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UN & CoE

January

25 January – In *IAM (on behalf of KYM) v. Denmark*, UN Committee on the Rights of the Child adopts its first decision under the Third Optional Protocol to the Convention on the Rights of the Child (CRC), in a case concerning the decision to deport a girl to her country of origin, where she could face female genital mutilation. The committee holds that the State had violated the child's rights to protection from all forms of violence (Article 19 of the CRC) and to have her best interests (Article 3 of the CRC) be a primary consideration

31 January – The Council of Europe Lanzarote Committee adopts its second implementation report on “protection of Children against sexual abuse in the circle of trust: The Strategies”

February

March

5 March – UN Committee on the Rights of the Child issues its concluding observations on the combined fifth and sixth periodic reports of Spain

28 March – Congress of Local and Regional Authorities of the Council of Europe adopts a resolution on ‘Unaccompanied refugee children: a matter of urgency for local and regional authorities’

April

4 April – Committee of Ministers adopts Council of Europe Recommendation on policy guidelines to protect children of imprisoned parents

16 April – In *European Roma and Travellers Forum (ERTF) v. France (119/2015)*, European Committee on Social Rights holds that the State fails to effectively protect the rights of Roma children, in particular as regards their access to education and vocational training

May

25 May – Slovenia ratifies Third Optional Protocol to the UN Convention on the Rights of the Child (CRC) on a communications procedure

June

10 June – In *Bistieva and Others v. Poland (No. 75157/14)*, a case concerning a family's detention in a centre for aliens in Poland, ECtHR finds a violation of the right to respect for private and family life (Article 8 of the ECHR) because of the unjustified and disproportionate length of the stay in the detention centre of a mother and her three children

13 June – Norway ratifies the Council of Europe (CoE) Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)

15 June – In *European Committee for Home-Base Priority Action for the Child and the Family (EUROCEF) v. France (114/2015)*, European Committee of Social Rights holds that France violates Article 17 (1) and (2) of the European Social Charter on several grounds such as the assessment and allocation system for unaccompanied foreign minors, delays in appointing an ad hoc guardian for unaccompanied foreign minors, and the detention of unaccompanied foreign minors in waiting areas and in hotels

20 June – United Kingdom ratifies CoE Lanzarote Convention

28 June – Adoption by the Lanzarote Committee of a Declaration on protecting refugee and migrant children against sexual exploitation and sexual abuse

July

4 July – Committee of Ministers adopts Recommendation CM/REC(2018)7 to member States on Guidelines to respect, protect, fulfil the rights of the child in the digital environment

August

September

27 September – In *Y.B. and N.S. v. Belgium*, UN Committee on the Rights of the Child adopts a decision under the Third Optional Protocol to the Convention on the Rights of the Child (CRC), declaring a violation of Articles 3, 10 and 12 of the convention in a case concerning the refusal to provide a visa for a child in kafala care (fostering arrangement)

27 September – In *N.B.F. v. Spain*, UN Committee on the Rights of the Child establishes the State had violated the best interests of a child (Article 3 of the CRC) and the right to be heard (Article 12 of the CRC) in the procedure to establish the age of a person claiming to be a child

October

November

December

10–11 December – UN General Assembly adopts the Global Compact for Safe, Orderly and Regular Migration at the Intergovernmental Conference in Marrakech, Morocco, upholding the principle of the best interests of the child

11 December – In *M.A. and Others v. Lithuania (No. 59793/17)*, a case concerning the right to make an asylum application at the border, the ECtHR finds a violation of the prohibition of torture (Article 3) and of the right to an effective remedy (Article 13) because a Russian family of seven members, leaving Chechnya, tried on three separate occasions to seek asylum in Lithuania, but each time was refused the right to make an application at the border and was sent back to Belarus

EU

January

23 January – In *Sąd Okręgowy w Białymstoku (Regional Court, Białystok, Poland) v. Mr Dawid Piotrowski (C-367/16)*, CJEU holds that, when interpreting the European arrest warrant and the surrender procedures between Member States, the judicial authority of the executing Member State must refuse to surrender only those minors who are the subject of a European arrest warrant and, under the law of the executing Member State, have not yet reached the age at which they are regarded as criminally responsible for the acts on which the warrant issued against them is based

February

7 February – European Parliament (EP) adopts resolution on zero tolerance for female genital mutilation (FGM), which urges the Commission and Member States to include FGM prevention measures in all policy areas and ratify the Istanbul Convention

March

April

12 April – In *A. and S. v. Staatssecretaris van Veiligheid en Justitie (C-550/16)*, CJEU makes a preliminary ruling that an unaccompanied child must be interpreted as a third-country national or stateless person who is below the age of 18 at the time of his or her entry into the territory of a Member State and of the introduction of his or her asylum application in that State, regardless of whether or not he or she attains the age of majority in the course of the asylum procedure

May

3 May – EP adopts a resolution on the protection of children in migration.

8 May – In *K.A., M.Z., M.J., N.N.N., O.I.O., R.I. and B.A v. Belgium (C-82/16)*, CJEU holds that national authorities cannot refuse to examine an application for a right of residence for the purposes of family reunification solely on the ground that the third-country national is the subject of a ban on entering that Member State

June

July

August

September

October

November

December

11 December – EP President appoints a new coordinator on children's rights

8

Rights of the child



One in four children in the European Union live at risk of poverty or social exclusion, despite the slowly improving trend towards reducing child poverty. Not all children, however, benefit from the change in trend. Children with parents born outside the EU or with foreign nationality are more likely to be poor. The number of migrant and asylum-seeking children coming to the EU decreased again in 2018. Nevertheless, in certain Member States, the reception conditions – including the use of immigration detention – remained a serious problem. In 2018, the UN Committee on the Rights of the Child adopted its first decisions on individual complaints against Member States, mostly in relation to the situation and treatment of children in the context of migration. Member States have been slow to incorporate into national law Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, which enters into force in June 2019. Few have aligned their legislation to match the requirements of this directive.

