

5.6.4. Rights of the child during the asylum procedure

5.6.4. Rights of the child during 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](#) For 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 organisations[1418](#) 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 assess 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](#)

- [1414](#) German Federal Minister of Justice | Bundesministerin für Justiz. (2022, July 12). Brief an den Mag. Wolfgang Sobotka Präsident des Nationalrats Parlament [Letter to Mag. Wolfgang Sobotka, President of the National Council Parliament] [Business number: 2022-0.354.600]. https://www.parlament.gv.at/dokument/XXVII/AB/10697/imfname_1460951.pdf

- [1415](#)Gemeinsam für Kinderrechte | Together for children's rights, & Michael Häupl and Irmgard Griss. (2022, July 13). Kindeswohl: Es ist noch sehr viel zu tun [Child welfare: There is still a lot to do]. <https://gemeinsamfuerkinderrechte.at/>
- [1416](#)Blog Asyl. (2022, September 12). Ausreichende Berücksichtigung des Kindeswohls in ausgewählten Asylverfahren? – eine Judikaturanalyse der Refugee Law Clinic [Sufficient consideration of the best interests of the child in selected asylum procedures? – a case law analysis by the Refugee Law Clinic]. <https://www.blogasyl.at/2022/09/ausreichende-beruecksichtigung-des-kindeswohls-in-ausgewaehlten-asylverfahren/>
- [1417](#)Gemeinsam für Kinderrechte | Together for children's rights. (2022, July 13). Ein Jahr Kindeswohlkommissionbericht [One Year Child Welfare Commission Report]: Pressekonferenz 13.07.2022 [Press Conference July 13, 2022]. <https://gemeinsamfuerkinderrechte.at/pressekonferenz-13-07-2022/>
- [1418](#)Asylkoordination Austria | Asylkoordination österreich. (2023, March 14). Plattform Gemeinsam für Kinderrechte (GfK) [Platform Together for Children's Rights (GfK)]. <https://archiv2022.asyl.at/de/info/presseaussendungen/oesterreichbrauchteinepermanentekindes>
- [1419](#)Loi n° 2022-140 du 7 février 2022 relative à la protection des enfants [Law n° 2022-140 of 7 February 2022 relating to the protection of children], February 7, 2022. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045133771>
- [1420](#)French Ministry of the Interior | Ministère de l'Intérieur et des Outre-Mer. (2021, May 6). Les mineurs non accompagnés demandeurs d'asile [Unaccompanied minors as asylum applicants]. <https://www.immigration.interieur.gouv.fr/Asile/Les-mineurs-non-accompagnes-demandeurs-d-asile>
- [1421](#)Immigration and Naturalisation Service, Ministry of Justice and Security | Immigratie- en Naturalisatiedients, Ministerie van Justitie en Veiligheid. (2022, July 14). More and more extensive asylum procedures for unaccompanied minor asylum seekers. <https://ind.nl/en/news/more-and-more-extensive-asylum-procedures-for-unaccompanied-minor-asylum-seekers>; Rijksoverheid | Dutch Government. (2022, July 14). Kamerbrief gevolgen uitspraak Raad van State over terugkeerbesluiten amv's [Letter to the House of Representatives on the consequences of the Council of State ruling on return decisions for unaccompanied minors] [Chamber piece]. <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/07/14/tk-beleidsconsequenties-uitspraak-afdeling-bestuursrechtspraak-raad-van-state-8-juni-2022-terugkeerbesluiten-amv-s>
- [1422](#)Dutch Advisory Council on Migration | Adviesraad Migratie. (2022, April 15). Signalering: Amv-beleid is (nog steeds) in strijd met EU-Terugkeerrichtlijn [Alert: unaccompanied minors policy is (still) in conflict with the EU return directive]. <https://www.adviesraadmigratie.nl/publicaties/publicaties/2022/04/15/signalering-amv-beleid-is-nog-steeds-in-strijd-met-eu-terugkeerrichtlijn>
- [1423](#)Migrationsverket | Swedish Migration Agency (Ed.). Legal Commentary. Interpretation of the judgment of the European Court of Justice C-441/19 - RK/002/2022. Lifos.
- [1424](#)Migrationsverket | Swedish Migration Agency. (2022, December 22). Bristande motivering av barnets bästa i asylbeslut [Lack of justification of the child's best interests in asylum decisions]. <https://www.migrationsverket.se/Om-Migrationsverket/Pressrum/Nyhetsarkiv/Nyhetsarkiv-2022/2022-12-22-Bristande-motivering-av-barnets-basta-i-asylbeslut.html>

