ISTITUTO DI DIRITTO, POLITICA E SVILUPPO

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Summer school
"Economic, social and cultural rights of migrant children in the European Union"

Jean Monnet Module MARS

TRAINING MATERIALS

MARS
Migration, Asylum and Rights of Minors

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- European Social Charter (Revised 1996)

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- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on a New Pact on Migration and Asylum, COM(2020) 609 final, 23.9.2020 (and annexes)

- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS EU strategy on the rights of the child, Brussels, COM(2021) 142 final, 24.3.2021

- COUNCIL RECOMMENDATION (EU) 2021/1004 of 14 June 2021 establishing a European Child Guarantee

- Council of the European Union, 9 June 2022, Conclusions on the EU Strategy on the rights of the child

Section III – Case Law

- ECHR, Guide on the case-law of the European Convention on Human Rights, *Immigration*, 31 December 2021

- ECHR, Factsheet – Unaccompanied migrant minors in detention, December 2021

- ECHR, Factsheet – Children's rights, May 2022

- ECHR, Factsheet – Accompanied migrant minors in detention, June 2022

Section IV – ICJ Training materials (Fair Project)

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Section VI – Data and reports

- FRA, Migration: Key fundamental rights concerns - Bulletin 1/2022, 4.3.2022

- UNHCR, UNICEF and IOM, Refugee and Migrant Children in Europe. Overview of Trends in 2020

See also

FRA, Council of Europe and European Court of Human Rights, Handbook on European law relating to asylum, borders and immigration - Edition 2020

FRA, Council of Europe and European Court of Human Rights, Handbook on European law relating to the rights of the child – Edition 2022

FRA, Unaccompanied children outside the child protection system – Case study: Pakistani children in Greece, 9 December 2021

UNICEF, Community-based Mental Health and Psychosocial Support in Humanitarian Settings: Three-tiered support for children and families, 2018

Last Update: 22 June 2022

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, 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,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

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 beliefs of the child's parents, legal guardians, or family members.

Article 3

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 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

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.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their

own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

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.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any

amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

Convention relating to the Status of Refugees

Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950

Entry into force: 22 April 1954, in accordance with article 43

Preamble

The High Contracting Parties ,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows :

Chapter I

GENERAL PROVISIONS

Article 1. - Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2. - General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3. - Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4. - Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5. - Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6. - The term "in the same circumstances"

For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7. - Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to

paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8. - Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9. - Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10. - Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11. - Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

Chapter II

JURIDICAL STATUS

Article 12. - Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13. - Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14. - Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15. - Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16. - Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi .

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Chapter III

GAINFUL EMPLOYMENT

Article 17. - Wage-earning employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who

have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18. - Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19. - Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Chapter IV

WELFARE

Article 20. - Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21. - Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22. - Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23. - Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24. - Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

Chapter V

ADMINISTRATIVE MEASURES

Article 25. - Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26. - Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

Article 27. - Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28. - Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29. - Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30. - Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31. - Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32. - Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33. - Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return (" refouler ") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 34. - Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Chapter VI

EXECUTORY AND TRANSITORY PROVISIONS

Article 35. - Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

(a) The condition of refugees,

(b) The implementation of this Convention, and

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36. - Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37. - Relation to previous conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

Chapter VII

FINAL CLAUSES

Article 38. - Settlement of disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39. - Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40. - Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41. - Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42. - Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43. - Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44. - Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45. - Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46. - Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

(a) Of declarations and notifications in accordance with section B of article 1;

(b) Of signatures, ratifications and accessions in accordance with article 39;

(c) Of declarations and notifications in accordance with article 40;

(d) Of reservations and withdrawals in accordance with article 42;

(e) Of the date on which this Convention will come into force in accordance with article 43;

(f) Of denunciations and notifications in accordance with article 44;

(g) Of requests for revision in accordance with article 45.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

Done at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

European Convention on Human Rights

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

European Convention on Human Rights

as amended by Protocols Nos. 11 and 14

supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16

The text of the Convention is presented as amended by the provisions of Protocol No. 14 (CETS No. 194) as from its entry into force on 1 June 2010. The text of the Convention had previously been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971, and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5 paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS No. 146) lost its purpose.

The current state of signatures and ratifications of the Convention and its Protocols as well as the complete list of declarations and reservations are available at www.conventions.coe.int.

Only the English and French versions of the Convention are authentic.

European Court of Human Rights
Council of Europe
F-67075 Strasbourg cedex
www.echr.coe.int

Contents

Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

ARTICLE 1

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.

SECTION I
RIGHTS AND FREEDOMS

ARTICLE 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.

ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 14

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.

ARTICLE 15

Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16

Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18

Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II
EUROPEAN COURT OF HUMAN RIGHTS

ARTICLE 19

Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

ARTICLE 20

Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

ARTICLE 21

Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2. The judges shall sit on the Court in their individual capacity.