8.1. Child poverty

Although the overall trend is improving, child poverty in the EU persists. One in four children (persons below the age of 18 years) live at risk of poverty or social exclusion.¹ This raises concerns about the effective fulfilment of Article 24 of the EU Charter of Fundamental Rights, which provides that “[c]hildren shall have the right to such protection and care as is necessary for their well-being”. As FRA pointed out in its 2018 report on the subject, fighting child poverty is also an issue of fundamental rights and legally binding obligations on the EU and its Member States, particularly with a view to promoting equal access to rights and equal opportunities.²

Having an ethnic or migrant background, having poorly educated parents, and living in single-parent households are major factors affecting child poverty. Efforts to fight child poverty seem to be gaining momentum at both the EU and national levels. The proposals related to child poverty in the EU’s new budget are encouraging. Meanwhile, the need to implement the global Sustainable Development Goals (SDGs), including those on poverty, offers an incentive for more effective policies.

8.1.1. Child poverty rate slightly improves, but not for all children

The percentage of children at risk of poverty or social exclusion (AROPE) has decreased in the EU-28 since 2012. The AROPE indicator, which Eurostat provides, combines three different sub-indicators: ‘at risk of poverty’, ‘severe material deprivation’ and ‘very low household work intensity’.³ The AROPE rate for children in 2017 was 3.2 percentage points lower than during the peak of the economic crisis in 2012, Eurostat data published in 2018 show.⁴ In 2012, 28.1 % of children in the EU-28 were at risk of poverty or social exclusion; the rate dropped to 24.9 % by 2017. There are substantial differences between Member States. The AROPE rate in 2017 ranges from around 15 % for children in **Czechia, Denmark, Finland and Slovenia** to more than 30 % in **Spain, Lithuania, Hungary and Italy**, 36 % in **Greece**, and almost 42 % in **Bulgaria and Romania**.

In 2017, 32.5 % of children in the EU-28 with parents born in a foreign country were at risk of poverty. This proportion, in contrast to the general trend, had

increased by 1 percentage point since 2016, according to the latest Eurostat data.⁵ As [Figure 8.1](#) shows, the situation is even worse for children whose parents have a foreign citizenship: in 2017, 40.7 % of these children were at risk of poverty compared with 35.8 % in 2016, which represents an increase of nearly 5 percentage points.⁶ In comparison, the proportion at risk of poverty in 2017 was 17.1 % for children with parents born in the country of residence and 17.4 % for children with parents who have the citizenship of the reporting country. However, the risk of poverty for children as a function of their parents' background varies considerably by country of residence.

The education level of parents and the household type are the most important factors influencing child poverty. The lower the parents' education level, the higher the likelihood that the children live at risk of poverty, Eurostat data reveal. In 2017, 52.9 % of children whose parents had not completed lower secondary education (ISCED 0–2) were at risk of poverty, compared with 23.0 % of children whose parents completed upper secondary education but did not go to university (ISCED 3–4), and 7.7 % of those whose parents had tertiary education (ISCED 5–8).⁷ Furthermore, children in single-parent households are in a much more vulnerable situation than children in households with at least two adults; 35.3 % of single-parent households are at risk of poverty compared with 16.8 % of households with dependent children and at least two adults.⁸

8.1.2. EU and national policy developments in 2018

Main EU policy developments

FRA ACTIVITY

Tackling child poverty: a matter of fundamental rights

A year after the proclamation of the European Pillar of Social Rights, FRA published its report *Combating child poverty: An issue of fundamental rights* in October 2018. The report aims to raise awareness of the fact that tackling child poverty is not only a matter of policy priorities, but an issue of fundamental rights and legally binding obligations, both for EU Member States and for EU institutions.

See FRA (2018), *Combating child poverty: An issue of fundamental rights*, Luxembourg, Publications Office.

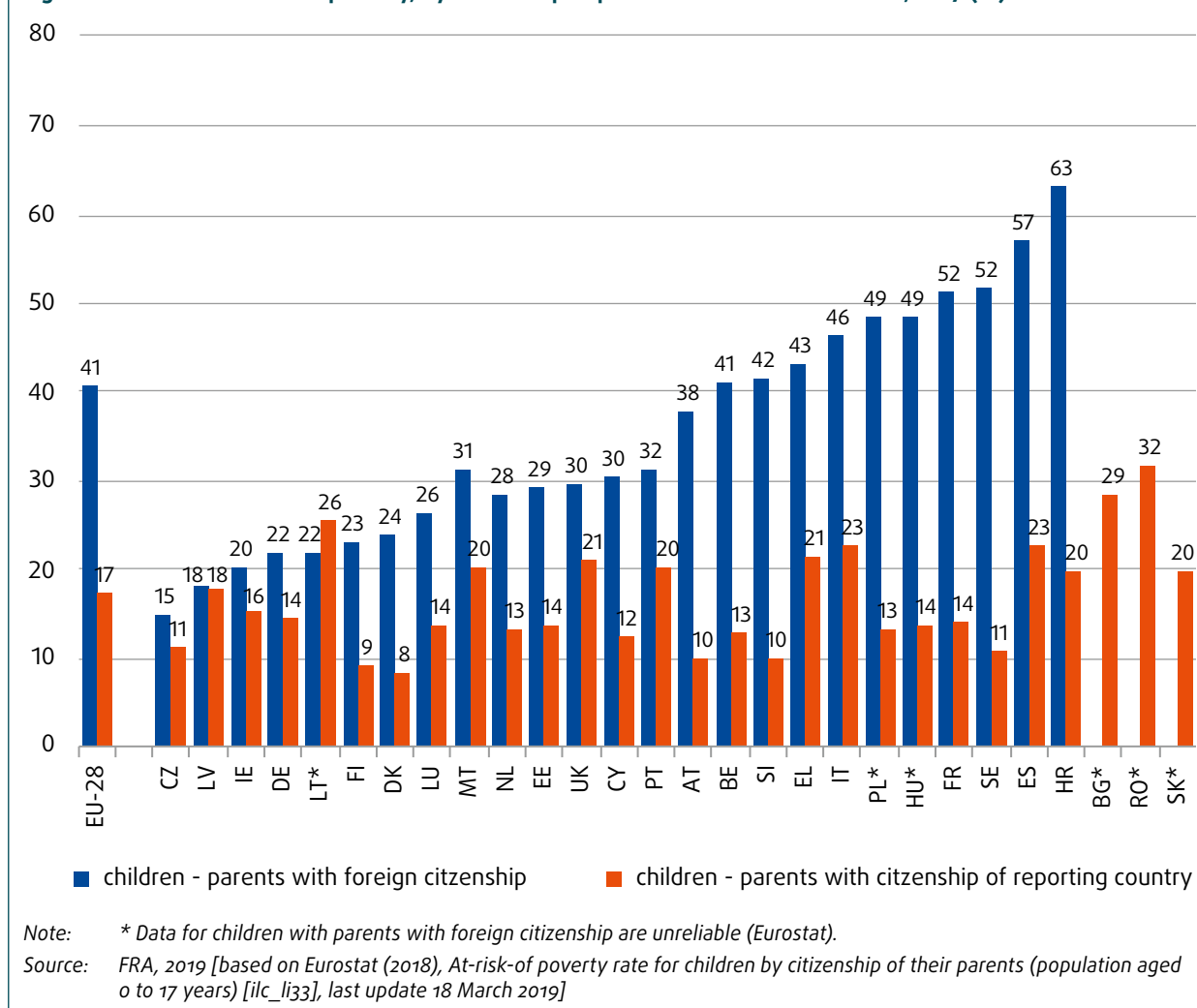
A positive development in 2018 was that the European Commission's proposal for the EU budget for 2021–2027 includes "a more social Europe implementing the European Pillar of Social Rights" among its general policy objectives.⁹ In relation to child poverty

