Social Story, website (accessed on 26 November 2025). Social stories help people to react to social situations that may be challenging like appearing in court, being detained or being arrested. They are typically used to communicate with people with autism.

generate or lead to inappropriate support, produce unreliable outputs, and/or exclude[231] When used, AI tools must be subject to safeguards, monitoring and effective oversight to ensure that they support non-discriminatory and rights-compliant communication.[232]

Trusted support persons

Another good practice is to ensure that children be accompanied by a trusted support person during legal proceedings. Where appropriate and in the child's best interests, communication may be facilitated with the support of a person from the child's close relational circle such as a parent, legal guardian, relative, friend, or other caregiver. This support can help the child feel safe and sufficiently comfortable to express views during proceedings.

Some national frameworks provide for support persons in **criminal proceedings**. For instance, in *the Czech Republic,* child victims have the right to be accompanied by a trusted support person during questioning.[233] In *Malta*, child suspects and accused have the right to be accompanied during court hearings by a parent, legal guardian, or an adult of their choice.[234]

In the Limburg courthouse (*the Netherlands*), children in situations of **parental divorce** may consult a children's coach during drop-in consultation hours, including to explain their situation, share their emotions, and prepare for their meeting with the youth court judge.[235]

Gender sensitive support may be important, for example to avoid placing pressure on girls to provide details that make them feel uncomfortable, particularly on topics such as sexuality or traumatic experiences. *Malta*'s Victims of Crime Act requires courts to appoint a support person for child victims during proceedings and for an appropriate period afterwards, with due consideration to the child's gender.[236]

Cultural mediators in asylum and migration-related proceedings

Cultural mediation is an example of good practice intended to address linguistic and non-verbal misunderstandings. Cultural mediators may support communication by interpreting interactions in culturally sensitive and context-aware ways, ensuring testimony is not distorted due to cultural communication differences. In its Handbook for professionals involved in legal proceedings concerning children in migration, the CoE has explicitly recognized the importance of cultural mediators, stating that: "[t]he support of a cultural mediator is fundamental in an arrival setting to understand the language, but also the non-verbal communication and culture of the child."[237]

Inspired by this model, the organization responsible for the legal guardianship of unaccompanied and separated children in *the Netherlands* has piloted a programme that introduced an intercultural mediator whose role extends beyond translation to actively explaining cultural differences. In the context of legal guardianship, "the main goal of the

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[229] UN General Assembly, *Human rights in the administration of justice: Report of the Secretary-General*, A/79/296, 7 August 2025.

[230] See e.g. DIANA system has been designed "as a multi-function, multirole application for victim data collection, information sharing, procedural accommodation definition, risk assessment, data management, expert system information through an AI chatbot, and for the provision of a secure chat for operators." Validity, *Model Multidisciplinary Cooperation System*, 30 June 2025.

[231] FRA, *Digitalising justice – A fundamental rights-based approach*, 2025.

[232] FRA, *Digitalising justice – A fundamental rights-based approach*, 2025.

[233] Section 21 Victims Act of the Czech Republic.

[234] Article 534AGN Criminal Code of Malta.

[235] De Rechtspraak, Kinderen welkom bij kindercoach in de rechtbank Limburg, 30 April 2025, website (accessed on 4 December 2025).

[236] Article 14A Victims of Crime Act, CAP. 539 of the Laws of Malta.

[237] CoE, *How to Convey Child-friendly Information to Children in Migration. A Handbook for Frontline Professionals*, 2018, p. 41.

intercultural mediator is to increase the understanding of the needs of unaccompanied children amongst professional [legal guardians] and other caretakers."[238]

The EU Pact Migration and Asylum encourages Member States to put in place "the necessary arrangements for cultural mediation services to be available to facilitate access" to screening procedures for asylum seekers.[239]

Intermediaries for children with disabilities

Intermediaries (also sometimes referred to as "facilitators") are persons who work with justice personnel and persons with disabilities to ensure effective communication by and with a person with a disability during legal proceedings.[240] Intermediaries are typically appointed and employed by the court, with the aim of facilitating communication between an individual with a disability and justice actors in legal proceedings.[241] They are not support persons *per se* but rather serve as a conduit to facilitate effective communication, to ensure that individuals with disabilities understand questions and can be understood by justice actors and other participants in legal proceedings.[242]

An intermediary should take time to understand the communication needs of the individual concerned and, where available, should be involved in a case at the earliest possible stage, including at the point at which the individual is first interviewed.[243] Through intermediaries, persons with disabilities can be supported in making informed choices and communicating them clearly.[244] This is done in different ways depending on the nature of the disability, but it requires that information be explained in ways that the person can understand. Intermediaries may also play a key role in recommending appropriate procedural accommodations and supports, which, in turn, may be provided to assist the individual concerned in participating effectively in the legal proceedings in question.[245] The role of an intermediary may differ across jurisdictions and, in most of EU Member States, intermediaries are not provided by law.[246]

Support persons for children with disabilities

In addition to intermediaries, other support persons may assist children with disabilities. Such persons may include:

(i) Note-takers (including in cases involving persons with hearing disabilities, psychosocial disabilities, and cognitive or learning related disabilities);
(ii) Qualified sign language and oral interpreters (including in cases involving hearing and speech related disabilities);
(iii) Relay services (including in cases involving hearing and speech-related disabilities);[247] and
(iv) Tactile interpreters (including in cases involving hearing or visual disabilities).[248]

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[238] Nidos, Resilience Project II, website (accessed on 19 August 2025).
[239] Article 11(3) EU Screening Regulation.
[240] UN Special Rapporteur on the Rights of Persons with Disability, International Principles and Guidelines on Access to Justice for Persons with Disabilities, August 2020, Principles 1 and 3 and Guideline 1(2)(j).
[241] Justice Intermediary Starter Kit (JISK), JISK Modules, website (accessed on 26 November 2025). See e.g. Article 18(27) Criminal Procedure (Amendment) Rules 2021 of the United Kingdom.
[242] UN Special Rapporteur on the Rights of Persons with Disability, International Principles and Guidelines on Access to Justice for Persons with Disabilities, August 2020, Guidelines 1(2)(j), 3(1), 3(2)(i), 6(2)(h), 8(2)(j).
[243] UN Special Rapporteur on the Rights of Persons with Disability, International Principles and Guidelines on Access to Justice for Persons with Disabilities, August 2020, Guideline 4(1)(e).
[244] UN Special Rapporteur on the Rights of Persons with Disability, International Principles and Guidelines on Access to Justice for Persons with Disabilities, August 2020, Guideline 4(1)(e).
[245] UN Special Rapporteur on the Rights of Persons with Disability, International Principles and Guidelines on Access to Justice for Persons with Disabilities, August 2020, Guideline 3(2)(a).
[246] See further Justice Intermediary Starter Kit (JISK), Intermediaries Around the World Map, website (accessed on 24 March 2026).
[247] See e.g. National Institute on Deafness and Other Communication Disorders, Telecommunications Relay Service, website (accessed on 20 August 2025).
[248] See e.g. Word Federation of the Deafblind, Deafblind Interpretation, website (accessed on 20 August 2025).

3.5. Access to guardianship

3.5.1. International legal standards

In legal proceedings involving children, several actors may be of particular importance:

- the parent(s) or the legal guardian, who is responsible for the statutory representation of the child under national law;
- the guardian *ad litem* (also sometimes referred to as "curator *ad litem*"), who is appointed to represent the child in specific proceedings; and,
- the lawyer who provides legal assistance and represents the child in legal proceedings.

Terminology varies across jurisdictions, and the terms "guardian" and "legal representative" are used inconsistently.[249] The UN High Commissioner for Refugees (UNHCR) notes that these terms: "are often used in context of asylum procedures, durable solutions, and alternative care. However, the meaning of these terms as used in international legal and policy framework remains inconsistent."[250] This section describes how guardians have a clearly defined, complementary and important role in upholding the fundamental rights of children. A guardian can be a natural person, or an organization, such as a child protection authority.

