

Transnational exchange workshop on procedural rights of migrant and refugee children in legal proceedings

Event Report 16-17 September 2025, Brussels

As part of a series of three transnational workshops organized by the International Commission of Jurists (ICJ), the second transnational exchange workshop took place in Brussels on 16–17 September 2025.¹ The workshop gathered lawyers, judges, and national authorities from Austria, the Czech Republic, Malta, the Netherlands, and Slovakia to exchange on procedural rights of migrant and refugee children in legal proceedings.

The event centred on international and EU legal frameworks protecting the rights of children, with particular attention to the right to be heard and to participate effectively in asylum and other migration-related proceedings. Experts discussed procedural safeguards in international and EU law, including legal representation, guardianship and the rights of migrant children in relation to deprivation of liberty. Group sessions enabled participants to share how these rights are interpreted and applied in their respective jurisdictions, identifying both challenges and promising practices.

1) Migrant and refugee children

Throughout the workshop, it was emphasized that migrant and refugee children represent a very broad and diverse group. These children may have migrated into a country, be currently in transit, or have been born in the country, and may be foreign nationals, stateless, documented, or undocumented.

Migrant and refugee children may be unaccompanied, separated, or accompanied by parents or other relatives. Participants reported that some children are identified as being accompanied by adults whose relationship with them is uncertain.

Some children also face particular vulnerabilities that require special attention. Concerns were raised regarding the situation of LGBTI children. Compared to adult asylum proceedings where sexual orientation and gender identity have gained greater visibility, participants noted that children belonging to these groups often receive insufficient attention, despite facing heightened risks of exclusion and marginalisation.

One of the issues discussed during the workshop was the practice of children receiving different treatment depending on their country of origin. Participants underscored the

¹ ICJ, [EU: Procedural safeguards for migrant children must not regress under the Pact on Migration and Asylum](#), 19 September 2025, website (accessed on 26 September 2025).

need to ensure that all migrant and refugee children are treated equally, regardless of their nationality.

2) Access to child-sensitive justice

The best interests principle and the right to be heard

All children are entitled to due process guarantees under international human rights law as rights holders. In addition, the Convention on the Rights of the Child (CRC) provides for specific procedural rights, including the best interests of the child and the right to be heard in all proceedings affecting them.² The Committee on the Rights of the Child (CRC Committee) has affirmed in its General Comment No. 5 that access to child-sensitive procedures and to effective remedies for children and their representatives require the provision of child-friendly information, independent complaints procedures, and legal and other assistance.³

Building on the provisions and principles of the CRC and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW),⁴ the Committee on the Rights of the Child (CRC Committee) and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW Committee) adopted the joint General Comment No. 3 and No. 22, as well as the joint General Comment No. 4 and No. 23, on States' obligations regarding the rights of children in the context of international migration.

The best interests of the child must be explicitly safeguarded through individualized procedures in all administrative or judicial decisions related to a child's entry, residence, return, placement, care, or when a parent faces detention or expulsion due to migration status.⁵ Assessment of a child's best interests must include respect for the child's right to express their views freely. Children's views should be heard and given due weight,⁶ and children must have access to free, child-friendly legal advice and representation provided by professionals with expertise in children's rights and migration issues.⁷ These instruments, along with the development of jurisprudence under other international human rights treaties can inform litigation before domestic courts. Even where national

² Articles 3(1) and 12 CRC.

³ CRC Committee, General comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child.

⁴ Both the CRC and the CMW contain safeguards for migrant and refugee children – though the CMW has not been ratified by any EU Member State to date.

⁵ Joint General Comment No. 3 of the CMW and No. 22 of the CRC in the context of International Migration: General principles, para. 30.

⁶ 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.

⁷ Joint General Comment No. 4 of the CMW and No. 23 of the CRC (2017) 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.

judges hesitate to rely directly on the interpretations of UN Treaty Bodies, lawyers can actively invoke these standards in their arguments.