in particular, the specific objectives of the European Social Fund+ (ESF+) refer explicitly to children as potential beneficiaries of actions that aim to promote the social integration of people at risk of poverty or social exclusion.¹⁰ In addition, the draft new Common Provisions Regulation suggests including child poverty considerations in the new conditionality system proposed for Member States to access EU funding. Concretely, this new conditionality system requires that EU Member States design and apply a national strategic policy framework for social inclusion and poverty reduction that includes "[e]vidence-based diagnosis of poverty and social exclusion including child poverty".¹¹ In this context, the European Parliament asked the Commission to conduct a study to assess the feasibility of a child guarantee scheme.¹² The study focuses on children in vulnerable situation and is expected to deliver relevant recommendations at the beginning of 2020.

In December 2018, the Committee on Employment and Social Affairs of the European Parliament adopted its report on the new ESF+ Regulation. It suggested including a provision obliging Member States to allocate at least 5 % of their ESF+ resources (i.e. € 5.9 billion across the EU) to targeted actions aimed at implementing a potential future European child guarantee scheme.¹³ The European Parliament upheld this suggestion and included it among its proposed amendments to the ESF+ Regulation on 16 January 2019. The future of this proposal is still to be decided after negotiations between Member States and EU institutions in the coming months. Furthermore, following a request by the European Parliament, the European Commission in 2018 undertook a study on the feasibility of such a guarantee scheme.¹⁴ The study focuses on children in vulnerable situations and is expected to deliver relevant recommendations at the beginning of 2020.

The European Semester continues to give little consideration to child poverty, as past FRA fundamental rights reports pointed out. The only country-specific recommendation in 2018 directly related to child poverty addressed **Spain**; it underlined the need to improve family support and coverage gaps in income-guarantee schemes. Another, addressed to **Lithuania**, was limited to a recital referring to child poverty, although the actual recommendation addressed poverty in only general terms.¹⁵

The need to include child poverty among the challenges identified by country-specific recommendations will become more compelling in the context of the new EU Funds. According to relevant proposals, these new EU Funds will call on Member States to allocate EU resources to addressing the country-specific recommendations they receive.¹⁶ If these recommendations do not include the fight against

Figure 8.1: Children at risk of poverty, by citizenship of parents and EU Member State, 2017 (%)

child poverty, the Member States might not provide sufficient amounts of resources. It will therefore be important to recognize the importance of, and to highlight, the fight against child poverty among all the other challenges.

Promising policy developments at national level

The fight against child poverty seemed to gain some momentum in certain Member States in 2018. In **France**, the plan to combat poverty places particular emphasis on child poverty and the protection of the rights of children.¹⁷ In **Spain**, the authorities have committed to adopting a new national strategic framework to combat poverty indicating the fight against child poverty as one of its main targets.¹⁸ In **Ireland**, the national implementation plan for SDGs adopted in 2018 embraces the target to reduce at least by half the proportion of children living in poverty by 2030.¹⁹

In **Finland**, the Ombudsman for Children has chosen to focus its annual report on child poverty,²⁰ while also submitting to parliament his first report on the state of children's rights and well-being.²¹ Following these interventions, the Finnish Government launched the preparation of a national strategy for children.²²

In **Belgium**, the Flemish government adopted a new child benefits system, called 'Groeipakket' (Growth Package). It consists of three fixed benefits, which apply to every child residing in the Flemish region: a one-off amount for each birth or adoption; a fixed monthly amount, which is the same for each child; and an additional 'school bonus' for each child, delivered in August.²³ **Lithuania** introduced universal child allowances for every child.²⁴ In **Estonia**, the amounts of such allowances increased.²⁵ In **Croatia**, new legislation that came into force in 2018 provides that all pupils of primary schools will receive free textbooks for the school year 2019/2020.²⁶

Promising practice

Establishing a High Commissioner against Child Poverty

Spain created the Office of the High Commissioner against Child Poverty in June 2018, after the UN Committee on the Rights of the Child addressed recommendations on child poverty to Spain in March 2018. As part of its mandate to enhance public policy analysis and ensure best practices in fighting against child poverty, the office is developing a map of child poverty that provides a detailed description of the spatial distribution of child poverty in Spain at the census tract level. The map database will merge income-related data with additional indicators, such as material deprivation and behavioural patterns, to improve understanding of the multidimensional nature of child poverty. The map will help to increase the efficacy of public policies by improving the targeting of measures to combat child poverty. It will also inform a set of policy interventions by the National Alliance to Fight Child Poverty, which the High Commissioner leads. The alliance promotes partnerships between the private sector and civil society.

For more information, see the High Commissioner's website and 2018 UN Committee on the Rights of the Child concluding observations on the combined fifth and sixth periodic reports of Spain (paras 9(c), 26(b) and 35(c)).

