

0. Introduction: Basic principles and definitions

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1. Definitions

Objective: to get a common understanding of basic terms used throughout the training modules

Migration

Migration - The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.

Migrants

As regards entry, or attempted entry, of a migrant to a foreign country, a number of broad, sometimes overlapping, groups of migrants can be identified:

- **Regular migrants:** migrants who enter the State after having obtained an authorisation, whether temporary or not, by the destination State;
- **Undocumented migrants:** migrants who enter the State in an irregular fashion, without having the proper documentation; or migrants who entered in a regular fashion whose authorisation has expired and who have remained, nonetheless, in the national territory. These training materials use the terminology recommended by the UN General

Assembly,¹ by avoiding the term “illegal migrant” and using “un- documented or irregular migrant” as synonyms. It must be stressed that the term “irregular” migrant does not express a quality of the person but a mere reference to his or her situation of entry or stay.

- **Asylum-seekers or refugees:** migrants who enter a country, whether regularly or irregularly, in order to escape persecution in their country of origin as defined by Article 1A of the *Geneva Refugee Convention*. Some of the provisions clarified by the EU Qualification Directive.

Article 2(c) **Qualifications directive:** “**refugee**” means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it (...)

- Subsidiary protection:

Article 2(e) **Qualifications directive:** “**person eligible for subsidiary protection**” means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, **if returned** to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, **would face a real risk of suffering serious harm** as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

- **Other migrants needing protection:** this category includes several kinds of migrants whose status is not well-defined but who are in need of international protection, recognised, to varying extents, by international law. These include stateless persons (whether or not they are asylum-seekers or refugees), victims of trafficking, unaccompanied children whose status has not been defined, failed asylum-seekers or undocumented migrants who cannot be expelled due to principle of *non-refoulement*.

This classification is only partially appropriate, since, as was recognised by the Global Commission on International Migration, “an individual migrant may belong to one or more [...] categories at the same time. She or he may move successfully from one category to another in the course of the migratory movement, or may seek to be reclassified from one category to another, as when an economic migrant submits a claim to asylum in the hope of gaining the privileges associated with refugee status.”²

• Trafficking vs Smuggling

The purpose of smuggling is to move a person across a border illegally, and is regarded as a violation of state sovereignty. Migrant smuggling is defined as facilitated irregular movement of persons across borders for profit.

The purpose of human trafficking is to exploit a human being for gain or other benefits and is a

¹ General Assembly (GA) resolution 3449(XXX), *Measures to ensure the human rights and dignity of all migrant workers*, 9 December 1975, para. 2.

² *Migration in an interconnected world: New directions for action*, op. cit., fn. 7, para. 15. See also, UNDP, *Human Development Report 2009*, op. cit., fn. 6, p. 26.

violation of that person's freedom and integrity. Trafficking is a process that involves a form of coercion or deception and which is for an exploitative purpose.³

Definition in Article 3 UN Palermo Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

Training tool: cards with terms – participants try to define the different categories in small groups, followed by discussion and slides with the definitions

- MIGRANT CHILD
- VICTIM OF HUMAN TRAFFICKING
- REFUGEE
- ASYLUM SEEKER
- UNDOCUMENTED MIGRANT
- (...)

Who is a child in international law

Although there are sometimes different definitions in national laws, for the purpose of these training modules we use a definition of a child as inscribed in the Convention on the Rights of the Child (CRC). It is important to be aware of it in different national contexts that might not be using the term child in line with international law.

Definition

International law

Article 1 Convention on the Rights of the Child (CRC)

The United Nations Convention on the rights of the Child defines a child as, every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

³ Full definition UN Palermo Protocol and EU Trafficking Directive.

Children as vulnerable group and particularly vulnerable children

The Parliamentary Assembly of the Council of Europe [Resolution 1509\(2006\)](#) on the human rights of irregular migrants

13.7. All children, but also other vulnerable groups such as the elderly, single mothers and more generally single girls and women, should be given particular protection and attention.

[Council of Europe Strategy for the Rights of the Child 2016-2021](#)

22. Children on the move and otherwise affected by migration are one of the most vulnerable groups in Europe today. In some countries, they face limited access to justice, education, social and health services. While unaccompanied children face a particularly precarious situation, migrant children at large even when accompanied by parents often suffer persistent violations of their human rights. The principle of the best interests of the child is too often neglected in asylum and immigration procedures. The use of detention instead of child welfare protection, failures in appointing effective guardianship, family separation and demeaning age assessment procedures are emblematic of the different ways in which migrant children fall through loopholes in child protection frameworks. They are also at high risk of trafficking and exploitation. Children left behind when their parents migrate, as well as stateless children are likewise at a heightened risk of finding their rights violated.

