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icon presenting children going through the asylum procedure

The Austrian Commission on the Best Interests of the Child delivered its report and recommendations for improving the legal framework and practices related to children in the asylum procedure in 2021. In 2022, the Federal Ministry of Justice stated that it had implemented 22 of the recommendations, some others were being implemented and the remainder were considered not to be feasible.1414 The commission members established a platform “Together for children’s rights” to organise civil society monitoring of the implementation of the recommendations.1415 or example, selected cases from the Austrian Federal Administrative Court were analysed to assess the consideration of the best interests of the child in the asylum procedure.1416 The commission’s chairperson,1417 experts working with children and civil society organisations1418 expressed concern about follow-up on the recommendations.

A new law was adopted concerning child protection in France and – among other measures – it requires the child welfare services to inform unaccompanied minors about the possibility to apply for international protection. The amendment was adopted to ensure that children are aware of the different options to lawfully stay by the time they reach majority.1419 Since 2019, the French Asylum Directorate undertook several steps to facilitate unaccompanied minors’ access to the asylum procedure. Specific information material was distributed to all reception facilities throughout the country, as well as to GUDA and departmental councils, including posters and leaflets which were made available in 10 languages.1420

The Dutch IND had rejected a child's asylum application without examining if adequate reception was available in the country of origin before issuing a return decision. Following the CJEU ruling TQ, the Council of State found in several cases (for example, for Guinean, Moroccan and Russian children) that this practice was against EU law and the best interests of the child. As a result, the asylum procedure for unaccompanied minors was changed, with the State Secretary for Justice and Security noting that it would lead to a longer process for this group of applicants. The possibility of an additional appeal was added, when the applicant contests the assessment or the length of the procedure.

When taking a decision on an application by an unaccompanied minor, the IND may conclude that further examination is required on the existence of adequate reception conditions in the country of origin. In this case, the authority takes a decision on the application only and transfers the file to the DT&V, which then completes the examination within a reasonable period of time. This period can be a maximum of 1 year but could be extended if the child does not cooperate with the authorities. The time limit is suspended when the child is granted an interim order or makes a repeated or subsequent application, as the DT&V cannot contact the country of origin during this period. When a child disappears, it is assumed that no further examination is needed and a return decision can be taken.1421 The Advisory Council on Migration assessed that this policy was still not entirely in line with EU law and noted that it left children in a lengthy legal limbo.1422

The TQ ruling led the Swedish Migration Agency to publish a legal commentary.1423 In addition, the agency reviewed the assessment and decision-making process involving cases of accompanied children. The review concluded that, while the outcome of the cases can be approved, the decisions should include a clearer and better justified assessment of the best interests of the child.1424

In order to decrease the backlog of cases launched by unaccompanied minors, the Belgian CGRS allocated 32 new staff members to work on applications by this profile.

Some countries introduced changes for a better overview of the asylum procedure for children. A new regulation was adopted in Italy to consolidate in one legislative piece the tasks of the Ministry of Labour and Social Policies related to unaccompanied minors.1425 A coordination mechanism was approved in Bulgaria to facilitate communication among the authorities and organisations working with unaccompanied and separated children.1426 However, the Bulgarian Helsinki Committee observed that this mechanism was not yet implemented in practice in 2022.1427 A regulatory amendment modified the composition of the Advisory Commission for the Assessment of the Best Interests of the Child in Luxembourg.1428 This commission meets to assess the best interests of the child in the return procedure. The objective of the change was to add a civil society representative to the commission.

The UNCRC called on Greece to “(e)nd the practice of forced returns (‘pushbacks’) of families and migrant children and ensure that they are individually identified, registered and protected against *refoulement*, including through an effective access to the asylum procedure, and free legal and humanitarian assistance” *(see Section 4.1)*.The committee noted several improvements in the institutional framework in recent years, such as the establishment of the Special Secretariat for the Protection of Unaccompanied Migrant Children under the Ministry of Migration and Asylum, and the adoption of a national protection strategy (2021–2025). It further encouraged the Greek government to review its legislation on asylum and ensure that the law includes appropriate safeguards for children, for example exempting them from the accelerated border procedure or through the expansion of the definition of family members to families created in transit.1429