8.1.3. Member State efforts to reach SDGs in relation to rights of child

The global 2030 Agenda and its 17 SDGs provide a comprehensive global policy framework for sustainable development (for more information on ► SDGs, see [Chapter 1](#)).²⁷ Several SDGs, and their specific targets, reflect children's rights, such as SDG 4 on inclusive and equitable quality education, SDG 5 on eliminating all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation (SDG Target 5.2), SDG 8 on fighting child labour in all its forms (SDG Target 8.7), and SDG 16 on ending abuse, exploitation, trafficking and all forms of violence against and torture of children (SDG Target 16.2). These SDGs correspond to concrete legally binding obligations enshrined in the EU Charter of Fundamental Rights, such as Article 24 on the rights of the child, Article 14 on the right to education, Article 32 on the prohibition of child labour and Article 33 on the legal, economic and social protection of the family. The whole range of the provisions of the Convention on the Rights of the Child (CRC) is also relevant, and binding on all EU Member States.

SDG 1 is about ending poverty in all its forms everywhere. More concretely, Target 1.2 requires

States to reduce at least by half the proportion of all persons living in poverty by 2030.²⁸ The target groups explicitly include children living in poverty. At the EU level, this would mean reducing the number of children living in poverty from 27.1 % (25.5 million) in 2015,²⁹ when the SDGs were adopted, to 13.5 % (12.7 million) by 2030.

By the end of 2018, all but four EU Member States (**Austria, Bulgaria, Croatia** and the **United Kingdom**) had presented their voluntary national review (VNR) reports at the High Level Political Forum, the central UN platform for monitoring the implementation of SDGs at the global level.³⁰ **Croatia** and the **United Kingdom** will present their reports in 2019. The VNR reports provide an overview of national structures, policies and concrete measures to implement the SDGs. References to children highlight relevant national actions in relation to several SDGs. A common child-related characteristic of VNR reports that EU Member States have submitted is their focus on education (SDG 4).

The SDG framework calls on governments to design and implement national policies that link social sustainability with the fight against poverty, including child poverty. The majority of the VNR reports that EU Member States have submitted since 2016 include such references. For example, the reports by **Belgium, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, Portugal** and **Spain** contain comprehensive overviews and detailed information on their actions in fighting child poverty.³¹ In many cases, however, VNR reports lack explicit reference to child poverty, although they describe measures to fight poverty targeting the general population, such as minimum income schemes or housing assistance, that may also have a positive impact on the situation of children living in poverty. This is a missed opportunity for governments to present their efforts comprehensively and to reflect on their outcomes on specific SDG targets. For example, with respect to national reviews on Target 10.7, on children in migration, UNICEF urges governments to "report on all children in national reviews, including non-national children".³²

8.2. Children in migration

The numbers of migrant and asylum-seeking children arriving in the EU decreased once again in 2018, although not as significantly as during 2017. While the reduced number of children has slowly improved the reception conditions of certain Member States, challenges remain in certain areas of reception or in certain Member States. The Committee on the Rights of the Child and the European courts took important decisions that will guide Member States' authorities in ensuring the protection of the rights of migrant and asylum-seeking children.

8.2.1. Numbers continue to decrease

The number of children applying for asylum in the EU continued to decrease during 2018.³³ The total number of children applying for asylum went from 398,255 in 2016 to 213,970 in 2017 and 189,990 in 2018.³⁴ **Germany** received the highest number of applications from children in 2018: 80,550, representing almost one half of the total applications filed by children in the EU. These were followed by **Greece, France, and Spain**.

The number of applications from children considered unaccompanied decreased significantly over the past three years. They decreased from 63,245 in 2016 to 31,395 in 2017, and to 19,740 in 2018.³⁵

Arrivals through the Mediterranean routes – **Greece, Italy and Spain** – also decreased. Spain became the main route in 2018, with 58,569 sea arrivals.³⁶ Almost 12 % of them were children. Greece³⁷ registered 32,497 sea arrivals (almost 37 % of them children) and Italy³⁸ 23,370 (18 % of them children).

More than 3,500 unaccompanied and separated children arrived in Europe via the Mediterranean routes in the first seven months of 2018, compared with over 13,300 in the same period in 2017, according to the United Nations High Commissioner for Refugees (UNHCR). UNHCR has reported on the children's difficult and dangerous journeys, which include similar abuses to those experienced by adults, including their transferral to detention facilities upon interception off the Libyan coast and disembarkation in Libya. As of the end of July 2018, nearly 1,200 children had been transferred to detention in Libya.³⁹

According to **Italy's** Ministry of Labour and Social Policies, 10,787 unaccompanied children were registered as being present in Italy as of 31 December 2018. The majority were boys. More than 14 % of the unaccompanied children were of Albanian nationality, and 38 % of the unaccompanied children were in Sicily.⁴⁰ This represents a decrease of about 7,000 from the number of unaccompanied children registered in Italy at the end of 2017.⁴¹

In **Greece**, the National Center for Social Solidarity estimates that, by 31 December 2018, there were 3,741 unaccompanied children, 94 % boys and 6 % girls. Of them, 30 % came from Pakistan, 32 % from Afghanistan and 11 % from Syria.⁴²

8.2.2. Protecting children in migration: policy developments and case law

At the EU level, the reform of the Common European Asylum System is still under discussion. The European

Commission, EU agencies and Member States continued various initiatives,⁴³ implementing policy actions for the protection of children in migration established in 2017.⁴⁴

The European Commission followed up on the implementation of actions indicated in the 2017 Communication on the protection of children in migration. Two meetings were organised in 2018 with experts from national child protection and asylum/migration services and relevant civil society organisations. The EU funds available under the Asylum, Migration and Integration Fund have been used to implement various initiatives, which benefit unaccompanied children or children with families, among others.⁴⁵ Under the Rights, Equality and Citizenship (REC) Annual Work Programme for 2018, a direct grant was awarded to the Dutch guardianship authority NIDOS for a two-year period (2018-2019) to coordinate the European network on guardianship.⁴⁶

Both the Court of Justice of the EU (CJEU) and the European Court of Human Rights examined important aspects of the protection of children in migration (see timeline). The CJEU made an important ruling on family reunification of an unaccompanied child in *A. and S. v. Staatssecretaris van Veiligheid en Justitie* (C-550/16).⁴⁷ The case concerned an Eritrean girl who applied for asylum as a child in the **Netherlands**, but who attained the age of majority during the procedure. When she was granted asylum and applied for family reunification, the request was denied on the basis that she was no longer a child. The CJEU held that the girl should have been regarded as a 'minor' for the purposes of the family reunification application. This would ensure that the success of the application for family reunification depended principally upon facts about the applicant and not on the time that the authorities take to process it. For more information ► on family reunification, see [Chapter 6](#).