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, ECtHR, Application no. 13178/03, 12 October 2006

The [separated child]'s position was characterised by her very young age, the fact that she was an illegal immigrant in a foreign land and the fact that she was unaccompanied by her family from whom she had become separated so that she was effectively left to her own devices. **She was thus in an extremely vulnerable situation.**

UN, Committee on the Rights of the Child, [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), CRC/C/GC/14, 29 May 2013

e) Situation of vulnerability

75. An important element to consider is the child's situation of vulnerability, such as disability, belonging to a minority group, being a refugee or asylum seeker, victim of abuse, living in a street situation, etc. The purpose of determining the best interests of a child or children in a vulnerable situation should not only be in relation to the full enjoyment of all the rights provided for in the Convention, but also with regard to other human rights norms related to these specific situations, such as those covered in the Convention on the Rights of Persons with Disabilities, the Convention relating to the Status of Refugees, among others.

76. The best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation. Authorities and decision-makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child's uniqueness. An individualized assessment of each child's history from birth should be carried out, with regular reviews by a multidisciplinary team and recommended reasonable accommodation throughout the child's development process.

Committee on the Rights of the Child, General Comment 6: Treatment of unaccompanied and separated children outside their country of origin

Separated and unaccompanied children

Unaccompanied children (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

Separated children are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

- Children with disabilities
- Girls
- LGBTI children
- Especially children under the age of
- Children with psychological disorders or mental health problems
- Child victims of trafficking in human beings

Age assessment

Role play: best interests of the child and age assessment

???

Case scenario/role play: participants receive information on their roles and play a meeting:

1. undocumented child who is 16 years old, applies for asylum
2. asylum authority
3. child's guardian
4. child's lawyer (or to be appointed?)

A decision needs to be taken whether it is necessary to undertake age assessment and in which way (?)

Age assessment refers to procedures through which authorities seek to establish the legal age of a migrant to determine which immigration procedures and rules need to be followed.

Under international law, Article 8 of the CRC obliges states to respect the child's right to identity. This implies an obligation to assist a child in asserting his or her identity, which may involve confirming the child's age. Age assessment procedures, however, should be a last resort.

General Comment no. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, UN Committee on the Rights of the Child (CRC), UN Doc. CRC/GC/2005/6, 1 September 2005

(V)(a) Initial assessment and measures

31. The best interests of the child must also be a guiding principle for determining the priority of protection needs and the chronology of measures to be applied in respect of unaccompanied and separated children. This necessary initial assessment process, in particular, entails the following:

(i) Prioritized identification of a child as separated or unaccompanied immediately upon arrival at ports of entry or as soon as their presence in the country becomes known to the authorities (art. 8). Such identification measures include age assessment and should not only take into account the **physical appearance** of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect

to **human dignity**; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such;

EU law

Article 25 (5) of the [Asylum Procedures Directive](#)

Article 25 Guarantees for unaccompanied minors

(...) 5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.

Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.

Where medical examinations are used, Member States shall ensure that:

- (a) unaccompanied minors are informed prior to the examination of their application for international protection, and in a language that they understand or are reasonably supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for international protection, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;
- (b) unaccompanied minors and/or their representatives consent to a medical examination being carried out to determine the age of the minors concerned; and
- (c) the decision to reject an application for international protection by an unaccompanied minor who refused to undergo a medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

International law

Article 10 CRC

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

ECtHR, [Yazgül Yılmaz v Turkey](#), No 36369/06, 1 February 2011

52. Par conséquent, la Cour observe que les autorités, qui avaient privé Mlle Yılmaz de sa liberté, n'ont pris aucune mesure positive pour la protéger au cours de sa garde à vue. Le caractère rudimentaire des certificats médicaux a privé les examens médicaux auxquels la requérante avait été soumise de tout effet utile. De même, alors que les autorités auraient pu, et même dû savoir qu'un examen gynécologique auquel une mineure est soumise sans pouvoir bénéficier des garanties adéquates, telles qu'un consentement recueilli en bonne et due forme ou un accompagnement adéquat, est de nature à causer un traumatisme supplémentaire à celui causé par les conditions de la privation de liberté, elles n'ont pris aucune précaution.