3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

ARTICLE 22

Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

ARTICLE 23

Terms of office and dismissal

1. The judges shall be elected for a period of nine years. They may not be re-elected.

2. The terms of office of judges shall expire when they reach the age of 70.

3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

ARTICLE 24

Registry and rapporteurs

1. The Court shall have a Registry, the functions and organisation of which shall be laid down in the rules of the Court.

2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.

ARTICLE 25

Plenary Court

The plenary Court shall

(a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

(b) set up Chambers, constituted for a fixed period of time;

(c) elect the Presidents of the Chambers of the Court; they may be re-elected;

(d) adopt the rules of the Court;

(e) elect the Registrar and one or more Deputy Registrars;

(f) make any request under Article 26, paragraph 2.

ARTICLE 26

Single-judge formation, Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.

4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is

unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

ARTICLE 27

Competence of single judges

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.

2. The decision shall be final.

3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

ARTICLE 28

Competence of Committees

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

(a) declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

(b) declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

2. Decisions and judgments under paragraph 1 shall be final.

3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.(b).

ARTICLE 29

Decisions by Chambers on admissibility and merits

1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.

2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

ARTICLE 30

Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any

time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

ARTICLE 31

Powers of the Grand Chamber

The Grand Chamber shall

(a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;

(b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and

(c) consider requests for advisory opinions submitted under Article 47.

ARTICLE 32

Jurisdiction of the Court

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.

2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

ARTICLE 33

Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.

ARTICLE 34

Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

ARTICLE 35

Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2. The Court shall not deal with any application submitted under Article 34 that

(a) is anonymous; or

(b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

ARTICLE 36

Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

ARTICLE 37

Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

ARTICLE 38

Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

ARTICLE 39

Friendly settlements

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2. Proceedings conducted under paragraph 1 shall be confidential.

3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

ARTICLE 40

Public hearings and access to documents

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

ARTICLE 41

Just satisfaction

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

ARTICLE 42

Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

ARTICLE 43

Referral to the Grand Chamber

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.

3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

ARTICLE 44

Final judgments

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final
   (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
   (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
   (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

ARTICLE 45

Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

ARTICLE 46

Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

ARTICLE 47

Advisory opinions

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.

2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the committee.

ARTICLE 48

Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

ARTICLE 49

Reasons for advisory opinions

1. Reasons shall be given for advisory opinions of the Court.

2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

ARTICLE 50

Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

ARTICLE 51

Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

SECTION III
MISCELLANEOUS PROVISIONS

ARTICLE 52

Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

ARTICLE 53

Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

ARTICLE 54

Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

ARTICLE 55

Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

ARTICLE 56

Territorial application

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.

2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

ARTICLE 57

Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

2. Any reservation made under this Article shall contain a brief statement of the law concerned.

ARTICLE 58

Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.

2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

ARTICLE 59

Signature and ratification

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.

2. The European Union may accede to this Convention.

3. The present Convention shall come into force after the deposit of ten instruments of ratification.

4. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

5. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

Protocol

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Paris, 20.III.1952

The Governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ARTICLE 2

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

ARTICLE 3

Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

ARTICLE 4

Territorial application

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

ARTICLE 5

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

Signature and ratification

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

DONE AT PARIS ON THE 20TH DAY OF MARCH 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

Protocol No. 4

to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto

Strasbourg, 16.IX.1963

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

ARTICLE 1

Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

ARTICLE 2

Freedom of movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

ARTICLE 3

Prohibition of expulsion of nationals

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

ARTICLE 4

Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

ARTICLE 5

Territorial application

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

3. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

4. The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol.

ARTICLE 6

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

Signature and ratification

1. This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2. The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 16th day of September 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory States.

Protocol No. 6

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty

Strasbourg, 28.IV.1983

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

ARTICLE 1

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

ARTICLE 2

Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

ARTICLE 3

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 4

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 5

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

ARTICLE 6

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

Signature and ratification

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 8

Entry into force

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 9

Depositary functions

The Secretary General of the Council of Europe shall notify the member States of the Council of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 5 and 8;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 28th day of April 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 7

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 22.XI.1984

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

   (a) to submit reasons against his expulsion,

   (b) to have his case reviewed, and

   (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1.(a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

ARTICLE 2

Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

ARTICLE 3

Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him.

ARTICLE 4

Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.

ARTICLE 5

Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

ARTICLE 6

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and State the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.

6. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

ARTICLE 7

Relationship to the Convention

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 8

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 9

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 10

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 6 and 9;

(d) any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 12

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.2000

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

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 2

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

ARTICLE 3

Relationship to the Convention

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 4

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 5

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 6

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 2 and 5;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Rome, this 4th day of November 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 13

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances

Vilnius, 3.V.2002

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

ARTICLE 1

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

ARTICLE 2

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 3

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 4

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

ARTICLE 5

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 7

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 8

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 4 and 7;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Vilnius, this 3rd day of May 2002, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 16

to the Convention on the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 2.X.2013

The member States of the Council of Europe and other High Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"), signatories hereto,

Having regard to the provisions of the Convention and, in particular, Article 19 establishing the European Court of Human Rights (hereinafter referred to as "the Court");

Considering that the extension of the Court's competence to give advisory opinions will further enhance the interaction between the Court and national authorities and thereby reinforce implementation of the Convention, in accordance with the principle of subsidiarity;

Having regard to Opinion No. 285 (2013) adopted by the Parliamentary Assembly of the Council of Europe on 28 June 2013,

Have agreed as follows:

ARTICLE 1

1. Highest courts and tribunals of a High Contracting Party, as specified in accordance with Article 10, may request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto.