In the context of child justice, the CRC Committee provides that "children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact" with the justice system.⁸ Children have the right to remain silent and no adverse inference should be drawn when they choose not to make statements.⁹ For migrant and refugee children, participation in a hearing may itself cause trauma or additional psychological hardship.

In cases involving deportation of parents, participants observed that children who are not formally parties to the proceedings lack the right to appeal, when they were not heard or when their interests were not considered, while these decisions have direct effect on them. Nevertheless, according to international law, their best interests must remain a primary consideration. For instance, a recent decision of the Court of Justice of the European Union (CJEU), concerning return procedures 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.¹⁰

The workshop also addressed the importance of speedy proceedings for migrant children. While timeliness is crucial to avoid prolonged uncertainty, speed must never compromise the procedural safeguards that protect their rights.

Child-friendly information and communication

Professionals working within administrative and justice systems have a responsibility to consider the child's needs from the beginning of the process, not only once the case reaches the court. In *Austria*, children in reception centres often endure long waiting periods before hearings without receiving any explanation about the procedures.

Information about procedures, decisions, and appeals must be communicated in child-friendly language. A recent case-law development was highlighted in *the Netherlands*; the Raad van State ruled on 20 August 2025 that immigration services must inform all children, including those under fifteen, of their right to be heard and ask whether they wish to exercise it.¹¹ In *the Czech Republic*, authorities have distributed leaflets for children in detention facilities, but participants questioned whether such written information is genuinely child-friendly, suggesting the use of videos or interactive tools instead.

⁸ CRC Committee, General Comment No. 24 (2019) on children's rights in the child justice system, para. 45.

⁹ CRC Committee, General comment No. 24 (2019) on children's rights in the child justice system, para. 45.

¹⁰ *GB v. Minister van Asiel en Migratie*, CJEU, C-313/25 PPU [Adrar], Judgement of 4 September 2025.

¹¹ [202404661/1/V1](#), [202403148/1/V3](#), and [202404064/1/V3](#), Raad van State of the Netherlands, 20 August 2025.

Workshop participants expressed the need to explain the roles and terminology of the various adults involved, such as guardians, legal representatives, and lawyers, not only to the child but also to other professionals, parents and relatives.

A consistent concern across all jurisdictions is the lack of systematic and mandatory training for professionals working with children who are often insufficiently trained on migrant children's rights, procedural safeguards, and appropriate methods of communication. In *Slovakia*, participants reported a shortage of qualified interpreters in asylum cases, many of whom lack training for communication with children. Some proceedings even relied on interpretation into English rather than Slovak, creating additional barriers to communicate effectively with lawyers, authorities, and other professionals. One idea that emerged from the discussions was to develop national-level workshops on specific themes, aimed at enhancing communication skills, knowledge, and sensitivity of a wide range of professionals, including judges, interpreters, and lawyers, when working with children who have experienced trauma or who identify as LGBTI.

Access to a guardian by unaccompanied minors

The workshop discussed access to a guardian, as a central safeguard for unaccompanied minors to ensure their best interests and the right to be heard throughout proceedings. Unaccompanied minors interact with a wide range of authorities and professionals, and without a guardian to guide and support them, they may be unable to access or understand the information and decisions affecting them. Provision of adequate and understandable information is an obligation for the child's participation. 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 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."¹²

International law requires that guardians be appointed immediately upon the identification of a separated or unaccompanied child, and that such guardians must be qualified child protection professionals.¹³ CRC Committee's General Comment No. 6 further specifies that unaccompanied and separated children must have both a guardian and a legal representative in judicial, asylum, and other administrative proceedings. Similarly, the European Committee of Social Rights (ECSR) considers an effective guardianship system to be a prerequisite for guaranteeing the best interests, care, and assistance of these children.¹⁴

¹² CRC Committee, General Comment No. 12: The right of the child to be heard, 20 July 2009, para. 3.

¹³ CRC Committee, General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin, paras. 21 and 33.

