

Legal considerations around the application of the asylum border procedure to unaccompanied children

Interpretation of Article 53(1) of the Asylum Procedures Regulation

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International Commission of Jurists, Save the Children, and Kids in Need of Defense

The EU Pact and the asylum border procedure

The EU Pact on Migration and Asylum (EU Pact) initiated by the European Commission, and formally adopted by the Council on 14 May 2024,¹ comprises several legislative instruments, including the Asylum Procedures Regulation (APR).² Following its adoption by the European Parliament and Council, the new EU rules on migration introduced by the Pact entered into force on 11 June 2024, and most will apply after two years, from 12 June 2026.³

The APR reforms the EU rules on international protection applications and increases the use of “special procedures” for their examination,⁴ including by expanding the use of an “accelerated examination procedure” (Article 42 APR) and the “asylum border procedure” (Article 43 APR), which is a type of accelerated asylum procedure.⁵ Unlike individuals placed in an accelerated procedure, applicants in a regular “administrative procedure” have “*the right to remain on the territory of the Member State [...] until the determining authority has taken a decision on the application*”.⁶

The “asylum border procedure” is intended to keep applicants close to the EU external border, purportedly to prevent them from absconding, and to facilitate their swift return should their applications be rejected.⁷ The APR employs the legal fiction of “non-entry”, that is, while required to undergo the “asylum border procedure”, applicants “shall not be authorized to enter the territory” of Member States.⁸ The “asylum border procedure” is applicable following either (a) an asylum application “at an external border crossing point or in a transit zone”; (b) an “apprehension in connection with an unauthorised crossing of the external

¹ See European Commission, [What is the Pact on Migration and Asylum?](#), 21 May 2024, website (accessed on 10 November 2025).

² 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 (2024) OJ L 2024/1348 [henceforth Asylum Procedure Regulation (APR)].

³ On 12 June 2024, the European Commission adopted the [Common Implementation Plan for the Pact on Migration and Asylum](#) (2024) COM (2024) 251 final. The plan sets out the key actions and preparations required to implement the EU Pact by the end of the two-year transition period. The Implementation Plan groups the different obligations stemming from the EU Pact into ten interdependent building blocks of implementation.

⁴ Regulation (EU) 2024/1348 establishing a common procedure for international protection in the European Union - The stated aim of the Regulation is to structurally improve the [asylum](#) procedure purportedly to ensure a fair and efficient process in the [European Union](#) (EU) for examining and deciding on an asylum application while limiting abuse and removing incentives for secondary movements across the EU. For further information, see: European Commission, [Migration and asylum](#), website (accessed on 28 November 2025).

⁵ See Chapter III Section IV APR on special procedures.

⁶ Article 10 APR. Chapter III Sections I-III APR cover the regular asylum procedure.

⁷ Recital 64 APR.

⁸ Article 43 APR.

border”; (c) a “disembarkation [...] after a search and rescue operation”; or (d) a relocation from another Member State.⁹

The APR requires that the “asylum border procedure” be completed as soon as possible and, at the latest, within 12 weeks from the registration of the application.¹⁰ This period may be extended to 16 weeks where the “asylum border procedure” concerns an applicant who has been transferred from another Member State.¹¹ The APR also introduces the “mandatory application of the asylum border procedure”, *inter alia*, in the following circumstances: (a) the applicant has “intentionally misled authorities by presenting false information or documents or by withholding relevant [ones], or destroy[ing] or discard[ing] of any identity or travel documents”; (b) “there are reasonable grounds to consider the applicant a danger to the national security or public order”; or (c) the applicant is from a country with a low ($\leq 20\%$) EU-wide asylum recognition rate.¹²

Applicants placed in the “asylum border procedure” shall reside in reception facilities located at or near the external border or in transit zones, and Member States may detain them.¹³ As mentioned above, the processing of applications through the asylum border procedure may last up to 12 and even 16 weeks from the registration of the application, if the period is extended. In light of this, the undersigned organizations are profoundly concerned that the APR allows the use of detention for prolonged periods and the creation of specific zones, including closed facilities or “border camps”, which, in practice, are places where people are deprived of their liberty.¹⁴