At the international level, 2018 was the first year the Committee on the Rights of the Child took decisions based on the individual complaints framework established in the Third Optional Protocol to the CRC.⁴⁸ Fifteen EU Member States have now ratified the protocol (**Belgium, Croatia, Cyprus, Czechia, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Portugal, Slovakia, Slovenia and Spain**).⁴⁹

Two of the three decisions that the committee took during 2018 concerned children in migration. In the case of *I.A.M. (on behalf of K.Y.M.) v. Denmark*, the committee held that the State had violated the girl's rights to protection from all forms of violence (Article 19 of the CRC) and to have her best interests (Article 3 of the CRC) be a primary consideration. The case concerned the decision to deport a girl to her country of origin, where she could face the risk of female genital mutilation.⁵⁰

In *N.B.F. v. Spain*, the committee found that the State had violated the best interests of a child (Article 3 of the CRC) and the right to be heard (Article 12 of the CRC) in a procedure to establish the age of a person claiming to be a child. The committee raised concerns about the medical method used (X-ray) and the lack of a legal representative accompanying the child during the procedure.⁵¹

The right to be heard was also an important element in national legal cases related to children in migration in EU Member States. In **Poland**, the Supreme Administrative Court annulled the judgment of the Voivodship Administrative Court and migration authorities regarding an order to return two Chechen children to **Russia**. The court found that they had issued their decisions on the basis of incomplete evidence, and without hearing the children.⁵²

The Constitutional Court of the Republic of **Slovenia** repealed a Supreme Court decision in a case in which a child was not heard during his asylum application procedure. According to the court:

“The principle of the child’s best interests requires special procedural guarantees in the international protection procedure involving an unaccompanied minor. The procedural guarantees, including a personal interview, are necessary for a complete and correct assessment of all relevant facts of the case. With the decision in question, the Supreme Court of the Republic of Slovenia violated the principle of the best interest of a child and therefore violated Article 56 of the Constitution of the Republic of Slovenia.”⁵³

8.2.3. Reception conditions

The Reception Conditions Directive requires Member States to ensure that material reception conditions provide an adequate standard of living for asylum seekers, which guarantees their subsistence and protects their physical and mental health. Many EU Member States had sufficient reception capacity during 2018, as the agency repeatedly reported in its regular migration updates published during 2018.⁵⁴ Moreover, the European Asylum and Support Office (EASO) produced new guidance on reception to support Member States in improving reception conditions.⁵⁵ The guidance follows the aim and structure of the existing reception guidance,⁵⁶ but adds specific aspects related to unaccompanied children – such as information, participation and representation, identification, assessments, response to special needs and safety risks.

Nevertheless, reception conditions for children, coming with their families or unaccompanied, remain a serious problem in certain Member States, which do not provide adequate long-term accommodation, allow

only limited access to education, or use immigration detention for children.

The situation varies between Member States, raising different areas of concern. Reception conditions in **Greece**, especially in the ‘hotspots’, continued to be very poor. Some of the children lived in tents or in overcrowded containers, taking turns to sleep. As well as access to decent accommodation, they lack water, sanitation facilities or heating. The lack of long-term accommodation for unaccompanied children continues unresolved. More than half of the 3,741 unaccompanied children in **Greece** (1,983 children) do not have appropriate long-term accommodation.⁵⁷ In July, after years of discussions, **Greek** authorities adopted a new guardianship law,⁵⁸ which aims to improve the existing system through professional guardians for unaccompanied children. Implementing acts are still to be adopted.

The Council of Europe’s Special Representative on Migration and Refugees conducted a fact-finding mission to **Spain** in March 2018. A report praised the fact that unaccompanied immigrant children and Spanish children without parental care are accommodated together. However, it criticised the reception facilities for unaccompanied children in Ceuta and Melilla.⁵⁹

In **Hungary**, the authorities continued to assign child protection guardians only to unaccompanied asylum seeking children under the age of 14,⁶⁰ who are placed in a children’s home in Fót, near Budapest. Unaccompanied children seeking asylum over 14 years of age were still placed in the Rösztke transit zone under guardianship by an ‘ad-hoc guardian’ until their asylum claims are decided upon. Such children do not need the guardians’ consent if they decide to leave the transit zone through the one-way exit to **Serbia**.⁶¹

In August 2018, the **Croatian** Government adopted the Protocol on the Treatment of Unaccompanied Children. It covers police treatment, accommodation, international protection, integration, family reunification and integration into Croatian society.⁶² However, during a parliamentary debate, the **Croatian** Ombudsperson for Children warned that, despite existing efforts for improvements, the reception and protection system for migrant children in Croatia is still inadequate.⁶³

Germany established in the ‘Masterplan Migration’ in spring 2018 the AnKER (*Ankunft, Entscheidung, Rückführung* – reception, decision-making and return) facilities.⁶⁴ Since August 2018, three German states have started creating AnKER facilities.⁶⁵ In these facilities, all relevant authorities are present on the spot to accelerate the asylum procedures of incoming asylum seekers. Civil society has raised concerns about the use of these facilities to accommodate children.⁶⁶

In **France**, 80 % of migrant children living in squats, in emergency housing or temporarily with relatives do not attend school, according to a joint statement published by the National Consultative Commission on Human Rights and a number of NGOs.⁶⁷ In the *EUROCEF v. France* decision, the European Committee of Social Rights considered that France had violated the right of unaccompanied foreign children to social, legal and economic protection on several grounds (violations of Article 17 (1) of the European Social Charter) due to shortcomings in the national shelter assessment and allocation system for unaccompanied foreign children; delays in appointing an ad hoc guardian; the detention of unaccompanied children in waiting areas and in hotels; the use of bone testing to determine age, which the committee considered inappropriate and unreliable; and a lack of clarity about how unaccompanied children could access an effective remedy.⁶⁸

Promising practice

Taking action to prevent children from going missing

The County Administrative Board of Stockholm (**Sweden**) was assigned to coordinate the development of procedures and guidelines for each of the county administrative boards in relation to children going missing. By the end of 2018, all 21 county administrative boards had developed standardised steps to take when a child disappears, as well as preventive measures, together with other relevant actors such as the Migration Agency, the Swedish Police, the local social services and civil society organisations.