As a general rule, parents who hold parental responsibility have both the right and the duty to represent their child in legal proceedings where the child lacks legal capacity. Although parental responsibility is shared, each parent in many systems may exercise it independently. There are circumstances in which parents are unknown, unable, unwilling, or legally prevented from representing the child in legal proceedings, including:

- **Children deprived of a family environment or in whose own best interests cannot be allowed to remain in that environment:** Article 20 of the CRC provides that: "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State." The FRA, in its Handbook on guardianship systems, clarifies that, "the appointment of [guardians *ad litem*] aims solely to ensure representation of a child in particular proceedings, so it cannot be seen as equivalent to the appointment of [legal guardians]. The [guardians *ad litem*]'s mandate does not cover all aspects of a child's life and development. Therefore, the appointment of a [legal guardian] should take place in all cases where a child is deprived of the parental environment, irrespective of the appointment of a [guardian *ad litem*]."[251]
- **Children in conflict of interest with a parent or legal guardian:** The CRC Committee has emphasized that, "[i]n situations where the child's views are in conflict with those of his or her [parent or legal guardian], a procedure should be established to allow the child to approach an authority to establish a separate representation for the child (e.g. a guardian *ad litem*), if necessary."[252] General comment No. 14 further establishes that, "[i]n particular, in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a [legal representative], in addition to a [guardian *ad litem*] or representative of his or her views, when there is a potential conflict between the parties in the decision."[253]

[249] This Compendium uses the terms "legal guardian", "guardian ad litem", and "lawyer" as defined above for consistency purposes.
[250] UNHCR, *Technical Guidance: Child-friendly Procedures*, 2021, p. 4.
[251] FRA, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 2015, p. 38.
[252] CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para 90.
[253] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, paras 56-57. See Article 40(b)(ii)-(iii) CRC.

a. Criminal proceedings

Children deprived of a family environment or in whose own best interests cannot be allowed to remain in that environment

Under Article 40 of the CRC, the CRC Committee has confirmed that parents or legal guardians of a child suspect or accused of having infringed criminal law "should be present throughout the proceedings. However, the judge or competent authority may decide to limit, restrict or exclude their presence in the proceedings, at the request of the child or of his or her [lawyer] or other appropriate assistant or because it is not in the child's best interests."[254] The Committee recommended States to "explicitly legislate for the maximum possible involvement of parents or legal guardians in the proceedings because they can provide general psychological and emotional assistance to the child and contribute to effective outcomes."[255]

In *Blokhin v. Russia*, the ECtHR also underlined the importance of legal guardianship in proceedings involving children deprived of parental care. The Court found that "during the entire period when the grandfather was not the [legal guardian], the applicant appears to have been under the guardianship of the State, and the grandfather had no legal rights to represent the applicant or defend his interests."[256]

Children in conflict of interest with a parent or legal guardian

In criminal investigations and proceedings involving child victims, the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) provides that: "each Party shall provide for the possibility for the judicial authorities to appoint a [guardian *ad litem*] for the victim when, by internal law, he or she may have the status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a result of a conflict of interest between them and the victim."[257]

b. Asylum and migration-related proceedings

Unaccompanied and separated children

The appointment of a legal guardian is inherent to the effective protection of the rights of unaccompanied and separated children.[258] According to the definition used by EUAA, the legal guardian "is an independent person who safeguards a child's best interests and general well-being, and to this effect complements the limited legal capacity of the child. The [legal guardian] acts as a statutory representative of the child in all proceedings in the same way that a parent represents his or her child."[259]

In some systems, a legal guardian could also be a lawyer. However, the best interests of the child principle indicates that the guardianship should not be reduced to legal representation alone; the role requires competence in child protection, and in safeguarding the child's overall well-being, in addition to knowledge of applicable legal standards. The CRC Committee has addressed this in General comment No. 6. stating that:[260]

> "21. Subsequent steps such as the appointment of a competent [legal guardian] as expeditiously as possible serves as a key procedural safeguard to ensure respect for

[254] CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, paras 56-57. See Article 40(b)(ii)-(iii) CRC.

[255] *Blokhin v. Russia*, ECtHR, Application No. 47152/06, Judgment of 23 March 2016, para 108.

[256] Article 31(4) CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

[257] CRC Committee, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, para 21.

[258] EUAA, *Practical guide on the best interests of the child in asylum procedures*, 2019, p. 11.

[259] CRC Committee, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, paras 21 and 33.

[260] *ICJ and ECRE v. Greece*, ECSR, Complaint No. 173/2018, Decision of 26 January 2021, para 165.

> the best interests of an unaccompanied or separated child and, therefore, such a child should only be referred to asylum or other procedures after the appointment of a [legal guardian]. In cases where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a [lawyer] in addition to a [legal guardian]. (…)
> 33. States are required to create the underlying legal framework and take necessary measures to secure proper representation of an unaccompanied or separated child's best interests. Therefore, States should appoint a [legal guardian] or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State in compliance with the Convention and other international obligations. The [legal guardian] should be consulted and informed regarding all actions taken in relation to the child. The [legal guardian] should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The [legal guardian] or adviser should have the necessary expertise in the field of child care, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the [legal guardian] acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship. For example, non-related adults whose primary relationship to the child is that of an employer should be excluded from a guardianship role."

In the *ICJ and ECRE v. Greece* case, the ECSR also considered that:

> "an effective guardianship system for unaccompanied and separated migrant children is a pre-condition for ensuring the best interests and the care and assistance of such children, as required by Article 17§1 of the Charter. States Parties should therefore appoint a [legal guardian] without undue delay, as soon as an unaccompanied or separated migrant child, including a refugee and asylum-seeking child, is identified. Without a [legal guardian], such children may be exposed to serious protection risks and may remain denied of enjoyment of a number of their rights, including effective access to legal assistance and to the asylum procedure. […] The Committee considers, consistent with the approach of the Committee on the Rights of the Child (General comment No. 6 (2005), §33), that the [legal guardian] should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's needs are appropriately covered by, *inter alia*, the [legal guardian] acting as a link between the child and the authorities, agencies and individuals who provide the care."[261]

The FRA has similarly held that the appointment of a legal guardian shall be immediate upon identification of an unaccompanied or separated child.[262] In its handbook *Guardianship for children deprived of parental care*, the Agency highlights the following: "The [legal guardian] plays a central role in ensuring access to legal assistance for unaccompanied children or in supporting the child in finding an adviser. The [legal guardian] is considered to be an independent person who safeguards the child's best interests and general well-being, and to this effect complements the limited legal capacity of the child, when necessary, in the same way that parents do. […] The [legal guardian] should be the person with the most comprehensive view of the child's situation and individual needs. A [legal guardian] is in a unique position to connect the various authorities and the child. The [legal guardian] can also help to ensure continuity in the

[261] FRA, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 2015, pp. 55-56.
[262] FRA, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 2015, p. 36.

protection of the child and to enable the child to participate effectively in all decisions affecting him or her, in line with the provisions of Article 12 of the CRC."

These standards indicate that legal guardians should be competent in child protection. To ensure independence and avoid conflicts of interest, guardianship arrangements of children should be made under the supervision of an authority or entity separate from the one responsible for determining the child's asylum or immigration status.[263] This separation guarantees that the legal guardian acts without any influence from immigration or asylum procedures.

In order to establish basic trust and to identify the needs and vulnerabilities of the child, a legal guardian should be able to meet and consult with the child before an authority or court hears the child.[264]

c. Custody, care and child protection proceedings

Children deprived of a family environment or in whose own best interests cannot be allowed to remain in that environment

Article 19 of the CRC requires States to take measures to prevent all forms of violence against children, including where children are in the care of parents, legal guardians, or other caregivers. Article 20 of the CRC further provides that: "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State." In its *Guidelines for the Alternative Care of Children*, the UN General Assembly states that, "no child should be [placed in alternative care] without the support and protection of a legal guardian or other recognized responsible adult or competent public body at any time."[265]

According to the FRA, national legislations should establish a legal basis for guardianship, and designate an independent authority to oversee the guardianship system.[266] Public bodies acting as legal guardians should not have financial or institutional interests that conflict with the child's interests.

Children in conflict of interest with a parent or legal guardian

In custody, care and child protection proceedings, the appointment of a guardian *ad litem* can ensure that the child has an independent voice in proceedings, particularly where the parental arrangements are complex, contested, or potentially harmful.[267] The ECtHR has stated that: "in cases where there are conflicting interests between parents and children, either a guardian *ad litem* or another independent representative is appointed to represent the views and interests of the child and keep the child informed about the content of the proceedings."[268] The Court has also clarified that: "in principle, minors can apply to the Court even, or indeed especially, if they are represented by a parent who is in conflict with the authorities and criticizes their decisions […]. In such cases, the standing as the natural parent suffices to afford him or her the necessary power to apply to the Court on the child's behalf, too, in order to protect the child's interests […] the situation may nonetheless be that the Court identifies conflicting interests between parent and child."[269]

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[263] FRA, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 2015, p. 60.
[264] UN General Assembly, *Guidelines for the Alternative Care of Children*, 18 December 2009, para 19.
[265] FRA, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 2015, p. 40.
[266] See e.g. Articles 4 and 9 European Convention on the Exercise of Children's Rights; Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010, p. 49.
[267] *N.Ts. and others v. Georgia*, ECtHR, Application No. 717776/12, Judgment of 2 February 2016, para 76. See also *C v. Croatia*, ECtHR, Application No. 80117/17, Judgment of 8 October 202, paras 76-77.
[268] *E.M. and others v. Norway*, ECtHR, Application No. 53471/17, Judgment of 20 January 2022, para 64.
[269] *B.J. and P.J. v. Czech Republic*, CRC Committee, Communication No. 139/2021, Views of 15 May 2023, para 8(14).