- [1425](#)Decreto del Presidente della Repubblica 4 ottobre 2022, n. 191 Regolamento recante modifiche al decreto del Presidente della Repubblica 31 agosto 1999, n. 394, in attuazione dell'articolo 22 della legge 7 aprile 2017, n. 47, recante misure di protezione dei minori stranieri non accompagnati(22G00202) [Presidential Decree of 4 October 2022, No 191 Regulation amending Presidential Decree No 394 of 31 August 1999 implementing Article 22 of Law No 47 of 7 April 2017 concerning measures for the protection of unaccompanied foreign minors (22G00202)], October 4, 2022. <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:2022-10-04;191>
- [1426](#)European Migration Network. (2022). EMN Quarterly Period: April - June 2022. Edition: N.39. <https://emnbelgium.be/sites/default/files/publications/EMN%2039th%20Quarterly.pdf>
- [1427](#)AIDA Bulgaria. (2023). Country Report: Bulgaria - 2022 Update. Edited by ECRE. Written by Bulgarian Helsinki Committee. https://asylumineurope.org/wpcontent/uploads/2023/03/AIDA-BG_2022update.pdf
- [1428](#)Règlement grand-ducal du 12 août 2022 portant modification du règlement grand-ducal du 4 novembre 2020 relatif à la composition et au fonctionnement de la commission consultative d'évaluation de l'intérêt supérieur des mineurs non accompagnés prévue à l'article 103 de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration [Grand-Ducal Regulation of 12 August 2022 amending the Grand-Ducal Regulation of 4 November 2020 relating to the composition and functioning of the advisory commission for the assessment of the best interests of unaccompanied minors provided for in Article 103 of the amended law of 29 August 2008 on the free movement of persons and immigration], August 12, 2022. <https://legilux.public.lu/eli/etat/leg/rgd/2022/08/12/a464/jo>
- [1429](#)United Nations Committee on the Rights of the Child. (2022, June 28). Concluding observations on the combined fourth to sixth periodic reports of Greece [CRC/C/GRC/CO/4-6]. <https://uhri.ohchr.org/Document/File/115ee2b4-0565-44c3-8973-8319f32fbc2/E9B9A517-C497-4E44-95B9-5CE737138E51>
- [1430](#)United Nations High Commissioner for Refugees. (2022, July 29). Special Secretariat for the Protection of Unaccompanied Minors and UNHCR sign agreement to strengthen protection of refugee children who are alone in Greece. <https://www.unhcr.org/gr/en/27971-special-secretariat-for-the-protection-of-unaccompanied-minors-and-unhcr-sign-agreement-to-strengthen-protection-of-refugee-children-who-are-alone-in-greece.html>
- [1431](#)Network for Children's Rights. (February 2022). Input to the Asylum Report 2023. https://euaa.europa.eu/sites/default/files/2023-02/network_for_children_rights.pdf
- [1432](#)Network for Children's Rights. (February 2022). Input to the Asylum Report 2023. https://euaa.europa.eu/sites/default/files/2023-02/network_for_children_rights.pdf
- [1433](#)Arsis | ΑΡΣΙΣ. (2022). Νομολογία αποφάσεων που αφορούν ανήλικους αιτούντες άσυλο 2020-2022 [Children Seeking International Protection: A Case Law Handbook 2020-2022]. <https://arsis.gr/wp-content/uploads/2022/12/%CE%95%CF%80%CE%B9%CF%84%CE%BF%CE%BC%CE%AE-%CE%9D%CE%BF%CE%BC%CE%BF%CE%BB%CE%BF%CE%B3%CE%AF%CE%B1%CF%82-2020-2022-%CF%84%CE%B5%CE%BB%CE%B9%CE%BA%CF%8C-WEB-site.pdf>
- [1434](#)United Nations Committee on the Rights of the Child. (2022, June 22). Concluding observations on the combined fifth and sixth periodic reports of Croatia. CRC/C/HRV/CO/5-6.

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsp7zG>

- [1435](#) United Nations Committee on the Rights of the Child. (2022, June 24). Concluding observations on the combined fifth and sixth periodic reports of Cyprus. CRC/C/CYP/CO/5-6. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhst6tBM>
- [1436](#) United Nations Committee on the Rights of the Child. (2022, October 13). Concluding observations on the combined fifth and sixth periodic reports of Germany. CRC/D/DEU/CO/5-6. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsvrVrBO>
- [1437](#) Save the Children Sweden | Rädda Barnen. (2022, July 4). Ny rapport till FN: Barns egna ord om utsatthet i Sverige [New Report to the UN: Children's own words about vulnerability in Sweden]. <https://www.raddabarnen.se/nyheter/2022/ny-rapport-till-fn/>
- [1438](#) Finnish Human Rights Centre (NHRI) | Ihmisoikeuskeskus | Människorättscentret. (2022, June 30). Submission from the Finnish Human Rights Centre/NHRI for the consideration of State Report - Finland - 93rd Pre-sessional WG. <https://bin.yhdistysavain.fi/1586428/z3cBh9SfCvrFZ1AkuWUw0XwWmG/NHRI%20-%20CRC%20report%202022%20-%20FINAL.pdf>
- [1439](#) United Nations High Commissioner for Refugees (UNHCR) Office in Spain. (October 2022). Guía para profesionales que trabajan con niños y niñas refugiados no acompañados [Guide for professionals working with unaccompanied refugee children]. <https://www.acnur.org/media/guia-para-profesionales-que-trabajan-con-ninos-y-ninas-refugiados-no-acompanados>