53. Partant, la Cour considère que le manque de garanties fondamentales lors de la garde à vue de la requérante, dans les conditions telles qu'elles ont été décrites ci-dessus, a placé celle-ci dans un état de profond désarroi. Elle estime, par ailleurs, que les autorités qui ont décidé de soumettre cette mineure à un examen gynécologique ne pouvaient ignorer les conséquences psychologiques de celui-ci. Eu égard au fait que cet examen lui a nécessairement causé un sentiment d'extrême angoisse, compte tenu de son âge et de sa situation de mineure non accompagnée, il atteint le seuil requis pour être qualifié de traitement dégradant.

54. Partant, il y a eu violation de l'article 3 de la Convention de ce chef.

Benefit of the doubt

Benefit of the doubt is a significant safeguard in the field of age assessment; particularly so, because **no current method of age assessment is able to determine a specific age with certainty.**

EASO Age assessment practice in Europe, Handbook, p. 24

The principle of the benefit of the doubt must be applied:

1. First, during the process and whilst doubts remain the individual should be afforded the benefit of the doubt and treated as a child.
2. Secondly, the principles of the benefit of the doubt apply in cases where it is the duty of the applicant to substantiate the application for international protection but the applicant's statements are not supported by documentary or other evidence, so long as the conditions of the QD Article 4.5 are met:
 - a) the applicant has made a genuine effort to substantiate his application;
 - b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;
 - c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
 - d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
 - e) the general credibility of the applicant has been established.

As, identified in the APD and the UN Committee general Comment 6, if following age assessment uncertainty remains, the individual should be given the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.

***Good practice example:* In Spain, age assessment can only be used when the person is undocumented. Any official document provided by the Diplomatic representations of the country of origin provided by the person should prevail over the age assessment medical tests.**

Effective remedy

...

Guardianship or support during procedure (before decision)

- See training module I.: Right to be heard

2. The main overarching principles

Convention on the Rights of the Child, [General Comment No. 5](#) on general measures of implementation of the Convention on the Rights of the Child (CRC/GC/2003/527 November 2003)

12. The development of a children's rights perspective throughout Government, parliament and the judiciary is required for effective implementation of the whole Convention and, in particular, in the light of the following articles in the Convention identified by the Committee as general principles:

Article 2: the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. This non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes. It should be emphasized that the application of the non-discrimination principle of equal access to rights does not mean identical treatment. A general comment by the Human Rights Committee has underlined the importance of taking special measures in order to diminish or eliminate conditions that cause discrimination.

Article 3 (1): the best interests of the child as a primary consideration in all actions concerning children. The article refers to actions undertaken by "public or private social welfare institutions, courts of law, administrative authorities or legislative bodies". The principle requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions - by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children.

Article 6: the child's inherent right to life and States parties' obligation to ensure to the maximum extent possible the survival and development of the child. The Committee expects States to interpret "development" in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development for all children.

Article 12: the child's right to express his or her views freely in "all matters affecting the child", those views being given due weight. This principle, which highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, applies equally to all measures adopted by States to implement the Convention.

These four principles together with the notion of dignity, are leading principles essential to a comprehensive policy on juvenile justice.

Convention on the Rights of the Child, General Comment No. 10 on children's rights in juvenile justice

1. The best interest of the child

Article 3 CRC

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 24 (2) of the EU Charter on Fundamental Rights

"In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration."

UN, Committee on the Rights of the Child, [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), CRC/C/GC/14, 29 May 2013

6. The Committee of the Child underlines that the child's best interests is **a threefold concept**:
(a) **A substantive right**: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

(b) **A fundamental, interpretative legal principle**: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) **A rule of procedure**: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

(...)

32. The concept of the child's best interests is complex and its content must be determined on a **case-by-case basis**. It is through the interpretation and implementation of article 3, paragraph 1, in line with the other provisions of the Convention, that the legislator, judge, administrative, social or educational authority will be able to clarify the concept and make concrete use thereof. Accordingly, the concept of the child's best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child. For collective decisions – such as by the legislator –, the best interests of children in general must be assessed and determined in light of the circumstances of the particular group and/or children in general. In both cases, assessment and determination should be carried out with full respect for the rights contained in the Convention and its Optional Protocols.

(...)

Elements to be taken into account when assessing the child's best interests

52. Based on these preliminary considerations, the Committee considers that the elements to be taken into account when assessing and determining the child's best interests, as relevant to the situation in question, are as follows:

- (a) The child's views (...)
- (b) The child's identity (...)
- (c) Preservation of the family environment and maintaining relations (...)
- (d) Care, protection and safety of the child (...)
- (e) Situation of vulnerability (...)
- (f) The child's right to health (...)
- (g) The child's right to education (...)

(...)