¹⁴ ECSR, *ICJ and ECRE v. Greece*, Complaint No. 173/2018, Decision of 26 January 2021, para. 165.

In line with this, the 2024 European Union (EU) Reception Conditions Directive defines a guardian whose role is “to represent, assist and act on behalf of an unaccompanied minor, as applicable, in order to safeguard the best interests and general well-being of that unaccompanied minor and so that the unaccompanied minor can benefit from the rights and comply with the obligations provided for in this Directive.”¹⁵

Discussions highlighted persistent challenges regarding the independence of guardians. In *Austria*, guardianship is provided directly by State child-protection authorities, raising questions about independence. In *the Czech Republic*, guardianship is systematically entrusted to child-protection offices (OSPOD), where staff often lack specialised expertise in migration and asylum. Participants stressed that temporary state-appointed guardians should not be involved in the screening process, as they act under the instructions of the same authority conducting it. In *the Netherlands*, guardianship is carried out by NIDOS, an independent organisation. Participants also considered the advantages of volunteer guardianship, which can ensure independence from state authorities but may fall short in providing the professional expertise needed in complex cases and legal proceedings

Access to effective remedies

The right to a remedy requires that the remedy be prompt, effective, accessible, enforceable and lead to cessation of and reparation for the human rights violation concerned. In *Rahimi v. Greece*, the European Court of Human Rights (ECtHR) found that the child lacked effective remedies because he was unable to contact a lawyer, was not provided with information in a language he could understand, and was never assigned a guardian who could have acted as his legal representative.¹⁶

When a child wishes to change their lawyer or guardian, they often face significant barriers. It can be intimidating for a child to complain about an adult. Moreover, in many countries, children cannot independently request a change of their representative, and appointments may be processed by the same authority that receives complaints. Even where independent complaints procedures are in place,– such as in the Netherlands, where children as young as six may formally request a change – the complexity and length of the process make it inaccessible to the child in practice. Participants suggested that innovative approaches, such as the use of social media platforms, could help make complaint mechanisms more accessible to children.

3) Unlawful detention of migrant children

The CRC Committee has made it clear that detention of children for the purposes of immigration control is never in the best interests of the child and is not justifiable. Children should never be criminalized or subjected to punitive measures because of their

¹⁵ 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 (EU Reception Conditions Directive).

¹⁶ [Rahimi v. Greece](#), ECtHR, Application No. 8687/08, 5 April 2011.

or their parent's migration status; detention of a child for these reasons constitutes a violation of the rights of the child.¹⁷ Detention has severe consequences for children, affecting their psycho-social development and well-being, interrupting their education, and exposing them to heightened risks of trafficking, exploitation, and abuse.

In the Czech Republic and Malta, unaccompanied minors continue to be detained alongside adults during age assessment procedures, despite the principle of giving them the benefit of the doubt, which requires that they be treated as children and not subjected to detention.

The workshop examined immigration detention of children in light of the jurisprudence of the ECtHR, which has been consistent: the Court has found violations of the European Convention on Human Rights (ECHR) when taking into account the child's young age (which may constitute extreme vulnerability), the length of detention, and the conditions in which children were held.¹⁸ Authorities are under an obligation to assess whether less coercive alternatives to detention are available.¹⁹

4) Focus on the new EU Pact on Asylum and Migration

Age assessment

Participants discussed the shortcomings in the EU Pact on Migration and Asylum, which will be implemented at national level from July 2026 concerning **age-assessment procedures**. While the Pact guarantees the right to appeal in the asylum procedure, it does not explicitly secure the right to appeal an age-assessment decision.²⁰ In some Member States, children can only challenge age assessments at the final stage of the asylum procedure.

Guardianship

The EU Pact introduces several new provisions related to guardianship:

¹⁷ Joint General Comment No. 3 of the CMW and No. 22 of the CRC in the context of International Migration: General principles, para. 5; Joint General Comment No. 4 of the CMW and No. 23 of the CRC (2017) 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; CRC Report of the 2012 Day of General Discussion: The Rights of all children in the context of international migration, 2012.