The CRC Committee recognizes that a guardian *ad litem* must represent the child's views and interests and must be independent. In *B.J. and P.J. v. the Czech Republic*, the CRC Committee found that "where the child wishes to express his or her views and where this right is fulfilled through a [parent or legal guardian], the latter's obligation is to communicate accurately the views of the child. In situations where the child's views are in conflict with those of his or her [parent or legal guardian], a procedure should be established to allow the child to approach an authority to establish separate representation for the child (for example, a guardian *ad litem*), if necessary. Taking into account that the views of the guardians *ad litem* appear to have been in conflict with the authors' views, the Committee considers that the domestic authorities failed to appoint separate representation for the children to ensure that their views were adequately expressed during the judicial proceedings."[270]

3.5.2. Human rights concerns

a. Custody, care and child protection proceedings

Children in conflict of interest with a parent or legal guardian

A significant concern arises where children are unable to secure the appointment of a guardian *ad litem* in proceedings in which the appointment of such a guardian is not mandatory. In *the Netherlands*, courts may appoint a guardian *ad litem* on their own initiative or at the request of an interested party, including the child, but they are not required to do so.[271] As a result, such requests are frequently refused.[272] In *Malta*, children cannot initiate the appointment of a guardian *ad litem* ("children's advocate"), as appointments must be initiated by an adult or ordered by the court on behalf of the child.[273]

Shortages of guardians *ad litem* with specialized competence in children's rights have also been identified, including in *Malta*.[274]

Another reported concern regards the limited interaction between guardians *ad litem* and children. In *the Netherlands*, guardians *ad litem* are only required to speak with children from the age of 8.[275] This may limit opportunities for younger children to express their views. In *Slovakia*, the Ministry of Justice has noted that children placed in alternative care facilities "repeatedly verbalize that they do not even know why they are placed in the facility or why they were transferred to another facility, and likewise verbalize that no one (neither the guardian *ad litem* nor the court) was interested in their opinion."[276]

In several countries, structural conflicts of interest and lack of independent representation raise further concerns. In *Slovakia*, for example, the same public authority that initiates child protection procedures may also act as the child's guardian *ad litem*.[277] This dual role may compromise the child's interests, for example when these guardians are employed by child protection authorities whose priorities may not correspond with the child's views, creating divided loyalties between institutional obligations and the duty to represent the child.

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[270] Article 1:250 Civil Code of the Netherlands.

[271] Mariëlle Bruning, Apollonia Bolscher, "Juridische analyse van de procespositie en het hoorrecht van minderjarigen", *Kind in proces: van communicatie naar effectieve participatie*, Meijers-reeks No. 335, Nijmegen: Wolf Legal Publishers 2020, para 2(2)(5).

[272] Minor Protection (Alternative Care) Act, CAP. 602 of the Laws of Malta, para 18.

[273] See Malta Foundation for the Wellbeing of Society, Child Participation Assessment Tool (CPAT): Country report – Malta, p. 13; TMV News, Number of Children's Advocates is increased, 22 February 2024, website (accessed on 21 November 2025).

[274] De Rechtpraak, Leidraad werkwijze en verslag bijzondere curators ex. 1:250 BW, 17 December 2024.

[275] Ministry of Justice of Slovakia, Metodika participačné práva dieťaťa, 2024, p. 17.

[276] See e.g. Ministry of Justice of Slovakia, Metodika participačné práva dieťaťa, 2024, p. 54-55.

[277] See e.g. Constitutional Court of the Czech Republic, No. I. ÚS 2891/24, Decision of 12 March 2025, paras 40-51.

Many systems also do not clearly distinguish the role of a guardian *ad litem*—whether they are required to represent the child's best interests as perceived by the guardian *ad litem*, exclusively convey the child's own views including on their own interests, or perform both functions. Due to this lack of clarity, guardians *ad litem* may override a child's expressed wishes on protective grounds. In the *Czech Republic*, the Constitutional Court has ruled that a guardian *ad litem* may adopt a position with which the child disagrees.[278] Similarly, in *Slovakia*, child protection authorities acting as guardians *ad litem* may oppose children's expressed views in court.[279]

Another concern identified relates to confidentiality, which may affect the willingness of children to participate in legal proceedings. Requests to keep guardians *ad litem*'s reports confidential may not always be respected by courts, and children may face adverse consequences from family members or other relatives when sensitive information is disclosed.[280]

3.5.3. Good practices

a. Asylum and migration-related proceedings

In *Austria*, the Ombudsoffice for Children and Youth (*Kinder- und Jugendanwaltschaft*) has launched a pilot project to extend the *Kinderbeistand* model of guardian *ad litem* [281] to all asylum cases concerning children. This pilot project also applies to accompanied children to better inform them about the asylum procedure and their rights in *Austria*.

Unaccompanied and separated children

The EU Pact on Migration and Asylum, to be implemented from June 2026, introduces safeguards for separated and unaccompanied children applying for international protection and residence permits.[282] Member States will be required to appoint a provisional representative prior to the appointment of a legal guardian within 15 working days of an application by an unaccompanied child, delayed for 10 working days only in exceptional circumstances.[283] The guardian is responsible for explaining the procedure to the child, ensuring access to reception conditions and healthcare, assisting the child during screening, biometric procedures, and age assessments, and representing the child throughout other proceeding-related matters. Legal guardians must be independent and free of any verified record of child-related crimes or other offences. Each legal guardian may oversee no more than 30 children to ensure sufficient individual attention.[284] No decision affecting a child should be taken without a legal guardian in place, except for urgent measures necessary to secure the child's safety and basic needs.[285]

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[278] See e.g. District Court of Komárno, No. 11P/153/2024, Judgment of 7 March 2025. In this case, children expressed that they wanted to be placed in the foster care of their grandparents. On the contrary, the child protection authority recommended denying the grandparents' request, arguing that the situation did not warrant an alternative care placement.

[279] ICJ, Event Report: Transnational exchange workshop on Child-Friendly Justice and Procedural Rights, May 2025.

[280] Kinder- und Jugendanwaltschaft (KIJA), Hilfe für Kinder und Jugendliche im Asylverfahren, 2 November 2023, website (accessed on 20 November 2025). See further Section 3.5.3.b below.

[281] See further ICJ, EU: Procedural safeguards for migrant children must not regress under the Pact on Migration and Asylum, 19 September 2025, website (accessed 20 February 2026).

[282] Article 27 2024 EU Reception Conditions Directive; Article 13 EU Screening Regulation; Articles 23 EU Asylum and Migration Management Regulation; Article 23 EU Asylum Procedure Regulation; Article 33 EU Qualification Regulation.

[283] Article 13(5) EU Screening Regulation; Article 23(10) EU Asylum Procedure Regulation; Article 27(5) EU Reception Conditions Directive.

[284] Article 33 EU Qualification Regulation.

[285] Defence for Children - ECPAT The Netherlands, Core Standards for guardians of separated children in Europe: Goals for guardians and authorities, 2011, pp. 5-6.

Defence for Children International (DCI) compiled a set of standards for legal guardianship, including the following responsibilities:

- to advocate for all decisions to be taken in the best interest of the child, aimed at the protection and development of the child
- to ensure the child's participation in every decision which affects the child, and to provide information in a child-friendly way
- to protect the safety of the child
- to act as an advocate for the rights of the child
- to act as a bridge and focal point for the child and other actors involved
- to ensure the timely identification and implementation of a durable solution
- to treat the child with respect and dignity
- to form a relationship with the child built on mutual trust, openness and confidentiality
- to be accessible
- to be equipped with relevant professional knowledge and competences.[286]

A legal guardian is often in a position to connect relevant actors and to identify not only the needs and vulnerabilities of children, but also barriers within the systems. Effective practice may include coordination of multidisciplinary support, including consultation with psychologists, social workers and care providers, where relevant; securing access to documents and evidence relevant to the children's proceedings, and mandating lawyers where legal assistance is not already in place.

Such measures are necessary to support children to express their views and feelings about their situation and enable these views to be communicated within the procedure. To support effective participation, ensuring that children's voice be heard in any realistic way and in taking into account their vulnerability, legal guardians must maintain regular contact with them, ideally in person.

In *the Netherlands*, a practice aimed at improving the legal guardianship system is that young people are invited to share feedback on their experience with Nidos, the independent organization providing guardianship to unaccompanied children, at the conclusion of their guardianship period.[287]

b. Custody, care and child protection proceedings

Children deprived of a family environment or in whose own best interests cannot be allowed to remain in that environment

A reported practice is to give priority, where appropriate, to the appointment of a trusted legal guardian with whom the child is already comfortable sharing views, while ensuring that the child can express their preferences regarding who should serve in this role.[288] In *Slovakia*, Guidelines of the Ministry of Justice emphasize that: "it is precisely in the greater emphasis on the child's participatory rights that it is appropriate for the courts to give preference to a close person over the child protection authority when appointing a legal guardian for a child."[289]

Children in conflict of interest with a parent or legal guardian

Many systems allow for the provision of guardians *ad litem* for children, although roles and mandates vary across jurisdictions. In *Austria*, a *Kinderbeistand* is appointed by courts for children up to the age of 14, and in exceptional circumstances up to 16.[290] They are persons with relevant professional expertise and training, appointed through the Austrian Judicial Support Agency (*Justizbetreuungsagentur*) on the basis of their profession and

[286] Nidos, *Annual Report 2016*, April 2017, p. 15.
[287] Section 117 Civil Non-Dispute Procedure Act of Slovakia.
[288] Ministry of Justice of Slovakia, Metodika participačné práva dieťaťa, 2024, p. 53.
[289] §104a(1) Non-Contentious Proceedings Act of Austria.
[290] §104a(1) Non-Contentious Proceedings Act of Austria.

professional experience in legal proceedings concerning children and young people.[291] The role of a *Kinderbeistand* is to inform and support the children throughout proceedings, and, with the child's consent, to convey their views to the court.[292] A *Kinderbeistand* may access case files and attend hearings and, at the child's request, accompany the child to give evidence outside the hearing.[293]