With respect to this, the undersigned organizations underscore that any systematic and prolonged detention is contrary to the right to liberty and security of person. International human rights law and standards establish that detention in the context of immigration control should be exceptional, imposed as a measure of last resort for the shortest possible period of time, and only when, following a thorough assessment of all relevant facts and circumstances in the individual case, resort to detention is demonstrably necessary, proportionate, and when other less restrictive alternatives are not sufficient to meet the legitimate interest pursued, *i.e.*, immigration control.¹⁵ The element of necessity requires that the detention be absolutely indispensable for achieving the intended purpose, and that no other measure less invidious to the human rights of the person who is going to be detained is available and could adequately meet the interests of immigration control.¹⁶

Safeguards for children and compatibility with human rights and child rights obligations

In all actions concerning children, including migrant, asylum, refugee or stateless children, the principle of the best interests of the child must be a primary consideration (Article 3 Convention on the Rights of the Child (UN CRC)). The best interests of the child is a substantive right, a fundamental, interpretative legal principle, and a rule of procedure.¹⁷ The EU Charter guarantees the right of all children to “such protection and care as is necessary for their well-being. They may express their views freely. [...] In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.”¹⁸

The APR provides for procedural safeguards for children throughout the asylum process.¹⁹ A qualified representative (a guardian) must be promptly appointed — no later than 15 working days after filing their asylum application — for unaccompanied children to guide and assist them throughout the asylum

⁹ Article 43(1) APR. For a more detailed overview of who can be subjected to the asylum border procedure, see Refugee Support Aegean (RSA), New Pact on Migration and Asylum: Impermissible regression of standards for asylum seekers, July 2024, pp. 28-29.

¹⁰ Article 51(2) APR.

¹¹ Article 51(2) APR.

¹² Articles 42(1) and 45 APR.

¹³ Recital 69, Article 54 APR.

¹⁴ See ECRE, Comments on the Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, October 2024.

¹⁵ See, among others, UN Working Group on Arbitrary Detention, Annual Report 2008, UN Doc. A/HRC/10/21, 16 February 2009, paras. 67 and 82; *Saadi v. United Kingdom*, ECtHR, Application No. 13229/03, Judgment of 29 January 2008, paras. 70-74.

¹⁶ Report of the Working Group on Arbitrary detention, A/HRC/39/45, 17 July 2018, para. 23.

¹⁷ 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 (art. 3, para. 1), CRCC/GC/14, 29 May 2013.

¹⁸ Article 24 EU Charter.

¹⁹ See Articles 43-53 APR on the asylum border procedure.

determination process, including during the age assessment and interviews. States are required to designate a temporary representative who should assist and represent unaccompanied children as soon as possible and until the permanent representative has been appointed.²⁰ Such temporary representatives should be trained to safeguard the best interests and general wellbeing of the child.²¹ Representatives must act independently, be subject to regular supervision, handle a limited number of cases, and ensure that children are fully informed of their rights in a child-friendly and understandable manner (Recital 35 and Article 23 APR).

Member States must ensure reception facilities that take into account “the special situation and needs of [...] minors” (Recital 61, APR) and apply the best interests of the child as a primary consideration (Recital 37 and 67 APR).

Recital 69 of the APR reiterates that: “minors should not be detained. Only in exceptional circumstances, as a measure of last resort and after it has been established that other less coercive alternative measures cannot be applied effectively, inter alia non-custodial community-based placements, and after detention is assessed to be in their best interests in accordance with the Directive (EU) 2024/1346, should it be possible to detain minors.”²² With respect to this, the undersigned organization underscore that, according to international human rights law and standards, detention of children for immigration purposes is never in their best interests and should never take place.²³ Both 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) have affirmed that “every child, at all times, has a fundamental right to liberty and freedom from immigration detention. [...] children should never be detained for reasons related to their or their parents’ migration status”.²⁴ Similarly, the UN Working Group on Arbitrary Detention, several other independent UN human rights experts and UN agencies have affirmed that the deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children, for the purposes of immigration control is prohibited.²⁵ Such prohibition is also consistent with the approach taken by regional human rights courts.²⁶

Unaccompanied children must not be placed in asylum border procedure

The undersigned organizations consider that placing children into “asylum border procedure” is incompatible with international human rights law and standards, regardless of any of the purportedly exceptional circumstances outlined in the APR (see below).