2. The requesting court or tribunal may seek an advisory opinion only in the context of a case pending before it.

3. The requesting court or tribunal shall give reasons for its request and shall provide the relevant legal and factual background of the pending case.

ARTICLE 2

1. A panel of five judges of the Grand Chamber shall decide whether to accept the request for an advisory opinion, having regard to Article 1. The panel shall give reasons for any refusal to accept the request.

2. If the panel accepts the request, the Grand Chamber shall deliver the advisory opinion.

3. The panel and the Grand Chamber, as referred to in the preceding paragraphs, shall include ex officio the judge elected in respect of the High Contracting Party to which the requesting court or tribunal pertains. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

ARTICLE 3

The Council of Europe Commissioner for Human Rights and the High Contracting Party to which the requesting court or tribunal pertains shall have the right to submit written comments and take part in any hearing. The President of the Court may, in the interest of the proper administration of justice, invite any other High Contracting Party or person also to submit written comments or take part in any hearing.

ARTICLE 4

1. Reasons shall be given for advisory opinions.

2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3. Advisory opinions shall be communicated to the requesting court or tribunal and to the High Contracting Party to which that court or tribunal pertains.

4. Advisory opinions shall be published.

ARTICLE 5

Advisory opinions shall not be binding.

ARTICLE 6

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

1. This Protocol shall be open for signature by the High Contracting Parties to the Convention, which may express their consent to be bound by:

   (a) signature without reservation as to ratification, acceptance or approval; or

   (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 8

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2. In respect of any High Contracting Party to the Convention which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Protocol in accordance with the provisions of Article 7.

ARTICLE 9

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 10

Each High Contracting Party to the Convention shall, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the courts or tribunals that it designates for the purposes of Article 1, paragraph 1, of this Protocol. This declaration may be modified at any later date and in the same manner.

ARTICLE 11

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and the other High Contracting Parties to the Convention of:

(a) a any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Article 8;

(d) any declaration made in accordance with Article 10; and

(e) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 2nd day of October 2013, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the other High Contracting Parties to the Convention.

European Convention
on Human Rights

European Court of Human Rights
Council of Europe
F-67075 Strasbourg cedex

www.echr.coe.int

ENG

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

European Treaty Series - No. 163

European Social Charter (Revised)

Strasbourg, 3.V.1996

Preamble

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being;

Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus;

Resolved, as was decided during the Ministerial Conference held in Turin on 21 and 22 October 1991, to update and adapt the substantive contents of the Charter in order to take account in particular of the fundamental social changes which have occurred since the text was adopted;

Recognising the advantage of embodying in a Revised Charter, designed progressively to take the place of the European Social Charter, the rights guaranteed by the Charter as amended, the rights guaranteed by the Additional Protocol of 1988 and to add new rights,

Have agreed as follows:

Part I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1 Everyone shall have the opportunity to earn his living in an occupation freely entered upon.

2 All workers have the right to just conditions of work.

3 All workers have the right to safe and healthy working conditions.

4 All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.

5 All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.

6 All workers and employers have the right to bargain collectively.

7 Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.

8 Employed women, in case of maternity, have the right to a special protection.

9 Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.

10 Everyone has the right to appropriate facilities for vocational training.

11 Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

12 All workers and their dependents have the right to social security.

13 Anyone without adequate resources has the right to social and medical assistance.

14 Everyone has the right to benefit from social welfare services.

15 Disabled persons have the right to independence, social integration and participation in the life of the community.

16 The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

17 Children and young persons have the right to appropriate social, legal and economic protection.

18 The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.

19 Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

20 All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.

21 Workers have the right to be informed and to be consulted within the undertaking.

22 Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.

23 Every elderly person has the right to social protection.

24 All workers have the right to protection in cases of termination of employment.

25 All workers have the right to protection of their claims in the event of the insolvency of their employer.

26 All workers have the right to dignity at work.

27 All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.

28 Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.

29 All workers have the right to be informed and consulted in collective redundancy procedures.

30 Everyone has the right to protection against poverty and social exclusion.

31 Everyone has the right to housing.

Part II

The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.

Article 1 – The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

2 to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

3 to establish or maintain free employment services for all workers;

4 to provide or promote appropriate vocational guidance, training and rehabilitation.

Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

2 to provide for public holidays with pay;

3 to provide for a minimum of four weeks' annual holiday with pay;

4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Article 3 – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1 to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;

2 to issue safety and health regulations;

3 to provide for the enforcement of such regulations by measures of supervision;

4 to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1 to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

2 to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

3 to recognise the right of men and women workers to equal pay for work of equal value;

4 to recognise the right of all workers to a reasonable period of notice for termination of employment;

5 to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1 to promote joint consultation between workers and employers;

2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1 to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;

2 to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;

3 to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;

4 to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

5 to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

6 to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

7 to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;

8 to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;

9 to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;

10 to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1 to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;

2 to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;

3 to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

4 to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

5 to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

Article 9 – The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

Article 10 – The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

1 to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;

2 to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;

3 to provide or promote, as necessary:

a adequate and readily available training facilities for adult workers;

b special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;

4 to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;

5 to encourage the full utilisation of the facilities provided by appropriate measures such as:

a reducing or abolishing any fees or charges;

b granting financial assistance in appropriate cases;

c including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;

d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1 to remove as far as possible the causes of ill-health;

2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

3 to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1 to establish or maintain a system of social security;

2 to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;

3 to endeavour to raise progressively the system of social security to a higher level;

4 to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;

3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

4 to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 14 – The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1 to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;

2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1 to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;

2 to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

3 to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17 – The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1 a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b to protect children and young persons against negligence, violence or exploitation;

c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

1 to apply existing regulations in a spirit of liberality;

2 to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;

3 to liberalise, individually or collectively, regulations governing the employment of foreign workers;

and recognise:

4 the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1 to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2 to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

3 to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

4 to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

a remuneration and other employment and working conditions;

b membership of trade unions and enjoyment of the benefits of collective bargaining;

c accommodation;

5 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

6 to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

7 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

8 to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

9 to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10 to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;

11 to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

12 to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

a access to employment, protection against dismissal and occupational reintegration;

b vocational guidance, training, retraining and rehabilitation;

c terms of employment and working conditions, including remuneration;

d career development, including promotion.

Article 21 – The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a to the determination and the improvement of the working conditions, work organisation and working environment;

b to the protection of health and safety within the undertaking;

c to the organisation of social and socio-cultural services and facilities within the undertaking;

d to the supervision of the observance of regulations on these matters.

Article 23 – The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

– to enable elderly persons to remain full members of society for as long as possible, by means of:

  a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

  b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

– to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

  a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

  b the health care and the services necessitated by their state;

– to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Article 24 – The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

  a the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

  b the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1 to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

2 to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1 to take appropriate measures:

a to enable workers with family responsibilities to enter and remain in employment, as well as to reenter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;

b to take account of their needs in terms of conditions of employment and social security;

c to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;

2 to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;

3 to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

b they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Article 30 – The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b to review these measures with a view to their adaptation if necessary.

Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1 to promote access to housing of an adequate standard;

2 to prevent and reduce homelessness with a view to its gradual elimination;

3 to make the price of housing accessible to those without adequate resources.

Part III

Article A – Undertakings

1 Subject to the provisions of Article B below, each of the Parties undertakes:

a to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

b to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;

c to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.

2 The articles or paragraphs selected in accordance with sub-paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval is deposited.

3 Any Party may, at a later date, declare by notification addressed to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of the notification.

4 Each Party shall maintain a system of labour inspection appropriate to national conditions.

Article B – Links with the European Social Charter and the 1988 Additional Protocol

1 No Contracting Party to the European Social Charter or Party to the Additional Protocol of 5 May 1988 may ratify, accept or approve this Charter without considering itself bound by at least the provisions corresponding to the provisions of the European Social Charter and, where appropriate, of the Additional Protocol, to which it was bound.

2 Acceptance of the obligations of any provision of this Charter shall, from the date of entry into force of those obligations for the Party concerned, result in the corresponding provision of the European Social Charter and, where appropriate, of its Additional Protocol of 1988 ceasing to apply to the Party concerned in the event of that Party being bound by the first of those instruments or by both instruments.

Part IV

Article C – Supervision of the implementation of the undertakings contained in this Charter

The implementation of the legal obligations contained in this Charter shall be submitted to the same supervision as the European Social Charter.

Article D – Collective complaints

1 The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol.

2 Any State which is not bound by the Additional Protocol to the European Social Charter providing for a system of collective complaints may when depositing its instrument of ratification, acceptance or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that it accepts the supervision of its obligations under this Charter following the procedure provided for in the said Protocol.

Part V

Article E – 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 F – Derogations in time of war or public emergency

1 In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2 Any Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.

Article G – Restrictions

1 The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2 The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article H – Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article I – Implementation of the undertakings given

1 Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:

a laws or regulations;

b agreements between employers or employers' organisations and workers' organisations;

c a combination of those two methods;

d other appropriate means.

2 Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned.

Article J – Amendments

1 Any amendment to Parts I and II of this Charter with the purpose of extending the rights guaranteed in this Charter as well as any amendment to Parts III to VI, proposed by a Party or by the Governmental Committee, shall be communicated to the Secretary General of the Council of Europe and forwarded by the Secretary General to the Parties to this Charter.