In the *Czech Republic*, guardians *ad litem* appointed in family law proceedings are required to (i) remain in regular contact with the child, (ii) explain to the child the nature and consequences of the decision taken on behalf of the child, and (iii) not depart from the expressed wishes of the child, unless there are reasonable grounds to do so.[294]

In *Malta,* guardians *ad litem* ("children's advocates") are lawyers appointed to represent children's interests in child protection and alternative care proceedings.[295] Their responsibilities include: "(a) provide legal assistance and advice to the minor; (b) submit the views of the minor in any court or with any administrative body as relayed to him by the key social worker or by an expert on minor protection as appointed by the Court for said purpose; (c) provide explanations to the minor on the possible consequences should they conform to his or her wishes; and (d) provide the minor with any relevant information."[296]

3.6. Right to a fair hearing and access to court

3.6.1. International legal standards

Children must be accorded special protection in any procedure before a court or tribunal.[297] Children must have effective access to court in order to ensure protection of their rights. According to the CoE's Guidelines on child-friendly justice, "domestic law should facilitate where appropriate the possibility of access to court for children who have sufficient understanding of their rights."[298]

Article 40(2) of the CRC sets out the "rights and guarantees aimed at ensuring that every child receives fair treatment and trial" (see also Article 14 of the ICCPR) in **criminal proceedings**.[299] In *T. v. the United Kingdom* and *V. v. the United Kingdom*, the Court held that criminal proceedings must be adapted to children's needs.[300] Two applicants, aged 11, charged with murder of a two-year-old, were subject to a public hearing for three weeks in an adult court. The procedure was, however, adapted to some extend to accommodate their young age: they were seated next to social workers in a specially raised dock, with their parents and lawyers nearby; the hearing times were aligned with the school day; a ten-minute break was scheduled every hour; they were permitted to spend time with their parents and social workers in a play area during adjournments; and social workers or defense lawyers could request an adjournment if the children showed signs of fatigue or stress.[301] The trial was preceded and accompanied by extensive national and international

[291] §104a(2) Non-Contentious Proceedings Act of Austria.
[292] §104a(3) Non-Contentious Proceedings Act of Austria.
[293] Sections 466(1)-(2) and 467(2) Civil Code of the Czech Republic. See also Constitutional Court of the Czech Republic, No. II. ÚS 725/18, Decision of 8 October 2018, paras 59-60. The legislation does not specify what constitutes "reasonable grounds," and the provision is not enforced in practice.
[294] Minor Protection (Alternative Care) Act, CAP. 602 of the Laws of Malta.
[295] Article 25(1) Minor Protection (Alternative Care) Act, CAP. 602 of the Laws of Malta.
[296] See e.g. ECOSOC, Guidelines for Action on Children in the Criminal Justice System, Resolution 1997/30, 21 July 1997, para 14(d).
[297] Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, November 2010, p. 15.
[298] General comment No. 24 (2019) on children's rights in the child justice system, para 38.
[299] *T. v. the United Kingdom*, ECtHR, Application No. 24724/94, Judgment of 16 December 1999; *V. v. the United Kingdom*, ECtHR, Application No. 24888/94.
[300] *T. v. the United Kingdom*, ECtHR, Application No. 24724/94, Judgment of 16 December 1999, para 9; *V. v. the United Kingdom*, ECtHR, Application No. 24888/94, para 9.
[301] *T. v. the United Kingdom*, ECtHR, Application No. 24724/94, Judgment of 16 December 1999, para 86; *V. v. the United Kingdom*, ECtHR, Application No. and 24888/94, para 88.

publicity. The Court considered that the applicants were likely to find the courtroom settings intimidating whether involved as a witness or a defendant.[302] Despite the adaptions of the proceedings, the children experienced post-traumatic effects after the hearing. Under Article 6(1) of the ECHR, the accused child must be able to understand what is happening and to participate effectively in their defence, to the extent reasonably expected of a child.[303] Physical presence alone is not sufficient.

While some guarantees apply specifically to determination of criminal charges, the requirements of fairness are relevant to proceedings affecting children more broadly, including **civil and administrative proceedings**. Specific rights apply only to those accused of criminal charges but comparable guarantees where relevant have been found by the ECtHR to be required in civil cases if the proceedings are to be adjudged "fair".[304]

Public hearing

In principle, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law and judgments should be pronounced publicly, including to ensure public confidence in the administration of justice.[305] These guarantees are closely linked to the right to be heard and to effectively participate.

At the same time, the best interests of the child must be a primary consideration. Courts may exclude all or part of the public from proceedings for specified reasons, including to protect a child's right to privacy and the principle of best interests of the child.[306] Where the public is excluded from the hearing, the judgment—including the essential findings, evidence and legal reasoning—must be made public, except where it is not in the best interests of the child, including with respect to proceedings arising from matrimonial disputes or the guardianship of children.

The reasonable time requirement

Proceedings affecting children must be conducted within a reasonable time.[307] Children experience the passage of time differently from adults and delay in or prolonged decision-making may have particularly adverse effects on children.[308] Procedures involving or affecting children should therefore be prioritized and completed in the shortest time possible, while ensuring that fair trial guarantees are respected.[309] The principle of the best interests of the child, as well as the right to be heard and to participate and fair proceedings are all closely connected to the reasonable time requirement.[310]

Asylum and migration-related proceedings affecting children also require timely decision making. In a joint General comment, the CRC and CMW Committees state that:

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[302] *T. v. the United Kingdom*, ECtHR, Application No. 24724/94, Judgment of 16 December 1999, paras 82-89; *V. v. the United Kingdom*, ECtHR, Application No. 24888/94, paras 88-91.

[303] *Golder v. the United Kingdom*, ECtHR, Application No. 4451/70, Judgment of 21 February 1975, para 36.

[304] Articles 10 and 11 UDHR, Article 14 ICCPR; Article 19 ICRMW; Article 6 ECHR; Article 47 EU Charter; HRC, General comment No. 32 (2007): Article 14, Right to equality before courts and tribunals and to fair trial, para 28.

[305] HRC, General comment No. 32 (2007): Article 14, Right to equality before courts and tribunals and to fair trial, para 29; *B. and P. v. the United Kingdom*, ECtHR, Applications Nos. 36337/97 and 35974/97, Judgment of 24 April 2001, paras 37-49; *Moser v. Austria*, ECtHR, Application No. 12643/02, Judgment of 21 September 2006, paras 97-104.

[306] See CRC Committee, General comment No. 14 (2013) on the right of the child to have their best interests taken as a primary consideration, para 93; Article 40(2)(b)(iii); *Paulsen-Medalen and Svensson v. Sweden*, ECtHR, Application No. 16817/90, Judgment of 19 February 1998; Committee of Ministers of the CoE, Guidelines on child-friendly justice and explanatory memorandum, 17 November 2010, p. 9.

[307] CRC Committee, General comment No. 14 (2013) on the right of the child to have their best interests taken as a primary consideration, para 93.

[308] *Johansen v. Norway judgment*, ECtHR, Application No. 17383/90, Judgment of 7 August 1996, Reports of Judgments and Decisions 1996-III, pp. 1010–11, para 88.

[309] CRC Committee, General comment No. 14 (2013) on the right of the child to have their best interests taken as a primary consideration, paras 85-88, 93.

[310] Joint General comment No. 4 (2017) of the CMW Committee and No. 23 (2017) of the CRC Committee on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, para 15.

"[m]easures should be taken to avoid undue delays in migration/asylum procedures that could negatively affect children's rights, including family reunification procedures. Unless it is contrary to the child's best interests, speedy proceedings should be encouraged, provided that this does not restrict any due process guarantees."[311]

Whether proceedings have been conducted within a reasonable time must be assessed in light of, among other factors, the complexity of the case and the impact of delay in proceedings on the rights of the child.[312] **Child custody cases**[313] and cases concerning parental responsibility and contact, call for particular expedition, especially where delay may have irreversible consequences for the parent–child relationship. In *Paulsen-Medalen and Svensson v. Sweden,* the ECtHR held that the restrictions on contact between a parent and a child taken into public care and the serious and potentially irreversible consequences of taking a child into care for the enjoyment of the right to respect for family life, required the authorities to act with exceptional diligence in ensuring progress of the proceedings.[314]

Accessibility for children with disability

Accessibility of courts is a prerequisite for persons with disabilities to enjoy their rights effectively.[315] Article 2 of the CRPD defines "universal design" as "design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design" and clarifies that this does "not exclude assistive devices for particular groups of persons with disabilities where this is needed."