¹⁸ [Mubilanzila Mayika and Kaniki Mitunga v. Belgium](#), ECtHR, Application No. 13178/03, 12 October 2006; [Popov v. France](#), ECtHR, Application No. 39472/07, Judgement of 19 January 2012; [A.B. and others v. France](#), ECtHR, Application No. 11593/12, Judgement of 12 July 2016; [G.B. and others v. Turkey](#), ECtHR, Application No. 4633/15, Decision of 17 October 2019; [H.A. and others v. Greece](#), ECtHR, Application No. 19951/16, Judgement of 28 February 2019.

¹⁹ [A.B. and others v. France](#), ECtHR, Application No. 11593/12, Judgement of 12 July 2016, para. 124; [R.R. and others v. Hungary](#), ECtHR, Application No. 36037/17, Decision of 2 March 2021.

²⁰ 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).

- a) A guardian must be appointed within fifteen days of the child's identification as unaccompanied, extendable to twenty-five days in certain circumstances.²¹

Participants considered this period problematic, since the first days after arrival are crucial for screening, identification, and age assessment. During this time, the absence of a guardian may leave children particularly vulnerable.

- b) The guardian must represent and assist the child throughout the asylum procedure.²²

The involvement of guardians across the different steps of the asylum procedure may foster continuity and trust between the child and their representative.

- c) The guardian shall be "in charge of a proportionate and limited number of unaccompanied minors and, under normal circumstances, of no more than 30 unaccompanied minors at the same time, in order to ensure that that person is able to perform tasks effectively."²³

While this represents an attempt at standardisation, participants stressed that it may be too high, both for volunteers and for professional guardians in complex cases.

- d) The EU Pact requires Member States to establish monitoring mechanisms for guardianship, to be overseen by the European Union Agency for Asylum (EUAA).²⁴

²¹ Article 23 EU Asylum Procedure Regulation; Article 27 2024 EU Reception Conditions Directive; Article 13 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); Articles 23 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); Article 33 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).

²² Recital 35 EU Asylum Procedure Regulation; Article 23 EU Asylum and Migration Management Regulation.

²³ Article 27(7) EU Reception Conditions Directive. See also Article 13(5) EU Screening Regulation; Article 23(10) EU Asylum Procedure Regulation.

²⁴ Article 43(4) EU Asylum Procedure Regulation; Article 31 EU Reception Conditions Directive ; Article 10 EU Screening Regulation. See Article 10(2) of the EU Screening Regulation: "Each Member State shall provide for an independent monitoring mechanism in accordance with the requirements set out in this Article, which shall: (a) monitor compliance with Union and international law, including the Charter, in particular as regards access to the asylum procedure, the principle of non-refoulement, the best interest of the child and the relevant rules on detention, including relevant provisions on detention in national law, during the screening; and (b) ensure that substantiated allegations of failure to respect fundamental rights in all relevant activities in relation to the screening are dealt with effectively and without undue delay, trigger, where necessary, investigations into such allegations and monitor the progress of such investigations. The independent monitoring mechanism shall cover all activities undertaken by the Member States in implementing this Regulation. The independent monitoring mechanism shall have the power to

Participants questioned how effective these mechanisms would be in practice.

- e) The guardian must "have the necessary qualifications, training and expertise".²⁵

The qualification requirements for guardians remain subject to national interpretation.

Legal assistance

The EU Pact may significantly reduce existing procedural safeguards on legal aid across the EU.²⁶ It will no longer be required to provide individualized free legal assistance at the first stage of asylum determination proceedings, but only at the appeals stage. Instead, Member States must provide group legal counselling, while individualised advice is no longer obligatory, which raises concerns regarding confidentiality, access to a lawyer and fair process.

In the Netherlands, free legal assistance currently provided from the outset risks being restricted to appeals, which could result in an increase in appeals being lodged. In the Czech Republic, "legal counselling" has been officially translated as "provision of information." These developments appear inconsistent with international human rights law and standards, and Member States should be encouraged to maintain higher protections than those set out in the Pact.