The impossibility to challenge the use of the “asylum border procedure” further undermines the right to an effective remedy against human rights violations (including child rights violations), which is a general principle of international law recognized by all States and, *a fortiori*, a right belonging to children, regardless of their immigration status.²⁷

The accelerated procedure offers fewer procedural safeguards, may entail detention, and increases the risk of *refoulement* at the border. Consequently, placing unaccompanied children and persons undergoing an age assessment in the “asylum border procedure” exposes them to serious risks of human rights violations, in particular, where it results in detention.

²⁰ Article 23 APR.

²¹ Article 23(2) APR.

²² See Recital 69, APR.

²³ 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, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017.

²⁴ 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, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para. 5.

²⁵ Report of the Working Group on Arbitrary Detention, A/HRC/39/45, 17 July 2018, para. 11; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/28/68, 5 March 2015, para. 80. See others: IAWG, Summary of normative standards and recommendations on ending child immigration detention, August 2016.

²⁶ See e.g. Inter-American Court of Human Rights, Advisory Opinion OC-21/14, 19 August 2014, paras 154-160; *Popov v. France*, ECtHR, Applications Nos. 39472/07 and 39474/07, Judgment of 19 January 2012, para. 91.

²⁷ 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.

Recital 20 of the APR provides additional safeguards for “applicants who are identified as being in need of special procedural guarantees”. It states that: “[applicants] should be provided with adequate support in order to create the conditions necessary for the genuine and effective access to procedures. Where it is not possible to provide adequate support in the framework of an accelerated examination procedure or of a border procedure, an applicant in need of special procedural guarantees should be exempted from those procedures.”

However, only unaccompanied minors are, in principle, exempt from the asylum border procedure under the APR.²⁸

Recital 62 of the APR underscores that, “*having regard to the importance of the rights of the child and the need to take into account the best interests of the child, unaccompanied minors should not, as a rule, be subject to the border procedure unless there are reasonable grounds to consider the minor represents a danger to the national security or public order of the Member State or the applicant had been forcibly expelled for serious reasons of national security or public order under national law.*”²⁹ Consequently, despite the general exemption, in principle, of unaccompanied children from “the asylum border procedure”, Article 53(1) explicitly allows their placement into it in certain circumstances. With respect to this, the following legal analysis outlines the significant human rights concerns arising from the placement of unaccompanied children in “the asylum border procedure”.

Article 53(1) exception analysis

This legal opinion focuses on the exception concerning unaccompanied minors, as set out in Article 53(1), which provides:

“The border procedure shall be applied to unaccompanied minors only in the circumstances referred to in Article 42(3), point (b). Where there is doubt as to the applicant’s age, the competent authorities shall promptly carry out an age assessment in accordance with Article 25.”

The first sentence of Article 53(1) provides a **single exception according to which unaccompanied minors may be placed in the border procedure (referencing Article 42(3), which provides that “the accelerated examination procedure may be applied to unaccompanied minors”)**. This exception arises only where, “*there are reasonable grounds to consider the applicant as a danger to the national security or public order of the Member State or the applicant had been forcibly expelled for serious reasons of national security or public order under national law*” (Article 42(3)(b) APR).

Danger to “national security” or “public order”

With regard to the “administrative procedure”, Recital 25 APR provides that “[w]here, following a thorough assessment by the competent national authorities, it is concluded that the applicant constitutes a danger to national security or public order, especially in relation to serious crimes or terrorism, a Member State should have the possibility to make an exception to the right of the applicant to remain on its territory during the administrative procedure.”³⁰

²⁸ Recitals 55 and 62, Articles 42(3) and 53(1) APR.

²⁹ Recital 74 APR clarifies that the notion of “public order” may include “a conviction for having committed a serious crime” in the country of asylum.

³⁰ See also Article 10 APR. Article 34 APR further allows State authorities to prioritize the examination of such asylum applications. An “accelerated examination procedure” may be carried out where there are serious “national security” or “public order” concerns (Recital 55 and Article 42 APR). Asylum applications may be examined in an “asylum border procedure” for adult applicants who are “a danger to national security or public order” (Recital 60 and Article 44 APR), and for a child applicant where, “there are reasonable grounds to consider the minor represents a danger to the national security or public order of the Member State or the applicant had been forcibly expelled for serious reasons of national security or public order under national law” (Recital 62). Recital 67 further clarifies that “where the border procedure is applied and the number of applicants at a given moment exceeds the number which corresponds to the adequate capacity of a Member State, [...] Member State should not give priority to minors and their family members when determining whom to subject to a border procedure, unless they are considered, on serious grounds, to pose a danger to the national security and public order of a Member State.”