In its General comment No. 2, the CRPD Committee has highlighted that: "[p]ersons with disabilities and other users should be able to move in barrier-free streets, enter accessible low-floor vehicles, access information and communication, and enter and move inside universally designed buildings, using technical aids and live assistance where necessary."[316] Facilities include, among others: "[c]ourts, police facilities, prisons, detention and forensic facilities, jury facilities, administrative offices and other such places (including toilets, cells, offices, entrances, lifts, canteens and recreational spaces in those places)."[317] The ECtHR also recognized that physical inaccessibility of a court for persons with a mobility-related disability may impair access to court and may amount to a violation of the right to a fair trial.[318]

3.6.2. Human rights concerns

Across the EU, persistent barriers in accessing courts and related facilities further exclude children with disabilities from effective participation in legal proceedings. Physical inaccessibility of court buildings and rooms may prevent children from attending and participating. Further concerns arise where national law or practice provides for videoconferencing for reasons linked to age or state of health. While remote hearings may function as an accommodation in some circumstances based on an individualized assessment of the child's specific needs,[319] they may also be imposed without considering whether the child is able to understand, communicate, or participate. Reported concerns related to remote hearings include: disparities in access to devices and stable internet;

[311] *Niederböster v. Germany*, ECtHR, Application No. 39547/98, Judgment of 27 February 2003, para 39.
[312] *Hokkanen v. Finland*, ECtHR, Application No. 19823/92, Judgment of 23 September 1994, para 72; *Laino v. Italy*, ECtHR, Application no. 33158/96, Judgment of 18 February 1999, para 22.
[313] *Paulsen-Medalen and Svensson v. Sweden*, ECtHR, Application No. 16817/90, Judgment of 19 February 1998, para 39.
[314] CRPD Committee, General comment No. 2 (2014): Article 9 Accessibility, para 27.
[315] CRPD Committee, General comment No. 2 (2014): Article 9 Accessibility, para 15.
[316] UN Special Rapporteur on the Rights of Persons with Disability, International Principles and Guidelines on Access to Justice for Persons with Disabilities, August 2020, Guideline 2(1)(a)(i).
[317] *Farcaş v. Romania*, ECtHR, Application No. 32596/04, Decision of 14 September 2010, para 48.
[318] Equality and Human Rights Commission, Inclusive justice: a system designed for all. Interim evidence report – Video hearings and their impact on effective participation, April 2020, pp. 8-13.
[319] Nessa Lynch, Dr Oscar O'Mara, *Upholding children's rights in remote hearings in child justice systems*, 2025.

limited availability of accessible digital platforms; lack of secure and private spaces for participation; insufficient child-sensitive approaches by judges; and a reduced level of comfort for children to speak freely.[320] In its report on the digitalization of justice, the FRA has noted that videoconferencing may also reduce "the likelihood of the court understanding the nonverbal language of parties to proceedings."[321]

a. Asylum and migration-related proceedings

Similar concerns arise in asylum and migration-related proceedings, where age thresholds are not consistent with the requirement of individual assessment. In *the Netherlands*, accompanied children under 15 are only heard if requested by the child or relative, and unaccompanied children may be heard from the age of 6.[322] In *Austria*, administrative courts are not subject to the legal obligation to hear children, resulting in proceedings where children's views are rarely sought in practice.[323] Where children's views are conveyed through parents, legal guardians, or guardians *ad litem*, their interpretations may not reflect the child's views accurately. In practice, judges may rely on lawyers, parents or guardians to assess whether it is appropriate for the child to be heard.

Another concern arises from the lack of child-friendly conditions in hearings and interviews. In *the Netherlands*, asylum hearings are described as hostile and intimidating due to the methods of interrogation.[324]

b. Custody, care and child protection proceedings

Despite the international safeguards described above, fair trial rights and access to court in practice are often restricted in many EU Member States on grounds of age. Restrictions on children's presence or direct participation persist, including through application of age thresholds for hearings of children. In *the Czech Republic*, children over the age of 12 are presumed capable of forming and expressing their own views,[325] and younger children may be heard based on individual assessment.[326] In *the Netherlands*, courts may only decide in family law proceedings after providing children aged 8 years or older with the opportunity to be heard.[327] There is no such requirement for younger children.

Even where hearings take place with the child present, concerns remain as to whether children feel safe and can speak freely. In *Malta*, judicial proceedings are described as bureaucratic and inconsistent.[328] In *the Netherlands*, research indicates that children frequently feel they are not listened to due to short hearings in youth care proceedings.[329]

The Baseline study conducted in the target EU Member States also points to systemic concerns, including resource shortages and time constraints, as well as insufficient professional training.[330] In *Austria*, for example, the Family Court Assistance Service has reported persistent understaffing.[331]

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[320] FRA, *Digitalising justice – A fundamental rights-based approach*, 2025.

[321] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 27.

[322] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 8.

[323] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 31.

[324] Section 867 Civil Code of the Czech Republic.

[325] Constitutional Court of the Czech Republic, No. IV. ÚS 827/18, Decision of 10 April 2018.

[326] This has been in force since 2025 (Parliamentary Papers II 2024/25, 31839, no. 1027, 17 October 2024) and will be implemented in all courts as of 1 June 2026.

[327] Eurochild, Unequal Childhoods: Rights on paper should be rights in practice, 2025, pp. 169-170.

[328] Rap, Verkroost and Bruning, *Kansen en momenten voor participatie in het jeugdhulptraject in de praktijk: Tweede deel van een onderzoek naar de participatie van kinderen in de jeugdhulpverlening*, 2018, pp. 16-17.

[329] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 4, 6, 29, 37, 48.

[330] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 6-8.

[331] CoE, *Listen – Act – Change: Council of Europe Handbook on children's participation for professionals working for and with children*, October 2020.

3.6.3. Good practices

It is critical that communication with a child takes place in a condition in which the child can feel comfortable and secure.[332] Before an interview or hearing starts, the child should be given the opportunity to ask questions and receive clear explanations about what will happen and why. Child-friendly adaptations include:[333]

(i) Physical environment
> The room is comfortable and well-ventilated; (etc.)
> The room has appropriate visual elements (colourful drawings and posters);
> Seats are appropriate to the child's size;
> The child may sit with the person of their choice, where this is in the best interests of the child;
> The environment is safe and private;
> There are as few people around as possible during the conversation;
> Food and refreshments are provided where appropriate.

(ii) Support and involvement
> The child is asked if they prefer their parents or legal guardian to be with them during the conversation;
> The child has a supportive adult helping them, if they ask for it and they agree that the person is present;
> Adults are dressed in smart casual clothing;
> Adults interact with the child in a friendly manner and show interest in them.

(ii) Logistics
> The child is informed in advance about the meeting and location in a form that the child can understand;
> Transportation to the meeting is arranged where needed;
> The meeting is scheduled at appropriate hours, preferably without disruption of school lessons;
> The meeting takes place with ample breaks;
> Waiting time is minimized;
> The child's contact with hostile persons is strictly limited or prevented.

a. Criminal proceedings

Examples from criminal proceedings illustrate practices aimed at protecting children during interviews and hearings. In *Austria*, the Criminal Investigation Department's Advisory Centre in Andreasgasse (*Kriminalpolizeiliches Beratungszentrum*) is an example of child-sensitive police interviewing, providing an appropriate environment and specially trained staff.[334] Child victims may be interviewed by specialized professionals in a room separated from the defendant, the defence lawyer and the prosecutor.[335] In cases involving serious sexual offences, the Austrian law requires that at least one of the judges be of the same gender as the accused child.[336]

Child-centred measures have also been implemented within court environments to safeguard children's well-being during proceedings. In *the Netherlands*, some video-based guidance tools and court tours have been developed to prepare children for hearings.[337] As a general rule, *the Netherlands* applies closed hearings in criminal cases involving children,

[332] See further ICJ, EU: Training materials on Alternatives to Detention for Migrant Children, April 2022, website (accessed on 12 December 2025). See also Defence for Children, Kindvriendelijke rechtspraak: Verbeterpunten, 2023.
[333] See further Daniela Amann, Marion Neunkirchner, Rights of Child Victims and the Role of the Police, *SIAK-Journal – Journal for Police Science and Practice*, International Edition Vol. 10, 2020. pp. 86-95,
[334] §66a(1)(Z3)-(2)(Z3) Criminal Procedure Code of Austria.
[335] §32(2) Criminal Procedure Code of Austria.
[336] Young Perspectives (YOPE), Jouw Zittingsdag - een film van Young Perspectives (def), Vimeo, 2 July 2024.
[337] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 31.

as a means of protecting privacy and well-being.[338] The Amsterdam District Court has established a child-friendly courtroom using a round-table arrangement rather than an adversarial layout.[339] In *the Czech Republic*, specialized child interrogation rooms have been established to create a safe and appropriate setting for questioning child victims.[340]

Remote hearings may, in some cases, provide an accessible option to reduce trauma-related stress, prevent delays, or accommodate children with disabilities. For example, in *Austria*, videoconferencing is used "to hear witnesses and defendants in preliminary criminal proceedings, and witnesses at trials."[341] This can be done either through the court's videoconferencing technology (requiring individuals to come at the nearest court equipped with such technology) or via Zoom.[342] In *the Czech Republic*, criminal hearings may be conducted through videoconferencing to protect the rights of individuals in consideration of their age or health.[343] Such measures should be applied following an individualized best-interest assessment on a case-by-case basis to ensure that fair trial guarantees are not compromised.