2 Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Governmental Committee which shall submit the text adopted to the Committee of Ministers for approval after consultation with the Parliamentary Assembly. After its approval by the Committee of Ministers this text shall be forwarded to the Parties for acceptance.

3 Any amendment to Part I and to Part II of this Charter shall enter into force, in respect of those Parties which have accepted it, on the first day of the month following the expiration of a period of one month after the date on which three Parties have informed the Secretary General that they have accepted it.

In respect of any Party which subsequently accepts it, the amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which that Party has informed the Secretary General of its acceptance.

4 Any amendment to Parts III to VI of this Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Part VI

Article K – Signature, ratification and entry into force

1 This Charter shall be open for signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2 This Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three member States of the Council of Europe have expressed their consent to be bound by this Charter in accordance with the preceding paragraph.

3 In respect of any member State which subsequently expresses its consent to be bound by this Charter, it shall enter into force on the first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval.

Article L – Territorial application

1 This Charter shall apply to the metropolitan territory of each Party. Each signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, specify, by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.

2 Any signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.

3 The Charter shall extend its application to the territory or territories named in the aforesaid declaration as from the first day of the month following the expiration of a period of one month after the date of receipt of the notification of such declaration by the Secretary General.

4 Any Party may declare at a later date by notification addressed to the Secretary General of the Council of Europe that, in respect of one or more of the territories to which the Charter has been applied in accordance with paragraph 2 of this article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of receipt of such notification by the Secretary General.

Article M – Denunciation

1 Any Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it, or at the end of any subsequent period of two years, and in either case after giving six months' notice to the Secretary General of the Council of Europe who shall inform the other Parties accordingly.

2 Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any article or paragraph of Part II of the Charter accepted by it provided that the number of articles or paragraphs by which this Party is bound shall never be less than sixteen in the former case and sixty-three in the latter and that this number of articles or paragraphs shall continue to include the articles selected by the Party among those to which special reference is made in Article A, paragraph 1, sub-paragraph b.

3 Any Party may denounce the present Charter or any of the articles or paragraphs of Part II of the Charter under the conditions specified in paragraph 1 of this article in respect of any territory to which the said Charter is applicable, by virtue of a declaration made in accordance with paragraph 2 of Article L.

Article N – Appendix

The appendix to this Charter shall form an integral part of it.

Article O – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and the Director General of the International Labour Office of:

a any signature;

b the deposit of any instrument of ratification, acceptance or approval;

c any date of entry into force of this Charter in accordance with Article K;

d any declaration made in application of Articles A, paragraphs 2 and 3, D, paragraphs 1 and 2, F, paragraph 2, L, paragraphs 1, 2, 3 and 4;

e any amendment in accordance with Article J;

f any denunciation in accordance with Article M;

g any other act, notification or communication relating to this Charter.

In witness whereof, the undersigned, being duly authorised thereto, have signed this revised Charter.

Done at Strasbourg, this 3rd day of May 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the Director General of the International Labour Office.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2012/C 326/02)

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.

2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.

2. In the fields of medicine and biology, the following must be respected in particular:

(a) the free and informed consent of the person concerned, according to the procedures laid down by law;

(b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;

(c) the prohibition on making the human body and its parts as such a source of financial gain;

(d) the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III

EQUALITY

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.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

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.

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

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

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The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

COUNCIL DIRECTIVE 2001/55/EC

of 20 July 2001

on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point 2(a) and (b) of Article 63 thereof,

Having regard to the proposal from the Commission [1]

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Having regard to the opinion of the Committee of the Regions [4],

Whereas:

(1) The preparation of a common policy on asylum, including common European arrangements for asylum, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.

(2) Cases of mass influx of displaced persons who cannot return to their country of origin have become more substantial in Europe in recent years. In these cases it may be necessary to set up exceptional schemes to offer them immediate temporary protection.

(3) In the conclusions relating to persons displaced by the conflict in the former Yugoslavia adopted by the Ministers responsible for immigration at their meetings in London on 30 November and 1 December 1992 and Copenhagen on 1 and 2 June 1993, the Member States and the Community institutions expressed their concern at the situation of displaced persons.

(4) On 25 September 1995 the Council adopted a Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis [5], and, on 4 March 1996, adopted Decision 96/198/JHA on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis [6].

(5) The Action Plan of the Council and the Commission of 3 December 1998 [7] provides for the rapid adoption, in accordance with the Treaty of Amsterdam, of minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and of measures promoting a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons.

(6) On 27 May 1999 the Council adopted conclusions on displaced persons from Kosovo. These conclusions call on the Commission and the Member States to learn the lessons of their response to the Kosovo crisis in order to establish the measures in accordance with the Treaty.

(7) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States.

(8) It is therefore necessary to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and to take measures to promote a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons.