For example, the county of Östergötland has produced guidelines for professionals that include a checklist of steps to take when a disappearance occurs, e.g. whom to contact at what stage, and a checklist of how to prevent disappearances, e.g. listing risk factors.

For more information, see County Administrative Board of Stockholm, Information on coordination work on missing children; County Administrative Board of Östergötland, Plan for missing children.

Several Member States have continued to offer foster care systems as possible accommodation for unaccompanied children, as provided for in Article 24 of the Reception Conditions Directive.⁶⁹ The **Netherlands** took a step forward on 1 July 2018, when it extended foster care for unaccompanied young adults up to the age of 21.⁷⁰

Immigration detention of children

Under EU law, children are to be detained only as a last resort and only if less coercive measures cannot be

applied effectively. Such detention must be for the shortest time possible.⁷¹ UN Member States endorsed the 'Global compact for safe, orderly and regular migration' in Marrakech in December. It states that immigration detention should be a measure of last resort and suggests that State Parties should work to end the practice of child detention in the context of international migration.⁷²

Providing alternatives to detention

"Protect and respect the rights and best interests of the child at all times, regardless of migration status, by ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements, that ensure access to education and health care, and respect the right to family life and family unity, and by working to end the practice of child detention in the context of international migration".

See Global Compact for Safe, Orderly and Regular Migration, UN General Assembly resolution 73/195, paragraph 29(h).

The United Nations Committee against Torture (CAT) has provided similar guidance. In its concluding observations on **Czechia** in June 2018, the committee asked the State party to end the practice of detaining persons in need of international protection, particularly children, and ensure the provision of alternative accommodation for families with children.⁷³ Similarly, in its concluding observations on the **Netherlands** (December 2018), CAT raised concern about the reports of the increased number of families with children awaiting return and of unaccompanied asylum-seeking children placed in detention; it asked the State party to take all measures to avoid detaining children and develop alternative measures.⁷⁴ However, according to the official statistics of the Dutch authorities, the number of families with children in detention appears to fluctuate or even decrease in certain years.⁷⁵ The CAT also positively noted the new detention regime for unaccompanied children. Detention of unaccompanied children may only be considered if less coercive measures cannot be applied effectively and there is a real risk of absconding or if the foreign national is interfering with his or her return.

At the European level, the European Parliament emphasised in its resolution on children in migration, in May 2018, that children must not be detained. It called on Member States to develop other forms of accommodation. It also called on the Commission to enact infringement procedures against Member States in case of protracted and systematic immigration detention of children and their families, to ensure compliance with children's fundamental rights.⁷⁶ The Reception Conditions Directive establishes that a child shall be detained only as a measure of last

resort and for the shortest possible period of time and if other alternatives cannot be applied effectively (Article 11 (2)).⁷⁷

In *Bistieva and others v. Poland*, a mother had been detained with her three children for almost six months. The European Court of Human Rights found Poland in violation of Article 8 of the ECHR (right to respect for private and family life).⁷⁸ In its most recent report on the situation in transit zones in **Hungary**, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended putting an end to the accommodation of unaccompanied children – including those aged 14 to 18 – and to transfer all unaccompanied children to an appropriate (semi-) open establishment. If exceptionally children are held with their parents in a transit zone, their stay should be for the shortest possible period of time, and every effort should also be made to avoid splitting up the family.⁷⁹

Some Member States, however, created new detention centres or introduced legal changes that facilitate detention. In July 2018, **Belgium** inaugurated a new closed detention centre for families with children pending return.⁸⁰ The NGO Children on the Run has strongly criticised the facility.⁸¹ The Flemish and French speaking offices of the Children's Rights Commissioner visited the facilities and presented an opinion in September 2018. He expressed concern about the extensions of the maximum period of stay, and noted stress within the families and fear among the children.⁸² In **France**, the Immigration Law of September 2018 extended the maximum length of administrative detention from 45 days to 90 days, including for families with children.⁸³

In the **Netherlands**, a new Bill for The Return and Aliens Detention was adopted in June 2018 by the House of Representatives and is pending approval in the Senate. It allows detention of families and unaccompanied children as a last resort and for as short a period as possible. For families with children the period of detention will only commence two weeks before their planned removal from the **Netherlands**, but can be prolonged if the delay is due to actions by the family members. Detention was already possible before, but the new law formalises the special location for children and their families, and certain child-specific guarantees, such as the duty of care by the director of the facility.⁸⁴

In December, **Italy** adopted Decree Law No. 132/2018. It allows the extension of the maximum period of detention pending return, from 90 days to 180 days.⁸⁵ The Ombudsperson for Children⁸⁶ and UNHCR⁸⁷ have requested that the new rules expressly exclude detention of children, unaccompanied children who have recently become adults, and families with at least one child who is a minor.

Education, training and employment

The Reception Conditions Directive regulates access to education, training and employment (Articles 14 to 16). Accessing them is critical for successful integration. However, many migrant children and young people still face difficulties accessing them. In **Greece**, a group of parents and guardians applied to the Council of State for the annulment of a decision of the Minister of Education, Research and Religious Affairs that allowed the registration of migrant children in public primary and secondary schools. The Council of State rejected the application of parents and guardians against the integration of children from refugee camps into public educational structures. It asserted that their attendance in no way affects the interests of the other pupils and their parents.⁸⁸

The **Austrian** government introduced limitations on asylum seekers accessing apprenticeships. Initially, a decree of the Federal Ministry for Labour in 2012 allowed asylum seekers to take up apprenticeships in understaffed professions up until the age of 18. In 2015, it was extended to the age of 25.⁸⁹ On 12 September 2018, the government withdrew the decree that enabled asylum seekers to become apprentices.⁹⁰