Multidisciplinary settings have been identified as a good practice providing holistic care and support to children in proceedings.[344] The Barnahus model represents a leading example of an integrated multidisciplinary and inter-agency approach.[345] It brings together child protection services, criminal investigation and prosecution, medical assessment and mental health support in a single, child-friendly setting. It aims to enable a holistic assessment and coordinated responses to the child's needs, while reducing re-traumatization and secondary victimization. In *Austria*, criminal courts are required to request a report from the Juvenile Court Assistance Service (*Jugendgerichtshilfe*), providing information on the accused child's social and family background, the child's own views on the alleged offence and recommendations relevant to judicial decision-making.[346]

b. Custody, care and child protection proceedings

Family law proceedings have increasingly adopted child-inclusive practices intended to support children's participation. In *Slovakia*, the Ministry of Justice has produced child-accessible informational leaflets explaining civil hearings and providing a basic overview of what to expect in court.[347] Slovak Guidance also recommends that interviews with children take place in an area other than the courtroom.[348] In several courts in *the Netherlands*, children are being heard in small child-friendly rooms, and judges do not always wear gowns.[349]

Audio- and video-recorded hearings may allow children to be heard while reducing the risk of repeated questioning and associated distress. In *Slovakia*, interviews with children in

[338] Openbaar Ministerie, De ronde tafel, *Opportunity No. 6*, 19 December 2022.
[339] Section 20(2) of the Victims Act of the Czech Republic. According to the 2022 records, there were 77 special interrogation rooms in Czechia. See more: Crime Prevention Department of the Ministry of the Interior of the Czech Republic, Special interrogation rooms, website (accessed on 29 August 2025).
[340] FRA, *Digitalising justice – A fundamental rights-based approach*, 2025, p. 44.
[341] FRA, *Digitalising justice – A fundamental rights-based approach*, 2025, p. 44.
[342] Section 52a Criminal Procedure Code of the Czech Republic.
[343] See CoE, *Barnahus: a European journey – Mapping study on multidisciplinary and interagency child-friendly justice models responding to violence against children in CoE member*, September 2023. As of June 2025, the Barnahus Network has 28 member countries represented by 51 members.
[344] Barnahus, website (accessed on 20 August 2025). As of June 2025, the Barnahus Network has 28 member countries represented by 51 members. As of June 2025, the Barnahus Network has 28 European member countries. See further CoE, *Barnahus: a European journey – Mapping study on multidisciplinary and interagency child-friendly justice models responding to violence against children in CoE member*, September 2023.
[345] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 7.
[346] Ministry of Justice of Slovakia, Metodika participačné práva dieťaťa, 2024, pp. 35-36.
[347] Ministry of Justice of Slovakia, Metodika participačné práva dieťaťa, 2024, p. 28.
[348] De Rechtspraak, Kindgesprek, website (accessed on 24 March 2026).
[349] Section 93c(3b) Act on the social protection of children and on the social guardian and on the amendment and addition of some laws of Slovakia; Committees of the National Council of the Slovak Republic, Amendment to the Family Act No. 175/2015 - Explanatory Report and Joint Report, 26 October 2015, website (accessed on 1 September 2025).

care or custody proceedings are audio-recorded to ensure an accurate record of children's statements and to avoid multiple interviews.[350]

The Cochem Model (*Cochemer Modell*) is an interdisciplinary approach to resolving family disputes, particularly in child custody and contact cases.[351] It is based on early judicial intervention, close cooperation among judges, lawyers, youth welfare services, and psychologists, and emphasis on parental responsibility.[352] The model relies on coordinated professional collaboration and requires active and mandatory participation of parents. The CoE's Parliamentary Assembly encourages multidisciplinary co-operation based on the Cochem Model.[353] While multidisciplinary assessment in proceedings involving children is not implemented consistently in all EU Member States, in law or practice, the following good practices have been identified:[354]

- In civil and family proceedings in *Austria*, the Family Court Assistance Service (*Familiengerichtshilfe*) supports courts through social workers, psychologists, and educators.[355] Acting on behalf of the court, it assists in establishing the factual basis for decisions, promotes amicable settlements, and informs the parties in cases concerning custody and personal contact. Its tasks include identifying potential settlements, conducting social work investigations (including home visits), producing psychological assessments and expert opinions, and facilitating engagement with the parties.
- In *the Netherlands*, the Child Care and Protection Board (*Raad voor de Kinderbescherming*), responsible for investigations and decisions on child protection measures, has a structured multidisciplinary process involving psychologists, educators and social workers. Procedures are guided by standardized questionnaires and places strong emphasis on social, emotional and educational factors.[356]
- *The Netherlands* has piloted "intervision" sessions, in which judges participated in peer discussions with professionals from other disciplines. These exchanges aimed to support professional reflection, raise awareness of implicit biases and contribute to more equitable and rights-based decision-making.[357]

Direct engagement of children in family law proceedings may support children's understanding of their situation and empower them to participate in the identification of realistic and appropriate solutions. Examples reported include:

- In *the Netherlands*, children are entitled to write letters to judges to express their views in their own words.[358]
- In *the Czech Republic*, the Constitutional Court has ruled that judges must communicate openly with children and should build the child's understanding through comprehensive questioning.[359]
- Family group conferencing, which offers an alternative to the Cochem model (see above), has been used in child protection cases in *the Czech Republic*. This approach involves families, supported by independent facilitators, and includes children in ways that correspond to their intellectual and emotional maturity.

[350] The Cochem model was developed in the early 1990s at the Cochem District Court in Germany by Judge Jürgen Rudolph.

[351] Ursula Kodjoe, From the "Practice of Cochem" to the "Consensus Model", 26 October 2016.

[352] CoE's Parliamentary Assembly, Resolution 2079 (2015) Equality and shared parental responsibility: the role of fathers, 2 October 2015, para 5(9).

[353] See e.g. FRA, Provisions requiring multidisciplinary assessment of child protection cases, website (accessed on 8 December 2025).

[354] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 6.

[355] Child Protection Council (*Raad voor de Kinderbescherming*), Kwaliteit van ons werk, website (accessed on 8 December 2025).

[356] De Rechtspraak, Intervisie, feedback en reflectie, 2014, website (accessed on 8 December 2025). See also Council for the Judiciary, *The Judiciary System in the Netherlands*, August 2010, p. 29.

[357] Villa Pinedo, *Zie mij en hoor(r)echt*, 13 September 2024.

[358] Constitutional Court of the Czech Republic, No. III. ÚS 1318/22, Decision of the 12 June 2023, para 33.

[359] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 20. See Právo Na Dětství, Systémová podpora procesů transformace systému péče o ohrožené děti a rodiny, website (accessed on 21 August 2025).

Implementation has reportedly been limited to certain regions. Although fifty-five coordinating organizations were trained by 2015 with support from the Ministry of Labour and Social Affairs, lack of stable, system-level funding has contributed to a significant decline, with only three organizations currently providing coordination.[360]

3.7. Access to an effective remedy

3.7.1. International legal standards

The right to an effective remedy for violations of human rights is a general principle of international law.[361] It is reflected, *inter alia*, in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, unanimously adopted by the UN General Assembly in 2005.[362] Principle 3 clarifies that "the obligation to respect, ensure respect for and implement international human rights law […] includes […] the duty to […] [p]rovide those who claim to be victims of a […] violation with equal and effective access to justice […] and [p]rovide effective remedies to victims, including reparation […]." The right to an effective remedy has both substantive and procedural dimensions.

Remedies must be prompt, effective, accessible and enforceable and should lead to cessation of human rights violations and, where appropriate, reparation.[363] Bodies responsible for investigation and adjudication must be independent and impartial.[364] The ECtHR emphasized that, "[w]hile the Court is aware of the importance of swift access to a remedy, speed should not go so far as to constitute an obstacle or unjustified hindrance to making use of it, or take priority over its practical effectiveness."[365]

In its General comment No. 5, the CRC Committee has stated that where there is a violation of economic, social and cultural rights, as well as civil and political rights, an effective remedy—including, in many cases, a judicial remedy—must be available to the victim, as well as reparation for any violation.[366] The CRC Committee has underlined that: "For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to

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[360] Article 8 UDHR; Article 2 ICCPR; Article 6 CERD; Article 14 CAT; Article 39 CRC; Article 13 ECHR; Article 47 EU Charter; HRC, General comment No. 31 (2004): The nature of the general legal obligation imposed on States Parties to the Covenant, paras 15-16; CEDAW Committee, General recommendation No. 26 (2008) on women migrant workers, paras 21-26.

[361] UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005.

[362] CRC Committee, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, para 30. See also See also *Al-Nashif v. Bulgaria*, ECtHR, Application No. 50963/99, Judgment of 20 June 2002, para 132; *Muminov v. Russia*, ECtHR, Application no. 42502/06, Judgment of 11 December 2008, para 100; *Jabari v. Türkiye*, ECtHR, Application No. 40035/98, Judgment of 11 July 2000, paras 39-50; *Rahimi v. Greece*, ECtHR, Application no. 8687/08, Judgment of 5 April 2011.

[363] HRC, General comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para 15; *L.K. v. the Netherlands*, CERD Committee, Communication No. 4/1991, Views of 13 March 1993, para 6(9); CoE Guidelines on Eradicating Impunity for Serious Human Rights Violations, Guidelines V and IV; *Aksoy v. Turkey*, ECtHR, Application No. 21987/93, Judgment of 18 December 1996, Reports 1996-VII, paras 95-100.

[364] *De Souza Ribeiro v. France*, ECtHR, Application No. 22689/07, Judgment of 13 December 2012, para 95.