(9) Those standards and measures are linked and interdependent for reasons of effectiveness, coherence and solidarity and in order, in particular, to avert the risk of secondary movements. They should therefore be enacted in a single legal instrument.

(10) This temporary protection should be compatible with the Member States' international obligations as regards refugees. In particular, it must not prejudge the recognition of refugee status pursuant to the Geneva Convention of 28 July 1951 on the status of refugees, as amended by the New York Protocol of 31 January 1967, ratified by all the Member States.

[1] OJ C 311 E, 31.10.2000, p. 251.
[2] Opinion delivered on 13 March 2001 (not yet published in the Official Journal).
[3] OJ C 155, 29.5.2001, p. 21.
[4] Opinion delivered on 13 June 2001 (not yet published in the Official Journal).
[5] OJ C 262, 7.10.1995, p. 1.
[6] OJ L 63, 13.3.1996, p. 10.
[7] OJ C 19, 20.1.1999, p. 1.

(11) The mandate of the United Nations High Commissioner for Refugees regarding refugees and other persons in need of international protection should be respected, and effect should be given to Declaration No 17, annexed to the Final Act to the Treaty of Amsterdam, on Article 63 of the Treaty establishing the European Community which provides that consultations are to be established with the United Nations High Commissioner for Refugees and other relevant international organisations on matters relating to asylum policy.

(12) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons enjoying temporary protection in the event of a mass influx of displaced persons.

(13) Given the exceptional character of the provisions established by this Directive in order to deal with a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, the protection offered should be of limited duration.

(14) The existence of a mass influx of displaced persons should be established by a Council Decision, which should be binding in all Member States in relation to the displaced persons to whom the Decision applies. The conditions for the expiry of the Decision should also be established.

(15) The Member States' obligations as to the conditions of reception and residence of persons enjoying temporary protection in the event of a mass influx of displaced persons should be determined. These obligations should be fair and offer an adequate level of protection to those concerned.

(16) With respect to the treatment of persons enjoying temporary protection under this Directive, the Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

(17) Member States should, in concert with the Commission, enforce adequate measures so that the processing of personal data respects the standard of protection of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1].

(18) Rules should be laid down to govern access to the asylum procedure in the context of temporary protection in the event of a mass influx of displaced persons, in conformity with the Member States' international obligations and with the Treaty.

(19) Provision should be made for principles and measures governing the return to the country of origin and the measures to be taken by Member States in respect of persons whose temporary protection has ended.

(20) Provision should be made for a solidarity mechanism intended to contribute to the attainment of a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons in the event of a mass influx. The mechanism should consist of two components. The first is financial and the second concerns the actual reception of persons in the Member States.

(21) The implementation of temporary protection should be accompanied by administrative cooperation between the Member States in liaison with the Commission.

(22) It is necessary to determine criteria for the exclusion of certain persons from temporary protection in the event of a mass influx of displaced persons.

(23) Since the objectives of the proposed action, namely to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and measures promoting a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons, cannot be sufficiently attained by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(24) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 27 September 2000, of its wish to take part in the adoption and application of this Directive.

(25) Pursuant to Article 1 of the said Protocol, Ireland is not participating in the adoption of this Directive. Consequently and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.

(26) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is therefore not bound by it nor subject to its application,

[1] OJ L 281, 23.11.1995, p. 31.

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.

Article 2

For the purposes of this Directive:

(a) 'temporary protection' means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;

(b) 'Geneva Convention' means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

(c) 'displaced persons' means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:

  (i) persons who have fled areas of armed conflict or endemic violence;

  (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights;

(d) 'mass influx' means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme;

(e) 'refugees' means third-country nationals or stateless persons within the meaning of Article 1A of the Geneva Convention;

(f) 'unaccompanied minors' means third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States;

(g) 'residence permit' means any permit or authorisation issued by the authorities of a Member State and taking the form provided for in that State's legislation, allowing a third country national or a stateless person to reside on its territory;

(h) 'sponsor' means a third-country national enjoying temporary protection in a Member State in accordance with a decision taken under Article 5 and who wants to be joined by members of his or her family.

Article 3

1. Temporary protection shall not prejudge recognition of refugee status under the Geneva Convention.

2. Member States shall apply temporary protection with due respect for human rights and fundamental freedoms and their obligations regarding non-refoulement.

3. The establishment, implementation and termination of temporary protection shall be the subject of regular consultations with the Office of the United Nations High Commissioner for Refugees (UNHCR) and other relevant international organisations.

4. This Directive shall not apply to persons who have been accepted under temporary protection schemes prior to its entry into force.

5. This Directive shall not affect the prerogative of the Member States to adopt or retain more favourable conditions for persons covered by temporary protection.

CHAPTER II

Duration and implementation of temporary protection

Article 4

1. Without prejudice to Article 6, the duration of temporary protection shall be one year. Unless terminated under the terms of Article 6(1)(b), it may be extended automatically by six monthly periods for a maximum of one year.