Procedural safeguards to guarantee the implementation of the child's best interests

85. To ensure the correct implementation of the child's right to have his or her best interests taken as a primary consideration, some child-friendly procedural safeguards must be put in place and followed. As such, the concept of the child's best interests is a rule of procedure (...).

86. While public authorities and organizations making decisions that concern children must act in conformity with the obligation to assess and determine the child's best interests, people who make decisions concerning children on a daily basis (e.g. parents, guardians, teachers, etc.) are not expected to follow strictly this two-step procedure, even though decisions made in everyday life must also respect and reflect the child's best interests.

87. States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child's best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children.

ECtHR, Ignaccolo-Zenide v. Romania, No. 31679/96, 25 January 2000, para. 94

94. (...) However, the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned are always an important ingredient. Whilst national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be

taken into account, and **more particularly the best interests of the child** and his or her rights under Article 8 of the Convention. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (...).

UNHCR, Executive Committee Conclusion No. 47 (XXXVIII) – 1987 – Refugee Children, paragraph (d).

all action taken on behalf of refugee children must be guided by the principle of the best interests of the child as well as by the principle of family unity.

Committee on the Rights of the Child, [General Comment No. 10](#) on Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007

10. In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.

[General Comment no. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin](#), UN Committee on the Rights of the Child (CRC), UN Doc. CRC/GC/2005/6, 1 September 2005

19. Article 3(1) states that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life.

20. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.

In assessing the best interests of the involved or affected children:

- a. their views and opinions should be given due weight;
- b. all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times;
- c. a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child.

The best interests of all children involved in the same procedure or case should be separately assessed and balanced with a view to reconciling possible conflicting interests of the children.

[Guidelines of the Committee of Ministers](#) of the Council of Europe on child friendly justice

2. The right to be heard

The right to be heard is further elaborated in the first procedural training module of this handbook.

International law: [Article 12 CRC](#)

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

EU law: [Article 24\(1\) The rights of the child – EU Charter on Fundamental Rights](#)

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

Committee on the Rights of the Child, [General Comment No. 12](#) on the right of the child to be heard

34. A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of courtrooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.

Committee on the Rights of the Child, [General Comment No. 10](#) on Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007

12. The right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice. (...)

UN, Committee on the Rights of the Child, [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), CRC/C/GC/14, 29 May 2013

43. Assessment of a child's best interests must include respect for the child's right to express his or her views freely and due weight given to said views in all matters affecting the child. This is clearly set out in the Committee's general comment No. 12 which also highlights the inextricable links between articles 3, paragraph 1, and 12. The two articles have complementary roles: the first aims to realize the child's best interests, and the second provides the methodology for hearing the views of the

child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests. Article 3, paragraph 1, cannot be correctly applied if the requirements of article 12 are not met. Similarly, article 3, paragraph 1, reinforces the functionality of article 12, by facilitating the essential role of children in all decisions affecting their lives.

44. The evolving capacities of the child (art. 5) must be taken into consideration when the child's best interests and right to be heard are at stake. The Committee has already established that the more the child knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for him or her have to transform direction and guidance into reminders and advice, and later to an exchange on an equal footing. Similarly, as the child matures, his or her views shall have increasing weight in the assessment of his or her best interests. Babies and very young children have the same rights as all children to have their best interests assessed, even if they cannot express their views or represent themselves in the same way as older children. States must ensure appropriate arrangements, including representation, when appropriate, for the assessment of their best interests; the same applies for children who are not able or willing to express a view.

45. The Committee recalls that article 12, paragraph 2, of the Convention provides for the right of the child to be heard, either directly or through a representative, in any judicial or administrative proceeding affecting him or her (...).

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17 Nov 2010

44. Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.

45. Due weight should be given to the child's views and opinion in accordance with his or her age and maturity.

46. The right to be heard is a right of the child, not a duty of the child.

47. A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child's best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.

48. Children should be provided with all necessary information on how effectively to use the right to be heard. However, it should be explained to them that their right to be heard and to have their views taken into consideration may not necessarily determine the final decision.

49. Judgments and court rulings affecting children should be duly reasoned and explained to them in language that children can understand, particularly those decisions in which the child's views and opinions have not been followed.

3. Non-discrimination principle

Law

International law

Article 2 ICCPR

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 ICCPR

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2(2) ICESCR

The contracting states shall "... undertake to respect and to ensure ... the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 1(1) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) covers '...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin ...'

Article 1 CEDAW

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 5 Convention on the Rights of Persons with Disabilities: Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

Article 2 CRC

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or
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beliefs of the child's parents, legal guardians, or family members.