[365] CESCR, General comment No. 3 (1990): The nature of States parties' obligations, para 5; CRC Committee, General comment No. 5 (2003) on general measures of implementation of the CRC, paras 24-25.

[366] CRC Committee, General comment No. 5 (2003) on general measures of implementation of the CRC, para 24.

independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration."[367] The CRC Committee has further affirmed that, "in the context of best interest assessments and best interest determination procedures, children must be guaranteed the right to appeal the decision to a higher court or an independent authority, with suspensive effect.[368]

For States parties to the Third Optional Protocol to the CRC, an individual communications procedure provides an additional avenue of remedies for the violation of children's rights. Article 5 of the Optional Protocol provides that: "Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments to which that State is a party: (a) The Convention; (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography; (c) The Optional Protocol to the Convention on the involvement of children in armed conflict."[369]

In its General comment No. 12, the CRC Committee has stated that, where "the right of the child to be heard is breached with regard to judicial and administrative proceedings (art 12, para. 2), the child must have access to appeals and complaints procedures which provide remedies for rights violations."[370] Similarly, the ECtHR has recognized that the unjustified deprivation of children's right to be heard by a judge, without effective review by a higher court, amounts to a violation of the right to a fair trial.[371] In *Iglesias Casarrubios and Cantalapiedra Iglesias v. Spain*, the Court found a violation where children were unjustifiably deprived of being heard directly without the provision of an effective remedy.[372] In the context of legal guardianship, the Court has also accepted that, in exceptional circumstances, an NGO may be admitted to act on the child's behalf.[373] The Court explained that "[i]t would normally be for the [legal guardian] […] to represent the applicant before the Court. However, the Court attaches particular importance to the fact that the applicant's [legal guardian] was accused, both before the domestic authorities and before the Court, of having failed in its responsibility to protect the applicant's interests. Accordingly, it cannot be expected that the person suspected of having been part of the applicant's alleged overall neglect […] would make a complaint on those grounds before the Court."[374]

Effective remedies do not always have to be exclusively judicial.[375] In a joint General comment, the CRC and the CMW Committees have affirmed that: "[c]hildren should be able to bring complaints before courts, administrative tribunals or other bodies at lower levels that are easily accessible to them, e.g., in child protection and youth institutions, schools and national human rights institutions."[376] However, there should be recourse to a

[367] *S.E.M.A. v. France*, CRC Committee, Communication No. 130/2020, Views of 25 January 2023, para 8(7).

[368] Article 5 OP3 CRC.

[369] CRC Committee, General comment No. 12 (2009): The right of the child to be heard, para 47.

[370] *Iglesias Casarrubios and Cantalapiedra Iglesias v. Spain*, EctHR, Application No. 23298/12, Judgment of 11 October 2016, paras 42-43.

[371] *Iglesias Casarrubios and Cantalapiedra Iglesias v. Spain*, EctHR, Application No. 23298/12, Judgment of 11 October 2016, paras 42-43.

[372] *L.R. v. North Macedonia*, ECtHR, Application No. 38067/15, Judgment of 23 January 2020.

[373] *L.R. v. North Macedonia*, ECtHR, Application No. 38067/15, Judgment of 23 January 2020, para 50.

[374] See e.g. HRC, General comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para 15; CEDAW Committee, General recommendation No. 19 (1992) on Violence against Women, para 24(t); CESCR, General comment No. 9 (1998): The domestic application of the Covenant, para 9; *Silver v. the United Kingdom*, ECtHR, Application Nos. 5947/72 and others, Judgment of 25 March 1983, Series A No. 61, para 113.

[375] Joint General comment No. 4 (2017) of the CMW Committee and No. 23 (2017) of the CRC Committee on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, para 16.

[376] See e.g. CESCR, General comment No. 9 (1998): The domestic application of the Covenant, para 9.

judicial body at the very least to review the propriety and lawfulness of any non-judicial remedy.[377] The CRC Committee has noted that: "Non-judicial mechanisms, such as mediation, conciliation and arbitration, can be useful alternatives for resolving disputes concerning children and enterprises", but that their availability should be guaranteed "without prejudice to the right to judicial remedy."[378] The Committee has further recommended that: "In all cases, access to courts or judicial review of administrative remedies and other procedures should be available."[379]

On the other hand, for certain obligations and certain types of violations, access to an independent adjudicator is considered indispensable.[380] The HRC, the CEDAW Committee, the CAT Committee, the CESCR, and the ECtHR have consistently emphasized that access to judicial remedies must be provided in cases of gross human rights violations, including gender-based abuses, torture, ill-treatment, and discrimination.[381] Article 6 of the ECHR grants individuals a right of access to court "in the determination of his civil rights and obligations or of any criminal charge against him."[382] Article 47 of the EU Charter reads: "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article."[383]

The Ombudspersons for children

Independent national human rights institutions (NHRIs) with mandates to promote and protect human rights may include specialized bodies dedicated to children. These are commonly referred to as "ombudspersons" or "commissioners for children's rights."[384] In its General comment No. 2, the CRC Committee has encouraged States parties "to establish an independent institution for the promotion and monitoring of implementation of the Convention."[385] According to the CRC Committee, Ombudspersons for children must be grounded in legislation and guarantees of independence, effectiveness, pluralism, broad mandate, adequate resourcing, and cooperation with other human rights mechanisms.[386] According to the CRC Committee, the Ombudspersons for children's mandate must provide remedies for breaches of children's rights:

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[377] CRC Committee, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, para 71.

[378] CRC Committee, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, para 71.

[379] See e.g. CESCR, General comment No. 9 (1998): The domestic application of the Covenant, para 9, "there are some obligations, such as (but by no means limited to) those concerning non-discrimination, in relation to which the provision of some form of judicial remedy would seem indispensable in order to satisfy the requirements of the Covenant. In other words, whenever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary."

[380] F*. Birindwa ci Bithashwiwa and E. Tshisekedi wa Mulumba v. Zaire*, HRC, Communication Nos. 241/1987 and 242/1987, Views of 2 November 1989, para 14; *Nydia Erika Bautista v. Colombia*, HRC, Communication No. 563/1993, Views of 27 October 1995, para 8.(2); CEDAW Committee, General recommendation No. 33 (2015) on women's access to justice, para 19(f); CAT Committee, General comment No. 3 (2012) on the Implementation of Article 14 by States Parties, para 20; CESCR, General comment No. 9 (1998): The domestic application of the Covenant, para 9; *Chahal v. the United Kingdom*, ECtHR, Application No. 22414/93, Judgment of 15 November 1996, Reports 1996-V, paras 150-151; *Aksoy v. Turkey*, ECtHR, Application No. 21987/93, Judgment of 18 December 1996, Reports 1996-VI, para 95; *Aydin v. Turkey,* ECtHR, Application No. 23178/94, Judgment of 25 September 1997, Reports 1997-VI, para 103.

[381] Article 6 ECHR. See *Golder v. the United Kingdom*, ECtHR, Application No. 4451/70, Judgment of 21 February 1975, Series A No. 18, para 36.

[382] See also *Johnston v. Chief Constable of the Royal Ulster Constabulary*, CJEU, Case 222/84, Judgment of 15 May 1986, para 18.

[383] CRC Committee, General comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child, para 6.

[384] CRC Committee, General comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child, para 2.

[385] CRC Committee, General comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child. See also General Assembly, Principles relating to the Status of National Institutions (The Paris Principles), 48/134, 20 December 1993.

[386] CRC Committee, General comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child, paras 13-14.

> "13. NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. In order to be able to effectively carry out such investigations, they must have the powers to compel and question witnesses, access relevant documentary evidence and access places of detention. They also have a duty to seek to ensure that children have effective remedies - independent advice, advocacy and complaints procedures - for any breaches of their rights. Where appropriate, NHRIs should undertake mediation and conciliation of complaints.
> 14. NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children's issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case."[387]

3.7.2. Human rights concerns

A major obstacle to access to justice and remedies is the limited legal capacity of children under national law. In many jurisdictions, children cannot initiate proceedings independently without being represented by consent of a parent, legal guardian, or guardian *ad litem*.[388] In practice, this may make access to remedies dependent on the willingness of their representative parents, legal guardian, or guardian *ad litem* to act. Additionally, the child's voice can be misrepresented or distorted by their representative.

Overall, children may lack confidence to raise concerns about proceedings or outcomes. An interview conducted in *the Netherlands* with a child confirmed that children may fear that speaking up may be perceived as wrongdoing and could negatively affect the proceeding or its outcome.[389]

The lack of access to effective remedies is compounded by the absence of child-friendly guidance and limited practical information on how to lodge a complaint in practice. Across jurisdictions, there is a general lack of child-friendly individual complaints mechanisms, as illustrated in *Malta*.[390]

A key concern is the lack of meaningful communication between children and their guardians *ad litem* regarding legal decisions, including whether to challenge them. In *Slovakia*, research shows that children may have little or no communication with their lawyers or guardians *ad litem* on whether they wish to contest a decision, resulting in an extremely low numbers of appeals in practice.[391]

a. Criminal proceedings

Another concern is the potential conflict between the role of the legal guardian and the expressed wishes of the child in relation to *inter alia* remedies. In *Austria*, legal guardians may have procedural rights in criminal proceedings, including the right to appeal, which may be exercised in a way that does not correspond to the child's wishes.[392]

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[387] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 5, 26, 27, 34. See also CRC Committee, Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies, 1 February 2024.