Under international law, a danger to “national security” or “public order” in immigration matters must concern a future threat and cannot be only based on past conduct.³¹ The danger must relate to the country where the asylum application is made.³² While the authorities have a certain degree of discretion in identifying such a threat, they must conduct an **individual assessment as to whether there are “reasonable grounds” for considering the applicant a danger to “national security”**.³³

The Article 42(3) APR threshold of “reasonable grounds to consider” — which must be met in order to trigger the power to place children in expedited procedures and may result in the deprivation of their liberty — should be interpreted in light to international human rights law and standards.

With respect to this, under international human rights law and standards, detention pending trial on criminal charges should be the exception, because it goes against the presumption of liberty and release pending trial, and even when a person is charged with a “national security” or “public order” offence, detention pending trial should still be an exception and it can only be imposed when it is compliant with the right to liberty and security of person. With respect to this, the UN Human Rights Committee (HRC) in its General Comment No. 35 on Article 9 (guaranteeing the right to liberty and security of person) of the International Covenant on Civil and Political Rights has set out the strict set of limited circumstances when such a detention would be permissible as follows: “*Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight [...]. The relevant factors should be specified in law and should not include vague and expansive standards such as “public security.”*”³⁴

A fortiori, detention in the context of an asylum determination procedure where the person concerned has not been charged with any crime — let alone with a “national security” or “public order” offence — will likely violate the right to liberty and security of person.

Additionally, the leading principles concerning resort to detention of children in the context of criminal justice are “(a) the arrest, detention or imprisonment of a child is to be used only in conformity with the law, only as a measure of last resort and for the shortest appropriate period of time; and (b) no child is to be deprived of his or her liberty unlawfully or arbitrarily.”³⁵ *A fortiori*, in the context of a detention that is not in pursuit of criminal charges pending trial, depriving children of liberty must, at the very least, comply with these principles as minimum standards, as affirmed in Recital 69 of the APR.

Pursuant to the international law obligation of non-discrimination, States must ensure that children are treated with equality both *de facto* and *de jure* without discrimination on any grounds,³⁶ “for example on the basis of gender, sexual orientation and gender identity/expression, disability, race, ethnicity, indigenous status, immigration status and other minority status.”³⁷ The misuse or abuse of measures purportedly in pursuit of “national security” must never justify violating children’s rights and heightening the risk of child detention.³⁸

Detaining exclusively third-country national children is *ipso facto* discriminatory and cannot be justified, given that, children who are Member State nationals — and who may purportedly threaten “public order” or “national security” just as much as third-country national children — are not, and cannot be detained other than as a result of criminal law enforcement.³⁹ It proves that Member States can address the threat posed to “national security” or “public order” by children in other ways, without detaining them, since they only powers they have to detain children who are their nationals and who purportedly threaten “national security” or “public order” is if they charge them with a criminal offence and prove that they must detain them pending trial, and comply with further safeguards.

³¹ *Orfanopoulos and Oliveri v. Land Baden-Württemberg*, CJEU, Joined Cases C-482/01 and C-493/01, Judgment of 29 April 2004.

³² *C.G. and Others v. Bulgaria*, ECtHR, Application No. 1365/07, Judgment of 24 April 2008, paras 43-44; *Bundesrepublik Deutschland v. B and D*, CJEU, Joined Cases C-57/09 and C-101/09, paras 104-105.

³³ *Al-Nashif v. Bulgaria*, ECtHR, Application no. 50963/99, Judgment of 20 June 2002; *HT v. Land Baden-Württemberg*, CJEU, Case C-373/13, 24 June 2015, paras 87-92; *J.N. v. State Secretary for Security and Justice*, CJEU, Case C-601/15 PPU, Judgment of 15 February 2016, paras 67-73.

³⁴ HRC, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 38.

³⁵ CRC Committee, General Comment No. 24 (2019) on children’s rights in the child justice system, CRC/C/GC/24, 18 September 2019, para. 85.

³⁶ Article 2 CRC.

³⁷ CRC Committee, General comment No. 21 (2017) on children in street situations, CRC/C/GC/21, 20 June 2017, para. 26.

³⁸ Report of the Independent Expert leading the UN global study on children deprived of liberty, A/74/136, 11 July 2019, pp. 14-15. See also Fionnuala Ní Aolá, Position Paper of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism on the Rights of Children in Contexts affected by Counter-Terrorism, 1 October 2023. PICUM, *Analysis of the Asylum Procedure Regulation and Return Border Procedure Regulation*, December 2024, p. 7.