In order to further improve the protection of unaccompanied and separated children, the Greek Special Secretariat for the Protection of Unaccompanied Migrant Children signed an agreement with UNHCR. The two organisations have been working closely since 2020, and in 2021, they

established a national emergency response mechanism.[1430]Collaborating NGOs, such as the Network for Children's Rights, welcomed this new mechanism and highlighted its importance in supporting unaccompanied children.[1431] The organisation also began implementing a new programme supporting unaccompanied children who do not want to enter the national mechanism.[1432]

In the case *A.J. v Greece*, the ECtHR dismissed all the complaints for different reasons. The case concerned the return of a child to the Occupied Palestinian Territory, but in the meantime, the return decision was withdrawn, and the child and siblings received international protection. Thus, the court found that there was no need to examine his complaint related to the return and the lack of his involvement in the procedure for revoking his status. The court found that his complaint related to the lack of psychosocial support was manifestly unfounded, as his mental health appeared to have been monitored on a regular basis. Concerning the separation of the siblings in different facilities, the court noted that this was for a short period, the authorities facilitated their contact, and as soon as possible, reunited them. Thus, the court concluded that this claim was also unfounded.

To support stakeholders working with child applicants, the civil society organisation Arsis published the second, updated edition of a collection of relevant national court decisions.[1433]

The UNCRC called on Croatia to "(e)nd the practice of forced returns ('pushbacks') of families and children in situations of migration and ensure that they are individually identified and registered and protected against refoulement, including through effective access to the asylum procedure"[1434] and Cyprus to "(e)nd the practice of forced returns, or pushbacks, of families and children, uphold the principle of non-refoulement in border management, ensure that children receive appropriate protection, access to the asylum procedure and legal and humanitarian assistance, (…) investigate pushback incidents and hold accountable those responsible".[1435] The Ministry of the Interior in Croatia made a statement that it fully respected and ensured all standards prescribed in EU legislation related to access to procedures and reception conditions. The ministry underlined that a Cooperation Agreement was concluded in June 2021 to monitor the actions of police officers in the area of illegal migration and international protection (implemented between 8 June 2012-8 June 2022). A new agreement was concluded for another year on 4 November 2022, funded by the European Commission. The novelties planned include that direct implementers receive access in 24 hours to the Ministry of the Interior's information system (a printout of data on a specific event), following an oral or written request.

The UNCRC encouraged the authorities in Germany to strengthen measures to ensure that applicant children are interviewed in a child-friendly manner and that they receive age-appropriate information and legal advice about their rights.[1436]

In preparation for Sweden's periodic UNCRC report, 31 civil society organisations elaborated a report produced by applicant and refugee children themselves, expressing their experiences in the asylum procedure and integration. The report is accompanied by an analysis and recommendations prepared by the organisations.[1437]

The UNCRC condemned Swiss authorities for not taking all the necessary steps to ensure that a child with a hearing impairment would receive appropriate medical care upon being returned to the country of origin *(see Section 5.3)*, as well as not hearing the sibling in the asylum application lodged on his own behalf. The authorities rejected the application because his case had already been examined as part of the parents' rejected claim.

The Icelandic Immigration Appeals Board requested the Directorate of Immigration to re-examine the case of a child to asses if he could qualify for a residence permit on humanitarian grounds instead of international protection. The board also asked it to re-assess his mother's case, based on the principle of family unity. Their application was rejected on formal grounds, as the mother had a valid residence permit in Chile and the child had Chilean citizenship. On appeal, the board found that the directorate did not fulfil its duties for an appropriate assessment.

In Lithuania, the Supreme Administrative Court confirmed in two cases in June and July 2022 that the situation of children must still be individually assessed, when the family as a whole apply for international protection.

The Finnish Human Rights Centre submitted its observations to the UNCRC on the report on Finland. The organisation had recommended to abolish the 12-year age limit for hearing child applicants and suggested a framework where children are heard based on an individual assessment of their maturity. The centre also made recommendations to improve the family reunification procedure and ensure adequate consideration of the best interests of the child. 1438

The Finnish Immigration Service (FIS) requested UNHCR to examine the assessment of best interests in 50 asylum cases during December 2018-December 2021. The results were positive, and UNHCR confirmed that the cases included clearly-structured analysis and legal reasoning on the best interests of the child and that detailed internal instructions on how to process and decide on applications by children is provided to case officers. It recommended to improve the assessment of child-specific forms of persecution in decision-making and systematically include more child-specific COI in decision-making.

In Spain, UNHCR published a guide for professionals working with unaccompanied children to overcome some of the challenges that the organisation observed in the asylum procedure and provide recommendations for a more child-sensitive approach in the assessment of their protection claims.1439

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