

The rights of migrant children: Strategic use of national and international mechanisms to foster children's access to justice

11th – 12th November 2016

Headquarters of Consejo General de la Abogacía Española
Paseo de Recoletos 13, Madrid (Spain)

Description

Fundación Raíces and the International Commission of Jurists (ICJ - European Institutions office) as part of the European Project “Fostering Access for Immigrant Children’s Rights” (FAIR Project), organize a training for lawyers on the protection of unaccompanied migrant children’s rights. The project is supported by the Rights, Citizenship and Equality programme of the European Union.

The focus of the current training in Madrid will be on the access to national and international mechanisms to equip Spanish lawyers to be able to effectively use international human rights law and European law. The training will also focus on the right to be heard, the principle of the best interest of the child and on a highly problematic question in Spain: the age assessment procedures on migrant children. The training will support the lawyers in using different strategies and ways to access international mechanisms, such as the European Court of Human Rights and the United Nations Committee on the Rights of the Child. We will discuss in depth the procedural rights of migrant children including the right to be heard.

Unaccompanied migrant children face multiple barriers in access to justice. The identification of a child (minor) as such is a fundamental requirement to make the rights and guarantees the legal system provides for children completely effective. The principle of the best interest of the child means that the fact that the person is a child prevails over their status as a migrant. Their human rights as a child should prevail over migration policy considerations, such as the control of migration flows.

The training will therefore also focus on age assessment as such, included in art. 35 of LODYLE (Organic Law 8/2000, 22nd December, reform of Organic Law 4/2000 11th January, about rights and freedoms of aliens in Spain and their social integration), further developed by the Immigration Regulation, the MENA Protocol and by the Spanish Supreme Court’s case law. We will discuss how and when the age assessment procedures should be activated, and in which circumstances it should never be activated, which are the existent guarantees and how to make them effective as long as they do not incur in violation of any children’s right, who are the actors involved in the process, what is the role of the Public Prosecutor, the lawyers and the representatives of the child, what are the procedural mechanisms that protect the rights of the child and which of them allow lawyers to discuss the result of the medical tests on age assessment procedures when they oppose the best interest of the child to whom they have been practiced.

The training will be built on studying the relevant national jurisprudence and international case-law and the participants will take part in a number of practical case studies and role-play scenarios.

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Program

Friday 11th November 2016

8:45 – 9:00

Registration of participants

Morning session (9:00-13:00)

9:00-9:30

Welcoming and presentation

- Presentation of Fundación Raíces. *Lourdes Reyzábal González-Aller, President of Fundación Raíces*
- Presentation of the International Commission of Jurists – European Institutions Office and the FAIR Project. *José Antonio Martín Pallín, Emeritus Judge at the Spanish Supreme Court.*

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Introduction

- General overview of the training. *Karolína Babická*
- Pre-training evaluation questionnaire. *Karolína Babická*
- Specific aspects of the training. *Marcelo Belgrano Ledesma*

9:30-10:30

First session: Introduction on International law. *Karolína Babická*

- Migrant children – definitions, vulnerabilities
- Human rights of migrant children – International and EU law
- Procedural rights
- Introduction to International Human Rights Mechanisms

10:30-11:00 Coffee break

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11:00 – 13:00

Second session: What is the age assessment procedure? *Itziar Gómez Fernández.*

- Spanish legal framework
- Analysis of the situation through comparative law.
- Key actors: the role of the Guardian Authorities, the Public Prosecutor, the Security Authorities, the Judges and the Courts.

13:00 – 15:00 Lunch break

Afternoon session (15:00-18:00)

15:00-16:30

First workshop: Case law analysis. *Itziar Gómez Fernández*

This session will include a methodology based on workshop and debate. We will go in depth on the Spanish Supreme Court, the Spanish Constitutional Court and the European Court of Human Rights' case law related to the statute of the MENA (Unaccompanied Migrant Minors) and the age assessment procedures.

16:30 – 18:00

Third session: The United Nations System of Protection of the Rights of the Child. *Jorge Cardona Llorens.*

- The Committee of the Rights of the Child.
- How to reach the CRC? Communication procedure and admissibility criteria.
- Real case analysis

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Saturday 12th November 2016

Morning session (9:00-13:00)

9:00 – 10:45

Fourth session: Presumption of minority and its use on behalf of the best interest of the minor. *José Miguel Sánchez Tomás.*

- Available mechanisms of protection and invocation.

10:45 – 11:15 Coffee Break

11:15 – 13:00

Fifth session: Children’s rights in the context of age assessment procedures.
Elena Arce Jiménez

- Right to be Heard
- The protection of the best interest of the child
- The right to have their views protected and defended.

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13:00-15:00 lunch break

Afternoon session (15:00-18:00)

15:00 – 17:30

Sixth session: International Mechanisms of protection of migrant Children’s rights. *Karolína Babická and María Díaz Crego*

- How to access International Human Rights mechanisms
- Real case analysis
- The European Court of Human Rights: how to introduce demands & interim measures

17:30 – 18:00

Wrap-up session. *Karolína Babická and Marcelo Belgrano Ledesma*

- Conclusions

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- Evaluation by participants
- Follow up (litigation support, strategic litigation workshop)
- Training materials
- Practical questions

Experts

Elena Arce Jiménez. Lawyer and Chief of the Migrations and Equal Treatment Department at the Spanish Ombudsman. Expert on Immigration Law.

Karolína Babická. Europe Legal Adviser at International Commission of Jurists – European Institutions office. Expert on Asylum and Migration Affairs.

Marcelo Belgrano Ledesma. Lawyer and Chief of the Immigration Affairs Department of the Madrid Barr Association. Expert on Immigration Law.

Jorge Cardona Llorens. Professor of Public International Law at University of Valencia and current member of the United Nations Committee of the Rights of the Child. President of the UNICEF Committee of the Autonomous Community of Valencia.

María Díaz Crego. Professor of Constitutional Law at Alcalá University. PhD on Juridical Sciences and expert on Fundamental Rights, Immigration and Asylum Law and European Integration and Human Rights.

Itziar Gómez Fernández. Lawyer at the Constitutional Court and Associate Professor of Constitutional Law at Carlos III University of Madrid. Expert on vulnerable groups and access to justice.

José Miguel Sánchez Tomás. Lawyer at the Constitutional Court and Associate Professor of Criminal Law at Rey Juan Carlos University of Madrid. Expert on procedural law, Spanish Constitutional Court's case law and Immigration law.

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