³⁹ See, *A. and Others v. the United Kingdom*, ECtHR, Application No. 3455/05, Judgment of 19 February 2009.

Finally, the applicants must be informed of the grounds for a placement in the “asylum border procedure” for reasons of “national security”, and **have the possibility to challenge** the assessment before an independent and impartial court.⁴⁰

In addition, any decision adopted on grounds of “national security” or “public order” must give primary consideration to the child’s best interests, in accordance with the Convention on the Rights of the Child (CRC) and Article 24(2) of the Charter of Fundamental Rights of the European Union (EU Charter).⁴¹

Age assessment of unaccompanied children who may be considered “a threat to national security”

The second sentence of **Article 53(1)**⁴² addresses age assessment where there is doubt as to the applicant’s minority.

In the specific situation of unaccompanied children who may exceptionally be placed in the border procedure on the grounds set out in Article 42(3)(b), they should be afforded specific reception conditions and special procedural guarantees, including the right to a representative, and any child-specific forms of persecution should be considered very carefully, with primary consideration being given to their best interests throughout the procedure.

In these limited cases, the term “promptly” in the second sentence⁴³ is a temporal safeguard, requiring that any age assessment carried out in relation to these individuals should be completed as quickly as possible during the border procedure, without undue delay, while ensuring that all the necessary procedural safeguards are fully respected. Accordingly, the second sentence of **Article 53(1)** must be read in conjunction with the first sentence of paragraph 1. Age assessment should be carried out promptly and **where strictly necessary within the asylum border procedure, and only for those individuals who fall within the exception of Article 53 which applies to unaccompanied children**. Any different reading not only contravenes the APR but risks normalizing placing unaccompanied children into border procedure, which is contrary to the core safeguards of the APR mentioned above.

Specific safeguards during the age assessment

Article 25 APR, titled “Age assessment of minors” requires that where an applicant’s age is in doubt, the determining authority must carry out a **multidisciplinary assessment**, *“including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the applicant’s age.”*⁴⁴ If the results remain uncertain, medical examinations may be used only as a measure of last resort.⁴⁵ Such an examination must be the least-invasive possible, respectful of individual’s dignity, conducted by experienced professionals, and undertaken with the informed consent of the applicant or their representative, in a child-friendly and age-appropriate manner.⁴⁶ Article 25(2) further provides that, “[w]here the result of the age assessment referred to in this paragraph is not conclusive with regard to the applicant’s age or includes an age-range below 18 years, Member States shall assume that the applicant is a minor.”

Recital 36 underscores that unaccompanied minors are particularly vulnerable and often lack documentation and, therefore, *“it is particularly critical to ensure strong safeguards to ensure that such applicants are not subject to incorrect or unreasonable age-assessment procedures.”* This recital guides the interpretation of Articles 25 and 53, confirming that the Regulation’s intent is to prevent—rather than enable—the use of an inadequate age assessment against unaccompanied children. The age assessment must be guided by the **best interests of the child** and interpreted in line with the EU Charter and the CRC (Recital 37 APR). It is well established in international law that, in the age assessment process, the **benefit of the doubt** must be afforded to any individual claiming to be a child. This principle is grounded in the best

⁴⁰ *Ljatif v. the former Yugoslav Republic of Macedonia*, ECtHR, Application No. 19017/16, Judgment of 17 May 2018, para. 35; *ZZ v. Secretary of State for the Home Department*, CJEU, C-300/11, Judgment of 4 June 2013, paras 52-60.

⁴¹ Recitals 23 and 67 APR.

⁴² Article 53(1) APR: “Where there is doubt as to the applicant’s age, the competent authorities shall promptly carry out an age assessment in accordance with Article 25.”

⁴³ *Ibid.*

⁴⁴ Article 25(1) APR. See also Recital 37.

⁴⁵ Article 25(2) APR. See also Recital 37 APR.