Council of Europe

Article 14 European Convention on Human Rights (ECHR)

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol 12 to the European Convention on Human Rights (ECHR)

Article 1 General prohibition of discrimination

1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article E European Social Charter

Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Article 4 Framework Convention for the Protection of National Minorities

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

EU

EU Charter on Fundamental Rights

Article 20 Equality before the law

Everyone is equal before the law.

Article 21 Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Gender Goods and Services Directive, Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and

Article 2 Definitions

For the purposes of this Directive, the following definitions shall apply:

- a) **direct discrimination**: where one person is treated less favourably, on grounds of sex, than another is, has been or would be treated in a comparable situation;
- b) **indirect discrimination**: where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
- c) **harassment**: where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
- d) **sexual harassment**: where any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment

Other relevant laws:

Employment Equality Directive, Council Directive 2000/78/EC

Racial Equality Directive, Council Directive 2000/43/EC

Gender Equality Directive, Directive 2006/54/EC (recast), OJ 2006 L 204

Useful sources of information:

[FRA Handbook on European non-discrimination law](#)

...

State obligations, Direct/indirect discrimination

States must ensure both *de facto* and *de jure* equality, and eliminate both direct and indirect discrimination.

Nature of states' obligations to ensure equality and non-discrimination

- Refrain from discriminatory actions that undermine the enjoyment of rights (duty to respect);
- Prevent and protect against certain forms of discrimination by private actors (duty to protect);
- Take positive proactive steps to ensure the equal enjoyment of human rights (obligation to fulfil).

States must not only eliminate plainly discriminatory laws, policies, and practices but also ensure that seemingly neutral measures do not have a discriminatory effect in real terms. In order to correct situations of inequality and discrimination, a State may also be required to implement temporary special measures deemed necessary in order to re-establish equality.

Direct/indirect discrimination

Direct discrimination: differential treatment based on illegitimate grounds. There is a less favourable treatment and a comparator: another person in a similar situation. Direct discrimination on the grounds of race, ethnicity or religion can never be justified or lawful.

Indirect discrimination: Apparently neutral provision, criterion or practice that would put people sharing a protected characteristic in disadvantage compared to others. In practice such provision has more negative impact on one particular group. It can be found LEGITIMATE where there is a JUSTIFICATION that the difference in treatment pursues a LEGITIMATE AIM and the action taken is PROPORTIONATE to achieving the aim.

CESCR, [General Comment No. 20](#), Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)

8. In order for States parties to “guarantee” that the Covenant rights will be exercised without discrimination of any kind, discrimination must be eliminated both formally and substantively:

(a) Formal discrimination: Eliminating formal discrimination requires ensuring that a State’s constitution, laws and policy documents do not discriminate on prohibited grounds; for example, laws should not deny equal social security benefits to women on the basis of their marital status;

(b) Substantive discrimination: Merely addressing formal discrimination will not ensure substantive equality as envisaged and defined by article 2, paragraph 2. The effective enjoyment of Covenant rights is often influenced by whether a person is a member of a group characterized by the prohibited grounds of discrimination. Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.

(...)

10. Both direct and indirect forms of differential treatment can amount to discrimination under Article 2, paragraph 2, of the Covenant:

(a) Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground; e.g. where employment in educational or cultural institutions or membership of a trade union is based on the political opinions of applicants or employees. Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation (e.g. the case of a woman who is pregnant);

(b) Indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates.

CESCR, [General Comment N. 16](#) (2005) Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights,

7. The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both de facto and de jure equality. De jure (or formal) equality and de facto (or substantive) equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.

(...)

12. Direct discrimination occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex and characteristics of men or of women, which cannot be justified objectively.

13. Indirect discrimination occurs when a law, policy or programme does not appear to be discriminatory on its face, but has a discriminatory effect when implemented. This can occur, for example, when women are disadvantaged compared to men with respect to the enjoyment of a particular opportunity or benefit due to pre-existing inequalities. Applying a gender-neutral law may leave the existing inequality in place, or exacerbate it.

CEDAW, [General recommendation No. 25](#), on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special

measures

4. The scope and meaning of article 4, paragraph 1, must be determined in the context of the overall object and purpose of the Convention, which is to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms. States parties to the Convention are under a legal obligation to respect, protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of de jure as well as de facto equality with men.

(...)

7. Firstly, States parties' obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination — committed by public authorities, the judiciary, organizations, enterprises or private individuals — in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States parties' obligation is to improve the de facto position of women through concrete and effective policies and programmes. Thirdly, States parties' obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.