2. Where reasons for temporary protection persist, the Council may decide by qualified majority, on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council, to extend that temporary protection by up to one year.

Article 5

1. The existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

2. The Commission proposal shall include at least:

(a) a description of the specific groups of persons to whom the temporary protection will apply;

(b) the date on which the temporary protection will take effect;

(c) an estimation of the scale of the movements of displaced persons.

3. The Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions of this Directive. The Decision shall include at least:

(a) a description of the specific groups of persons to whom the temporary protection applies;

(b) the date on which the temporary protection will take effect;

(c) information received from Member States on their reception capacity;

(d) information from the Commission, UNHCR and other relevant international organisations.

4. The Council Decision shall be based on:

(a) an examination of the situation and the scale of the movements of displaced persons;

(b) an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures;

(c) information received from the Member States, the Commission, UNHCR and other relevant international organisations.

5. The European Parliament shall be informed of the Council Decision.

Article 6

1. Temporary protection shall come to an end:

(a) when the maximum duration has been reached; or

(b) at any time, by Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

2. The Council Decision shall be based on the establishment of the fact that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States' obligations regarding non-refoulement. The European Parliament shall be informed of the Council Decision.

Article 7

1. Member States may extend temporary protection as provided for in this Directive to additional categories of displaced persons over and above those to whom the Council Decision provided for in Article 5 applies, where they are displaced for the same reasons and from the same country or region of origin. They shall notify the Council and the Commission immediately.

2. The provisions of Articles 24, 25 and 26 shall not apply to the use of the possibility referred to in paragraph 1, with the exception of the structural support included in the European Refugee Fund set up by Decision 2000/596/EC [1], under the conditions laid down in that Decision.

CHAPTER III

Obligations of the Member States towards persons enjoying temporary protection

Article 8

1. The Member States shall adopt the necessary measures to provide persons enjoying temporary protection with residence permits for the entire duration of the protection. Documents or other equivalent evidence shall be issued for that purpose.

2. Whatever the period of validity of the residence permits referred to in paragraph 1, the treatment granted by the Member States to persons enjoying temporary protection may not be less favourable than that set out in Articles 9 to 16.

3. The Member States shall, if necessary, provide persons to be admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas. Formalities must be reduced to a minimum because of the urgency of the situation. Visas should be free of charge or their cost reduced to a minimum.

Article 9

The Member States shall provide persons enjoying temporary protection with a document, in a language likely to be understood by them, in which the provisions relating to temporary protection and which are relevant to them are clearly set out.

Article 10

To enable the effective application of the Council Decision referred to in Article 5, Member States shall register the personal data referred to in Annex II, point (a), with respect to the persons enjoying temporary protection on their territory.

[1] OJ L 252, 6.10.2000, p. 12.

Article 11

A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State during the period covered by the Council Decision referred to in Article 5. Member States may, on the basis of a bilateral agreement, decide that this Article should not apply.

Article 12

The Member States shall authorise, for a period not exceeding that of temporary protection, persons enjoying temporary protection to engage in employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training and practical workplace experience. For reasons of labour market policies, Member States may give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefit. The general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

Article 13

1. The Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing.

2. The Member States shall make provision for persons enjoying temporary protection to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources, as well as for medical care. Without prejudice to paragraph 4, the assistance necessary for medical care shall include at least emergency care and essential treatment of illness.

3. Where persons enjoying temporary protection are engaged in employed or self-employed activities, account shall be taken, when fixing the proposed level of aid, of their ability to meet their own needs.

4. The Member States shall provide necessary medical or other assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

Article 14

1. The Member States shall grant to persons under 18 years of age enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State The Member States may stipulate that such access must be confined to the state education system.

2. The Member States may allow adults enjoying temporary protection access to the general education system.

Article 15

1. For the purpose of this Article, in cases where families already existed in the country of origin and were separated due to circumstances surrounding the mass influx, the following persons shall be considered to be part of a family:

(a) the spouse of the sponsor or his/her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens; the minor unmarried children of the sponsor or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted;

(b) other close relatives who lived together as part of the family unit at the time of the events leading to the mass influx, and who were wholly or mainly dependent on the sponsor at the time.

2. In cases where the separate family members enjoy temporary protection in different Member States, Member States shall reunite family members where they are satisfied that the family members fall under the description of paragraph 1(a), taking into account the wish of the said family members. Member States may reunite family members where they are satisfied that the family members fall under the description of paragraph 1(b), taking into account on a case by case basis the extreme hardship they would face if the reunification did not take place.

3. Where the sponsor enjoys temporary protection in one Member State and one or some family members are not yet in a Member State, the Member State where the sponsor enjoys temporary protection shall reunite family members, who are in need of protection, with the sponsor in the case of family members where it is satisfied that they fall under the description of paragraph 1(a). The Member State may reunite family members, who are in need of protection, with the sponsor in the case of family members where it is satisfied that they fall under the description of paragraph 1(b), taking into account on a case by case basis the extreme hardship which they would face if the reunification did not take place.