5) Promising practices in child friendly justice

Workshop participants highlighted emerging and established good practices across jurisdictions aimed at strengthening the participation of migrant and refugee children in legal proceedings.

Child-friendly communication / Access to information and to complaints mechanisms

- Lawyers from Non-Governmental Organizations (NGOs), such as Aditus Foundation in Malta and the Organization for Aid to Refugees (OPU) in the Netherlands, are regularly called upon to provide information to children.

issue annual recommendations to Member States. Member States shall put in place adequate safeguards to guarantee the independence of the independent monitoring mechanism. [...]"

²⁵ Article 23(9) EU Asylum Procedure Regulation; Article 23(5) EU Asylum and Migration Management Regulation.

²⁶ See Articles 15-19 EU Asylum Procedure Regulation. Article 15 of the Asylum Procedure Regulation: "1. Applicants shall have the right to consult, in an effective manner, a legal adviser or other counsellor on matters relating to their applications at all stages of the procedure. 2. Without prejudice to the applicant's right to choose his or her own legal adviser or other counsellor at his or her own cost, an applicant may request free legal counselling in the administrative procedure provided for in Chapter III, in accordance with Article 16, and free legal assistance and representation in the appeal procedure provided for in Chapter V, in accordance with Article 17. The applicant shall be informed as soon as possible and at the latest when registering the application in accordance with Article 27 of his or her right to request free legal counselling or free legal assistance and representation. 3. Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law. 4. Member States may organise the provision of legal counselling and legal assistance and representation in accordance with their national systems."

- In the Netherlands, the Dutch Refugee Council has developed leaflets and videos in multiple languages to inform children in reception centres, although budget cuts pose a threat to the sustainability of these initiatives.
- Ireland has established a framework for addressing complaints against guardians of unaccompanied minors, allowing children to submit a complaint in writing, either online or person, to the Child and Family Agency (Tusla).²⁷

Child-sensitive decisions

- In the Netherlands, a 2019 reform introduced the possibility for children placed under child protection measure to obtain temporary residence permits, creating more stability during proceedings.²⁸

Collaboration among professionals

- Italy has developed a comprehensive and multidisciplinary approach to age assessment for unaccompanied minors, ensuring that evaluations are conducted by professionals from various fields.²⁹
- NIDOS in the Netherlands runs the SUN project, which offers training on children's rights to judges, immigration officers, and teachers, although participation is voluntary.³⁰

Children, parents, teachers, health workers, public servants, social workers, and other professionals working with children, may report violations of children's rights to their national Children's Ombudsperson. The Austrian Ombuds Offices for Children's Rights (Kinder- und Jugendanwaltschaft), the Dutch Ombudsperson for Children (De Kinderombudsman), the Czech Children's Ombudsperson (Dětský Ombudsman), the Slovak Office of the Commissioner for Children (Úrad komisára pre deti), and the Maltese Office of the Commissioner for Children (Kummissarju għat-Tfal) are entitled to request information, issue opinions, recommend measures to the Government, and submit notifications to the CRC Committee.

²⁷ Tusla, [Changing Futures](#), website (accessed on 26 September 2025).

²⁸ A residence permit based on temporary humanitarian grounds can be granted to children subject to a supervision order imposed by a juvenile court for at least one year. See Child Protection Council, [Tijdelijke verblijfsvergunning kinderen met kinderschermingsmaatregel](#), 26 August 2019 (accessed on 29 October 2025).

²⁹ National Institute for Health, Migration and Poverty (NIHMP) and Council of Europe, [Multidisciplinary protocol for age assessment of unaccompanied migrant minors in execution of Law no. 47 of April 7, 2017](#).

³⁰ NIDOS, [SUN Project: Safeguarding Unaccompanied and Separated Children's Rights through the EU Charter of Fundamental Rights](#), website (accessed on 29 September 2025).



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