CERD, [General Recommendation No. 32](#), The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination

6. The Convention is based on the principles of the dignity and equality of all human beings. The principle of equality underpinned by the Convention combines formal equality before the law with equal protection of the law, with substantive or de facto equality in the enjoyment and exercise of human rights as the aim to be achieved by the faithful implementation of its principles.

EU law

EU Charter on fundamental rights

Article 21

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Employment Equality Directive ([2000/78/EC](#))

Article 2 Concept of discrimination

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) **direct discrimination** shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) **indirect discrimination** shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age,

or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

3. **Harassment** shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

4. An **instruction to discriminate** against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

Other laws:

- **Racial Equality Directive (2000/43/EC)**
- **Long-term residence Directive (2003/109/EC), Free movement Directive (2004)**
- **Anti-discrimination Directive (2008 proposal): discrimination prohibited based on religion, disability, age, sexual orientation**

The grounds of discrimination

○ *Race or ethnic origin*

Article 1.1 ICERD

racial discrimination is “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

Racial Equality Directive 2000/43/EC

CERD, *General Recommendation No. 30*

Gabriela Rodríguez Pizarro, UN Special Rapporteur on the rights of migrants, *Annual Report 2000, op. cit.*, fn. 18. The CERD has expanded on the nature of the obligations on States parties to the Convention in a number of general comments available at <http://www2.ohchr.org/english/bodies/cerd/comments.htm>

Although differences in treatment between nationals and non-nationals are permitted by Article 1.2 ICERD, discrimination in legislation, policy or practice between different groups of non-nationals based on race, colour, descent, or national or ethnic origin would constitute a breach of the treaty.

ECtHR, *D.H. and Others v. the Czech Republic* [GC] (No. 57325/00), 13 November 2007

In the case of *D.H. and Others v. the Czech Republic*, the government argued that the system of 'special' schools was established in order to assist in the education of Roma children by overcoming language difficulties and redressing the lack of pre-school education. However, the ECtHR found that it was irrelevant whether the policy in question was aimed at Roma children. In order to prove discrimination it was necessary to show that they were disproportionately and negatively affected by comparison to the majority population, not that there existed any intention to discriminate.

206. Nevertheless, whenever discretion capable of interfering with the enjoyment of a Convention right is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation (...).

207. The facts of the instant case indicate that the schooling arrangements for Roma children were not attended by safeguards (...) that would ensure that, in the exercise of its margin of appreciation in the education sphere, the State took into account their special needs as members of a disadvantaged class (...). Furthermore, as a result of the arrangements the applicants were placed in schools for children with mental disabilities where a more basic curriculum was followed than in ordinary schools and where they were isolated from pupils from the wider population. As a result, they received an education which compounded their difficulties and compromised their subsequent personal development instead of tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population. Indeed, the Government have implicitly admitted that job opportunities are more limited for pupils from special schools.

208. In these circumstances and while recognising the efforts made by the Czech authorities to ensure that Roma children receive schooling, the Court is not satisfied that the difference in treatment between Roma children and non-Roma children was objectively and reasonably justified and that there existed a reasonable relationship of proportionality between the means used and the aim pursued. In that connection, it notes with interest that the new legislation has abolished special schools and provides for children with special educational needs, including socially disadvantaged children, to be educated in ordinary schools.

209. Lastly, since it has been established that the relevant legislation as applied in practice at the material time had a disproportionately prejudicial effect on the Roma community, the Court considers that the applicants as members of that community necessarily suffered the same discriminatory treatment. Accordingly, it does not need to examine their individual cases.

210. Consequently, there has been a violation in the instant case of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1, as regards each of the applicants.

Oršuš and others v. Croatia

157. The Court considers that temporary placement of children in a separate class on the ground that they lack an adequate command of the language is not, as such, automatically contrary to Article 14 of the Convention. It might be said that in certain circumstances such placement would pursue the legitimate aim of adapting the education system to the specific needs of the children. However, when such a measure disproportionately or even, as in the present case, exclusively, affects members of a specific ethnic group, then appropriate safeguards have to be put in place (...). Thus, the Court must now examine whether there existed such safeguards at each stage of the implementation of the measures complained of and whether they were effective.