[388] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 34.

[389] Malta Foundation for the Wellbeing of Society, *Child Participation Assessment Tool (CPAT): Country report – Malta*, p. 41.

[390] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 51-52.

[391] Para 38 Juvenile Justice Act of Austria.

[392] ICJ, Event Report: Transnational exchange workshop on procedural rights of migrant and refugee children in legal proceedings, September 2025.

b. Asylum and migration-related proceedings

Children also face significant barriers when they seek to change their lawyer or legal guardian. It can be intimidating for a child to complain about an adult. In many systems, children cannot independently request a change of their legal guardian, and appointments may be processed by the same authority that receives complaints.[393] Even where independent complaints mechanisms are in place – such as in *the Netherlands*, where children as young as six may request a change – the complexity and length of the procedure make it inaccessible to the child in practice.[394]

c. Custody, care and child protection proceedings

Due to their lack of legal capacity, children face barriers to access to justice when parents, legal guardians, or guardians *ad litem* either refuse to bring a case to court on the child's behalf or pursue legal action without the child's consent. This raises particular concerns for children, for example in alternative care, where the person responsible for lodging a complaint may also be the subject of the complaints. As a consequence, complaints may rarely be filed on behalf of children regarding decisions they disagree with. In *the Netherlands*, children fall under parental authority or an appointed guardian *ad litem*, who are exclusively legally empowered to initiate proceedings on the child's behalf.[395]

In *the Czech Republic* and *Slovakia*, limited communication between guardians and children about the available avenues to challenge decisions may contribute to the lack of appeals in practice.[396]

3.7.3. Good practices

a. Administrative proceedings

In *the Netherlands*, children aged 12 and above, or those considered capable by a judge, may independently submit a complaint to the authority alleged to have violated their rights, and may subsequently file an appeal.[397]

b. Custody, care and child protection proceedings

Where national systems recognize children's autonomy to initiate legal proceedings without adult representation, this can strengthen access to remedies. In *Austria*, children aged 14 and above have legal capacity to submit custody-related applications to family courts.[398] Similarly, in *the Netherlands*, children aged 12 and above and younger children considered capable by a judge, may submit informal requests in family matters by letter or email, subject to the judge's discretion.[399] In *the Czech Republic*, the Constitutional Court has ruled that the right of the child to appeal cannot be limited by their appointed guardian *ad litem*.[400]

An illustration of effective guardianship practice is case No. II. ÚS 2225/23 before the Constitutional Court of *the Czech Republic*,[401] in which the guardian *ad litem* pursued

[393] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 27.
[394] Article 1:245 and 1:247 Civil Code of the Netherlands. Exceptions allow children aged at least twelve or sixteen to initiate certain civil proceedings independently.
[395] Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, pp. 13, 17 and 50.
[396] Article 8:21(2) General Administrative Act of the Netherlands; Immigration and Naturalisation Service (IND), Object or appeal decision, website (accessed on 1 September 2025).
[397] §104(1) Non-Contentious Proceedings Act of Austria. Information from the VOICE Baseline Study on the Participation of Children in Legal Proceedings, p. 5.
[398] See, *inter alia*, Article 1:262b and 377g Civil Code of the Netherlands.
[399] Constitutional Court of the Czech Republic, No. I. ÚS 2891/24, Decision of 12 March 2025, paras 40-51.
[400] Constitutional Court of the Czech Republic, No. II. ÚS 2225/23, Decision of 1 November 2023.
[401] FRA, Towards Integrated Child Protection Systems - Challenges, promising practices and ways forward, 20 March 2025, p. 77.

available remedies to challenge the placement of a 16-year-old child in a closed educational institution, including by requesting legal assistance for the child and submitting a constitutional complaint.

c. The Ombudspersons for children

According to the FRA, two thirds of EU Member States have procedures allowing children to bring individual rights-based complaints through a children's Ombudsperson.[402]

In *Austria, Kinder- und Jugendanwaltschaften* (*KIJAs*) are established in each of the nine federal states and operate independently of government directives. They provide free and confidential support to children and young people, including on the issues of violence, sexual abuse, parental separation, or other legal matters related to children's rights, offering free, confidential, and non-bureaucratic support.[403]

In *the Netherlands, de Kinderombudsman* is an independent body within the National Ombudsperson's Office whose role is to monitor children's rights in compliance with the CRC. *De Kinderombudsman* receives questions and complaints from children, and is entitled to provide advice, intervene directly by calling or visiting the relevant organization, launch formal investigations and publish reports.[404]

In *the Czech Republic*, from 1 July 2025, the *Dětský Ombudsman* has a mandate to monitor and promote children's rights under the CRC, protect them from discrimination, and investigate both systemic issues and individual cases.[405] The *Dětský Ombudsman* may review actions of authorities, institutions, and public officials, and call for action where necessary. Any child in need, as well as parents, relatives, teachers, health workers, public servants, social workers, or others, may report violations to the Dětský Ombudsman.

In *Slovakia,* the *Úrad komisára pre deti* is a State institution that promotes and protects children's rights through independent investigations and monitoring.[406] The *Úrad komisára pre deti* examines requests or acts on its own initiative, and engages directly with children or through child-rights organizations. The *Úrad komisára pre deti* may request information and records, urge government agencies action, submit notifications to the CRC Committee, issue opinions, recommend remedial measures, and participate in proceedings.

In *Malta,* the Office of the Commissioner for Children (*Kummissarju għat-Tfal*) works to protect children, promote their rights under the CRC, ensure access to necessary services, and support their participation,[407] including through public education and information work, investigations into alleged rights violations, setting standards for public authorities, and advising the Government. In addition, the Council for Children supports and advises the Commissioner in these functions.

[402] Kinder- und Jugendanwaltschaft, website (accessed on 4 September 2025).
[403] Kinderombudsman, website (accessed on 4 September 2025).
[404] Dětský Ombudsman, website (accessed on 4 September 2025).
[405] Úrad komisára pre deti, website (accessed on 4 September 2025).
[406] Office of the Commissioner for Children, website (accessed on 4 September 2025).
[407] See further ICJ and FORUM, Recommendations on the main principles governing the individual assessment of children in conflict with the law, December 2021, pp. 7-8.

4. Cross-cutting conclusions and recommendations

4.1. Training of professionals

A current obstacle to the effective enjoyment of the right to be heard and to participate is the limited availability of professionals specialized in children rights and child-friendly justice. Training on children's rights and child-friendly justice should be mandatory for all professionals who come into contact with children in administrative and judicial proceedings. States should ensure that judges, prosecutors, lawyers, law enforcement officers and other professionals involved in such cases receive specialized and continuous training, including on the practical implications of children's procedural rights.

Where such training is not compulsory, professionals should seek out and attend relevant specialized training opportunities and remain informed of developments. CSOs play an important role in filling training gaps. Training must place particular emphasis on child-friendly communication skills to ensure that interactions are respectful, clear, and adapted to the child's developmental stage such as described in the Lundy's model of participation.

Training should also address issues directly related to children's needs, such as child development and trauma-sensitive practice. Professionals should be able to adapt their conduct to the psychological, emotional and social needs of each individual child. Without such training, professionals may apply adult-centred assumptions when assessing best interests and may fail to identify or remedy violations of children's rights. Children's lived experiences, including violence, displacement or institutionalization, may significantly influence their capacity and willingness to trust authority figures. This is particularly relevant for unaccompanied and separated children, who may have been exposed to multiple and cumulative traumatic events.

As outlined in Section 2.4, professionals must be trained to recognize and address the role that discrimination may play in limiting children's access to justice. Proactive measures are essential to ensure that all children, especially those in vulnerable situations, are treated without discrimination and that their rights are fully realized.

Additionally, professionals should actively inform children about their rights in legal proceedings, ensuring that information is provided in an age-appropriate, accessible, and understandable manner as described in Section 3.3.

4.2. Multidisciplinary approach

Multidisciplinary models can assist in ensuring children's effective participation. Collaboration among guardians *ad litem*, lawyers, social workers, psychologists, educators, medical professionals, public authorities and other actors can support a fuller understanding of the child's circumstances and needs and may contribute to well-informed, proportionate and child-centred decision-making. However, viewing children as rights-holders should remain paramount through such an approach. If not carefully structured, bringing many professionals into a process may result in children being marginalized rather than enabled to participate. Multidisciplinary arrangements should therefore include measures to secure the child's effective participation, including through direct engagement where appropriate and through child-friendly information and support.[408]

4.3. Empowering children in decision-making

Children should be enabled and, where appropriate, encouraged to communicate directly with decision-makers in proceedings that concern them, unless such communication would

[408] CRC Committee, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para 96.

risk secondary victimization, be too intimidating, or otherwise undermine the child's well-being. Where direct engagement is not appropriate, indirect or supported forms of communication should be used to secure the child's effective participation and to ensure that the child's views are accurately conveyed and given due weight.

4.4. Data collection on children's participation

States should collect and analyze children's feedback regarding their experiences within administrative and judicial systems. The availability of comprehensive and disaggregated data on children's participation is essential to assess whether practice ensures effective involvement in decisions that affect them and to identify structural shortcomings.

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