Ireland opted in to the Reception Conditions Directive in 2018.⁹¹ This decision was partly a response to the judgment of the Irish Supreme Court in *NHV v. Minister for Justice and Equality & Others* in 2017. In this case, the court put an end to the absolute prohibition on asylum seekers' access to the Irish labour market, which would include children from the age of 16.⁹² On 9 February 2018, the Supreme Court formally deemed unconstitutional the absolute ban that had been in place on asylum seekers entering employment.⁹³

The Ombudsperson in **Spain**, in his annual report, criticised that unaccompanied migrant children do not have an automatic right to employment. According to the Ombudsperson, treatment is different for unaccompanied migrant children and other foreign children, who have automatic access to employment from the age of 16 years. According to the Ministry of Employment and Migration, unaccompanied children need to request permission to take up employment in each individual case.⁹⁴

8.3. Children and juvenile justice

Most developments in the area of juvenile justice related to incorporating into national law Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (the Procedural Safeguards Directive).⁹⁵ National efforts focused on legislative

changes and on training of professionals and research, often funded by the European Commission.

On 25 and 26 June 2018, the European Commission organised a conference on child-friendly justice and integrated child protection systems – lessons learned from EU projects. The main goal of the meeting was to showcase good practices to inspire others and to take stock of what has been done since 2011/2012 with EU funds under the Rights, Equality and Citizenship Programme (REC); and to explore how EU funds can best support implementation and enforcement of the rights of the child, with a view also to informing future policy and funding priorities.

8.3.1. Procedural Safeguards Directive: a new instrument entering into force in 2019

The Procedural Safeguards Directive was adopted in 2016, and 2018 was a year for preparatory action for incorporating it into national law. Member States must do so by 11 June 2019.⁹⁶ The directive is legally binding on EU Member States, with the exceptions of **Denmark, Ireland** and the **United Kingdom**.

The directive aims to ensure the effective protection of the rights of children in the EU who are in conflict with the law. It lays down a series of procedural safeguards to ensure that children “are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration”.⁹⁷

FRA ACTIVITY

Mapping minimum ages across the EU

Throughout 2018, FRA published a series of online maps and tables showing the varying patterns concerning age requirements for children to acquire rights across the EU. They illustrate inconsistencies, protection gaps and restrictions deriving from different age thresholds. FRA published a report on minimum age requirements for children’s participation in judicial proceedings, and one on fingerprinting and age assessments in an asylum context.

The findings relating to juvenile justice show that, in the majority of EU Member States, children in criminal proceedings are entitled to special support and procedural safeguards, such as audio-visual recording or interviewing by specialist personnel, until the age of 18 years, irrespective of whether they are victims, witnesses or suspects/offenders.

See FRA (2018), Mapping minimum age requirements: Children’s rights and justice and Children’s rights and justice: Minimum age requirements in the EU, Luxembourg, Publications Office.

Existing national procedural safeguards do not always cover all areas addressed by the directive. Amendments to national law are necessary in Member States such as **Cyprus, Estonia, Germany** and the **Netherlands**. Other Member States might need legislative changes if they have set a lower age than 18 years in their procedural safeguards. For example, in **Poland** the age limit for procedural safeguards is 15 years, and in Scotland (**United Kingdom**) it is 16 years.⁹⁸

FRA’s past research on child-friendly justice⁹⁹ has identified a number of challenges in areas that the directive covers. For example, Article 18 enshrines the child’s right to legal aid. Even though all EU Member States provide for legal aid for child suspects/offenders without an explicit minimum age requirement, in the majority of Member States (17) legal aid is dependent on income requirements. **Belgium, Bulgaria, Denmark, Estonia, Hungary, Latvia, Lithuania, the Netherlands, Romania, Sweden** and the **United Kingdom** provide legal aid for children without any income requirements.¹⁰⁰

Article 14, on the right to protection of privacy, postulates that, “to that end, Member States shall either provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public” (Article 14 (2)). The majority of EU Member States (16) do not set specific age limits regarding children’s right to privacy in court hearings, so the application of the so-called closed-door rule (i.e. holding hearings without the public present) lies within courts’ discretion, FRA’s research on minimum age shows.¹⁰¹ Children feel very unsafe and uncomfortable when too many persons are present during hearings, and even more so when those persons’ roles are unclear, FRA’s studies on child-friendly justice found.¹⁰² In one Member State, the closed-door rule applies to hearings only if children are younger than 16 (**Malta**).

8.3.2. National efforts in the area of juvenile justice

By the end of 2018, only five Member States – **Finland, Hungary, Latvia, Luxembourg** and **Slovakia** – had taken action to incorporate the Procedural Safeguards Directive into their national legislation. In **Hungary**, a new criminal procedural act entered into force on 1 July 2018;¹⁰³ it implements most provisions, such as the right to information, the right of the child to have the holder of parental responsibility informed, assistance by a lawyer and rules on specific treatment. In **Latvia**, the legal reform¹⁰⁴ ensured that all alternative measures need to have been evaluated before detention is used, as a measure of last resort and for security purposes only. In **Luxembourg**, in April 2018,¹⁰⁵ Directive 2016/800 was incorporated into Bill No. 7276 on the protection of young people, which

aims to reform youth protection.¹⁰⁶ In **Finland**, the Act on fair trial in criminal proceedings was amended to ensure that an accused person below 18 years cannot be sentenced to imprisonment unless he or she has been personally heard in the main proceedings.¹⁰⁷ **Latvia**, **Slovakia** and **Spain** have notified the Commission of complete transposition.

Based on an inquiry by the government in **Sweden**, the Ministry of Justice concluded that Swedish law was already in line with the Procedural Safeguards Directive.¹⁰⁸ Other Member States are in the process of drafting legislative amendments, establishing working groups or approving draft new legislation. For example, the **Finnish** Ministry of Justice has submitted a legislative proposal¹⁰⁹ with further amendments to eight laws addressing issues such as the child's right to information and the necessity for a pre-sentence report. **Bulgaria** adopted a draft legislative package to amend the Criminal Code¹¹⁰ and the Criminal Procedure Code¹¹¹ on 13 December 2018, but the president imposed a veto¹¹² so it had to return to the National Assembly for new deliberations.