According to the report, measures have been taken to ensure equal access to education for Roma children and encourage their attendance at school; the Committee wishes to receive more concrete examples of these measures, and information on their results. It notes in this respect that according to the observations from the Bulgarian Helsinki Committee for many Roma children school, even primary school is completely inaccessible and few attend school. Further it notes that separate schools for Roma children exist, although there are initiatives aimed at

desegregating them. The Committee considers that while educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact some groups lead an itinerant or semi-itinerant lifestyle **there should be no separate schools for Roma children.**

ECSR, European Social charter (revised) – [Conclusions 2003 \(Bulgaria\)](#), Art 17, para 2, p. 53

Article 4 [Framework Convention for the Protection of National Minorities, 1995](#)

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

(...) from the point of view of persons belonging to national minorities, the Venice Commission observes that differential treatment, including through support by kin-states, may constitute discrimination if it is not objectively and reasonably justified and is proportionate to the aim pursued. (p. 19)

Council of Europe, Advisory Committee on the FCNM, [Commentary on Education under the Framework Convention for the Protection of National Minorities](#) (2006), ACFC/25DOC(2006)002

○ ***Nationality and immigration status***

Council of Europe

Article 1 ECHR

Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

ECtHR, [Ponomaryovi v. Bulgaria](#), No. 5335/05, 21 June 2011, para. 60.

60. On that point, the Court observes at the outset that the applicants were not in the position of individuals arriving in the country unlawfully and then laying claim to the use of its public services, including free schooling (...). Even when the applicants found themselves, somewhat inadvertently, in the situation of aliens lacking permanent residence permits (...), the authorities had no substantive objection to their remaining in Bulgaria and apparently never had any serious intention of deporting them (...). Indeed, at the material time the applicants had taken steps to regularise their situation (...). Thus, any considerations relating to the need to stem or reverse the flow of illegal immigration clearly did not apply to the applicants' case (...).

61. Nor can it be said that the applicants tried to abuse the Bulgarian educational system (...). It was not their choice to settle in Bulgaria and pursue their education there; they came to live in the country at a very young age because their mother had married a Bulgarian national (...). The applicants could not realistically choose to go to another country and carry on their secondary studies there (...). Moreover, there is no indication that the applicants, who were fully integrated in Bulgarian society and spoke fluent Bulgarian (...), had any special educational needs which would have required additional financing for their schools.

62. However, the authorities did not take any of these matters into account. Indeed, since section 4(3) of the 1991 National Education Act and the fee-setting decision of the Minister of Education issued on 20 July 2004 pursuant to that section (...) made **no provision for requesting exemption from the payment of school fees**, it does not seem that the authorities could have done so.

63. The Court, for its part, finds that in the specific circumstances of the present case the requirement for the **applicants to pay fees for their secondary education on account of their nationality and immigration status was not justified**. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1.

EU law

Council [Directive 2003/109/EC](#) of 25 November 2003 concerning the status of third-country nationals who are long-term residents

Whereas: (...) (5) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

Article 11 Equal treatment

1. Long-term residents shall enjoy equal treatment with nationals as regards:
 - (a) access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration;
 - (b) education and vocational training, including study grants in accordance with national law;
 - (c) recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures;
 - (d) social security, social assistance and social protection as defined by national law;
 - (e) tax benefits;
 - (f) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;
 - (g) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
 - (h) free access to the entire territory of the Member State concerned, within the limits provided for by the national legislation for reasons of security.
 2. With respect to the provisions of paragraph 1, points (b), (d), (e), (f) and (g), the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the long-term resident, or that of family members for whom he/she claims benefits, lies within the territory of the Member State concerned.
 3. Member States may restrict equal treatment with nationals in the following cases:
 - (a) Member States may retain restrictions to access to employment or self-employed activities in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens;
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(b) Member States may require proof of appropriate language proficiency for access to education and training. Access to university may be subject to the fulfilment of specific educational prerequisites.

4. Member States may limit equal treatment in respect of social assistance and social protection to core benefits.

5. Member States may decide to grant access to additional benefits in the areas referred to in paragraph 1.

Member States may also decide to grant equal treatment with regard to areas not covered in paragraph 1.

Council [Directive 2003/86/EC](#) of 22 September 2003 on the right to family reunification

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third country nationals. In this context, it has in particular stated that the European Union should ensure **fair treatment of third country nationals** residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union. The European Council accordingly asked the Council rapidly to adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere have been reaffirmed by the Laeken European Council on 14 and 15 December 2001.