⁴⁶ Article 25(3)-(5) APR.

interests of the child. In their Joint General Comment and recommendations, the CRC Committee and the CMW Committee emphasized the importance of the **presumption of minority** which must be maintained unless and until proven otherwise; any documents presented by the applicant must be considered genuine unless there is proof to the contrary.⁴⁷ The CRC Committee and the CMW Committee further affirm that, when a person refuses to undergo medical tests to ascertain their age, such person should not be declared or assumed to be an adult, based exclusively on such refusal.⁴⁸

The fundamental purpose of the age assessment is to ensure the access to and enjoyment of all rights and safeguards to which children are entitled as of right. With respect to this, it *“is therefore imperative that there be due process to determine a person’s age, as well as the opportunity to challenge the outcome through an appeals process.”*⁴⁹ **Effective judicial review** and the possibility of appeal are crucial given the implications of a decision denying a minority status to a child.⁵⁰ Under EU law, Article 47 of the EU Charter guarantees the right to an effective remedy.

It must be ensured that children be **granted the benefit of the doubt and presumptively treated as children** unless and until proven otherwise, and that any age assessment procedure be carried out speedily and in a dignified manner.⁵¹

The APR provides **procedural safeguards** for children that must be applied throughout the age assessment process. Article 22 of the APR stipulates that the child’s best interests must be the primary consideration in all procedures, requiring child-sensitive interviews conducted by trained staff and, where appropriate, in the presence of a responsible adult or legal adviser. Recital 35 and Article 23 of the APR provide additional safeguards for unaccompanied minors, mandating prompt appointment of a qualified representative to protect their rights, assist throughout the procedure, and ensure their well-being. Recital 69 specifies that children should not be detained, and if detention is exceptionally applied, it must be a measure of last resort, only after less coercive alternatives have been exhausted and assessed to be in the child’s best interests.

Conclusions

The Regulation must be applied in a manner that guarantees full respect for the rights and dignity of every child seeking international protection in the European Union, in line with EU and international human rights and refugee law.

Unaccompanied children should **not be placed in the “asylum border procedure”** due to the lack of procedural safeguards and risk of detention, which, in turn, expose them to serious risks of violations of their human rights.

If a Member State nonetheless decides to invoke the Article 53(1) exception to place an unaccompanied child in the border procedure on grounds of “national security” or “public order”, such placement must be **strictly exceptional and based on clearly articulated and reasonable/non-discriminatory grounds of a clear and present risk, not vague or general assertions of a threat to “national security” or “public order”**. **The detention of the child concerned must be a measure of last resort and for the shortest appropriate period of time.**

It must follow an **individual assessment** on whether there are “reasonable grounds” for considering the child a **“danger to national security” or “public order”**.

⁴⁷ 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, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para. 4; *N.B.F. v. Spain*, CRC Committee, CRC/C/79/D/11/2017, Adoption of views, 27 September 2018, para. 12(3); *J.A.B. v. Spain*, CRC Committee, CRC/C/81/D/22/2017, Adoption of views, 31 May 2019, para. 13(4); *S.E.M.A. v. France*, CRC Committee, CRC/C/92/D/130/2020, Adoption of views, 25 January 2023, para. 8(5).

⁴⁸ *Ibidem*.

⁴⁹ *N.B.F. v. Spain*, CRC Committee, CRC/C/79/D/11/2017, Adoption of views, 27 September 2018, para. 12(3).

⁵⁰ *M.A.B. v. Spain*, CRC Committee, CRC/C/83/D/24/2017, Adoption of Views, 7 February 2020, 12 July 2017, para. 10(3); *Darboe and Camara v. Italy*, ECtHR, Application no. 5797/17, Judgment of 21 July 2022.

⁵¹ PACE, Resolution 2020 (2014), The alternatives to immigration detention of children, 3 October 2014, para. 9(4); *Darboe And Camara v. Italy*, ECtHR, Application No. 5797/17, Decision of 21 July 2022, paras 153-154; *A.D. v. Malta*, ECtHR, Application No. 12427/22, Judgment of 17 October 2023, paras 74 and 190.

The decision must also be subjected to an **effective right of appeal** before an independent and impartial court.

The **age assessment** referred to in Article 53(1) of the APR must apply to the unaccompanied children who are exceptionally placed in the asylum border procedure under Article 53(1). It must always be guided by **the best interests of the child** (Recital 37), and ensure that **specific safeguards** according to Recital 20 and Article 25 of the APR and the **benefit of the doubt** and **presumption of minority** are guaranteed. Where it is not possible to provide adequate support in the framework of an accelerated examination procedure or of a border procedure, an applicant in need of special procedural guarantees should be exempted from those procedures.