The UN Committee against Torture (CAT) presented its concluding observations¹¹³ on the **Netherlands**. It expressed concern that children from the age of 16 years may be tried as adults under the ordinary criminal law for serious offences, and that children may be interviewed without a lawyer or their parents present in cases of minor offences.

On 13 March 2018, the Age of Criminal Responsibility (Scotland) Bill¹¹⁴ was introduced to the **Scottish** Parliament and completed the second stage (out of three) on 7 February 2019. If it is enacted, the new law will raise the age of criminal responsibility in Scotland from eight to 10 years old.

EU Member States also focused on the training of professionals, as Article 20 of the directive requires. They particularly provided guidance on the

effective defence of child suspects, as in **Hungary**¹¹⁵ and **Romania**.¹¹⁶ The Ministry of Justice and the International Institute for the Rights of the Child in **Bulgaria**¹¹⁷ organised training on the rights of children and child-friendly hearings, as part of the juvenile justice specialisation for professionals. In addition, ethics rules for working with children became an obligatory part of police work.¹¹⁸

The European Commission has funded several comparative studies that will be useful in the development of training and potentially for legislative developments. These include research by Terre des Hommes,¹¹⁹ Defence for Children International¹²⁰ and the International Juvenile Justice Observatory.¹²¹

Promising practice

Remaining in the community as alternative to detention

The Minister for Children and Youth Affairs in **Ireland** has introduced a Bail Support Scheme (BSS) for children suspected of committing a criminal offence.

This scheme is to help child suspects remain on bail in the community, rather than being imprisoned in child detention centres on remand awaiting the hearing of their trial. This pilot scheme was subcontracted to Extern, a social justice charity, and aims to offer an alternative to detention for young persons. It focuses on supporting young offenders to remain within their home and in education, training or employment, keeping them out of trouble with the law. Extern intervenes as needed using Multisystemic Therapy (MST). This type of therapy is in operation worldwide and is proven to help reduce reoffending rates, keep young people in education, and decrease adolescent drug and alcohol use.

For more information, see the press release on the Department of Children and Youth Affairs' webpage.



FRA opinions

Despite a downward trend over the past five years, child poverty in the EU persists. One out of four children lives at risk of poverty or social exclusion. This raises concerns about the respect of Article 24 of the EU Charter of Fundamental Rights, which provides that “[c]hildren shall have the right to such protection and care as is necessary for their well-being”. Since 2016, in contrast to the general trend, the situation for children with migrant backgrounds has worsened, increasing inequality between them and children of the general population, the latest Eurostat data show. Meanwhile, child poverty considerations are practically absent from the European Semester, in particular from country-specific recommendations. This risks not taking child poverty into account adequately when disbursing public funds, including EU funds. A positive development in 2018 was the European Commission’s proposal to include children among the potential beneficiaries of actions aiming to promote social inclusion in the context of the European Social Fund+ in the new EU funding period 2021-2027. Adding to this positive momentum are efforts to promote and substantiate the European Parliament’s long-standing proposal for a European Child Guarantee Scheme for children in vulnerable situations.

Discussions and actions to fight child poverty are also relevant to the implementation of the Sustainable Development Goals (SDGs). The SDGs are part of the global 2030 Agenda, which sets out the policy framework for global sustainable development, and are grounded on international human rights obligations. In this respect, SDG 1 calls for halving poverty by 2030, including child poverty. The vast majority of EU Member States have already submitted a first voluntary national report on the implementation of the SDGs, as part of the annual review process that takes place every year at the UN High Level Political Forum on sustainable development. However, many of these reports contain no references at all to child poverty, or very limited ones.

FRA opinion 8.1

EU and Member States’ funding priorities should reflect the need to reduce child poverty at the levels aspired to by the sustainable development goal on poverty (SDG 1), in view of meeting the best interest of the child as laid down in Article 24 of the EU Charter of Fundamental Rights. To achieve this, EU institutions and Member States should consider allocating sufficient resources for combating child poverty using all available tools, including the European Child Guarantee Scheme for children in vulnerable situation, if established. Moreover, EU institutions should continue to include child poverty considerations in all phases of the European Semester, in particular in country-specific recommendations, given their potential impact on the use of EU Funds.

EU Member States should consider, in the context of the SDG assessment, to include in their voluntary national review reports specific references to national policies and more comprehensive data about child poverty, as well as any results of impact assessments on relevant policies.

The number of migrant children arriving in Europe continued to decrease. About 150,000 children applied for asylum in 2018, compared with about 200,000 in 2017 and almost 400,000 in 2016. The Reception Conditions Directive provides a number of guarantees for asylum-seeking children, such as the assessment of special needs of children (Article 22), the appointment of a representative if unaccompanied (Article 24), the establishment of certain conditions when using immigration detention (Article 11), and access to education (Article 14), vocational training (Article 16) and employment (Article 15). The reduced number of children helped certain Member States, but not all, provide adequate reception facilities for children. Sometimes they did not provide even for basic needs, such as water and sanitation. Member States continued to detain child immigrants, despite the international discussions regarding limiting child detention to the minimum.

FRA opinion 8.2

In the context of migration, EU Member States should, in line with the Reception Conditions Directive, provide children with basic adequate housing, legal representation, access to school and further education. Member States should increase efforts to develop non-custodial alternatives to detention.

Many EU Member States are still in the process of drafting or approving new legislation or amendments to existing legislative frameworks to incorporate the Procedural Safeguards Directive. The directive guarantees procedural safeguards for children who are suspects or accused persons in criminal proceedings. Member States are due to incorporate the directive into national law by 11 June 2019. In the context of juvenile justice proceedings, children have a right to be informed and heard in a child-friendly way, with the provision of legal aid and privacy protective measures,

as several articles of the Procedural Safeguards Directive require. The effective exercise of this right remains a major concern that FRA and the European Commission's funded research have identified. Practical challenges sometimes arise due to differing age limitations among Member States, the provision of legal aid depending on income-related requirements, or the discretionary powers of judicial actors.

FRA opinion 8.3

In the process of incorporating into national law the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings, EU Member States should review age limitations or other conditions that in practice might hinder the effective access of children to certain procedural guarantees. EU Member States should also consider providing legal aid unconditionally to all children, including free-of-charge legal representation throughout the proceedings, and making specialised lawyers available.



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