CJEU, C-200/02, Kunqian Catherine Zhu and Man Lavette Chen v. Secretary of State for the Home Department, 19 October 2004

47. (...) in circumstances like those of the main proceedings, Article 18 EC and Directive 90/364 confer on a young minor who is a national of a Member State, is covered by appropriate sickness insurance and is in the care of a parent who is a third-country national having sufficient resources for that minor not to become a burden on the public finances of the host Member State, a right to reside for an indefinite period in that State. In such circumstances, those same provisions allow a parent who is that minor's primary carer to reside with the child in the host Member State.

o *Age*

Based on the Convention on the Rights of the Child, the rights of children shall be secured without discrimination on any grounds such as sex, race, colour or ethnic background, age, language, religion, political or other opinion, national or social origin, socio-economic background, status of their parent(s), association with a national minority, property, birth, sexual orientation, gender identity or other status. **Positive measures may be needed to protect children or certain groups of children against vulnerabilities due to their age.**

[Guidelines of the Committee of Ministers of the Council of Europe](#) on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

D. Protection from discrimination

1. The rights of children shall be secured without discrimination on any grounds such as sex, race, colour or ethnic background, age, language, religion, political or other opinion, national or social origin, socio-economic background, status of their parent(s), association with a national minority, property, birth, sexual orientation, gender identity or other status.

2. Specific protection and assistance may need to be granted to more vulnerable children, such as

migrant children, refugee and asylum seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions.

Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul – [Protecting children’s rights in the justice system](#), 1 April 2015

24. The principle of non-discrimination is especially relevant when justice systems are dealing with **particularly vulnerable groups of children**, such as street children, children belonging to minorities, migrant children or asylum seekers, children with disabilities, or child soldiers, who may require particular attention, protection and skills from the professionals interacting with them, especially **lawyers, prosecutors and judges**.

UN, Committee on the Rights of the Child, [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), CRC/C/GC/14, 29 May 2013

41. The right to non-discrimination is not a passive obligation, prohibiting all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality.

[General Comment no. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin](#), UN Committee on the Rights of the Child (CRC), UN Doc. CRC/GC/2005/6, 1 September 2005

18. The principle of non-discrimination, in all its facets, applies in respect to all dealings with separated and unaccompanied children. In particular, it prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant. This principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender. Measures should also be taken to address possible misperceptions and stigmatization of unaccompanied or separated children within the society. Policing or other measures concerning unaccompanied or separated children relating to public order are only permissible where such measures are based on the law; entail individual rather than collective assessment; comply with the principle of proportionality; and represent the least intrusive option. In order not to violate the prohibition on non-discrimination, such measures can, therefore, never be applied on a group or collective basis.

○ *Gender*

CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The Committee has expanded on the nature of the obligations on States parties to the Convention in a [number of general recommendations](#).

See also, Article 3 ICCPR; Article 3, *International Covenant on Economic, Social and Cultural Rights*

(ICESCR); Articles 1 and 2 CEDAW; CESCR, *General Comment No. 16, op. cit.*, fn. 22, paras. 1 and 10; CESCR, *General Comment No. 20, op. cit.*, fn. 22, paras. 2, 3, 4 and 20.

- *Sexual orientation and gender identity*

...

- *Religion and belief*

...

- *Disability*

On 23 December 2010, the [EU ratified the UN Convention on the Rights of People with Disabilities](#) being the first international organisation to accede to an international treaty on human rights. The EU became the 97th party to the Convention.

CJEU, C-303/06, *S. Coleman v. Attridge Law and Steve Law* [GC], 17 July 2008.

1. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, and, in particular, Articles 1 and 2(1) and (2)(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a).

2. Directive 2000/78, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as meaning that the prohibition of harassment laid down by those provisions is not limited only to people who are themselves disabled. Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled **is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment** laid down by Article 2(3).

- *Birth / Right to respect for family life*

See: ECHR, *Camp and Bourimi v. the Netherlands*, 3 October 2000, *Pla and Puncernau v. Andorra*, 13 July 2004, *Brauer v. Germany*, 28 May 2009

- *Peaceful enjoyment of ones possessions*

See: ECHR, *Mazurek v. France*, 1 February 2000

Training structure:

Time allocated: 1 hour

Time	Topic	Tool
10 min	Introduction and expectations	
10 min	Definitions: Migration related	Cards with terms: participants try to define the terms in pairs/small groups Followed by a PPT with definitions
20 min	Role play: best interests of the child and age assessment	Case scenario/role play: participants receive information on their roles and play a meeting: <ol style="list-style-type: none"> 5. undocumented child who is 16 years old, applies for asylum 6. asylum authority 7. child's guardian 8. child's lawyer <p>A decision needs to be taken whether it is necessary to undertake age assessment and in which way (?)</p>
10 min		Discussion
10 min		PPT with information on <ul style="list-style-type: none"> - age assessment - best interests of the child and other principles: non-discrimination and the right to be heard