4. When applying this Article, the Member States shall taken into consideration the best interests of the child.

5. The Member States concerned shall decide, taking account of Articles 25 and 26, in which Member State the reunification shall take place.

6. Reunited family members shall be granted residence permits under temporary protection. Documents or other equivalent evidence shall be issued for that purpose. Transfers of family members onto the territory of another Member State for the purposes of reunification under paragraph 2, shall result in the withdrawal of the residence permits issued, and the termination of the obligations towards the persons concerned relating to temporary protection, in the Member State of departure.

7. The practical implementation of this Article may involve cooperation with the international organisations concerned.

8. A Member State shall, at the request of another Member State, provide information, as set out in Annex II, on a person receiving temporary protection which is needed to process a matter under this Article.

Article 16

1. The Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.

2. During the period of temporary protection Member States shall provide for unaccompanied minors to be placed:

(a) with adult relatives;

(b) with a foster-family;

(c) in reception centres with special provisions for minors, or in other accommodation suitable for minors;

(d) with the person who looked after the child when fleeing.

The Member States shall take the necessary steps to enable the placement. Agreement by the adult person or persons concerned shall be established by the Member States. The views of the child shall be taken into account in accordance with the age and maturity of the child.

CHAPTER IV

Access to the asylum procedure in the context of temporary protection

Article 17

1. Persons enjoying temporary protection must be able to lodge an application for asylum at any time.

2. The examination of any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period.

Article 18

The criteria and mechanisms for deciding which Member State is responsible for considering an asylum application shall apply. In particular, the Member State responsible for examining an asylum application submitted by a person enjoying temporary protection pursuant to this Directive, shall be the Member State which has accepted his transfer onto its territory.

Article 19

1. The Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration.

2. Where, after an asylum application has been examined, refugee status or, where applicable, other kind of protection is not granted to a person eligible for or enjoying temporary protection, the Member States shall, without prejudice to Article 28, provide for that person to enjoy or to continue to enjoy temporary protection for the remainder of the period of protection.

CHAPTER V

Return and measures after temporary protection has ended

Article 20

When the temporary protection ends, the general laws on protection and on aliens in the Member States shall apply, without prejudice to Articles 21, 22 and 23.

Article 21

1. The Member States shall take the measures necessary to make possible the voluntary return of persons enjoying temporary protection or whose temporary protection has ended. The Member States shall ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity.

The Member State shall ensure that the decision of those persons to return is taken in full knowledge of the facts. The Member States may provide for exploratory visits.

2. For such time as the temporary protection has not ended, the Member States shall, on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return.

3. At the end of the temporary protection, the Member States may provide for the obligations laid down in CHAPTER III to be extended individually to persons who have been covered by temporary protection and are benefiting from a voluntary return programme. The extension shall have effect until the date of return.

Article 22

1. The Member States shall take the measures necessary to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission is conducted with due respect for human dignity.

2. In cases of enforced return, Member States shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.

Article 23

1. The Member States shall take the necessary measures concerning the conditions of residence of persons who have enjoyed temporary protection and who cannot, in view of their state of health, reasonably be expected to travel; where for example they would suffer serious negative effects if their treatment was interrupted. They shall not be expelled so long as that situation continues.

2. The Member States may allow families whose children are minors and attend school in a Member State to benefit from residence conditions allowing the children concerned to complete the current school period.

CHAPTER VI

Solidarity

Article 24

The measures provided for in this Directive shall benefit from the European Refugee Fund set up by Decision 2000/596/EC, under the terms laid down in that Decision.

Article 25

1. The Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall indicate – in figures or in general terms – their capacity to receive such persons. This information shall be set out in the Council Decision referred to in Article 5. After that Decision has been adopted, the Member States may indicate additional reception capacity by notifying the Council and the Commission. This information shall be passed on swiftly to UNHCR.

2. The Member States concerned, acting in cooperation with the competent international organisations, shall ensure that the eligible persons defined in the Council Decision referred to in Article 5, who have not yet arrived in the Community have expressed their will to be received onto their territory.

3. When the number of those who are eligible for temporary protection following a sudden and massive influx exceeds the reception capacity referred to in paragraph 1, the Council shall, as a matter of urgency, examine the situation and take appropriate action, including recommending additional support for Member States affected.

Article 26

1. For the duration of the temporary protection, the Member States shall cooperate with each other with regard to transferral of the residence of persons enjoying temporary protection from one Member State to another, subject to the consent of the persons concerned to such transferral.

2. A Member State shall communicate requests for transfers to the other Member States and notify the Commission and UNHCR. The Member States shall inform the requesting Member State of their capacity for receiving transferees.

3. A Member State shall, at the request of another Member State, provide information, as set out in Annex II, on a person enjoying temporary protection which is needed to process a matter under this Article.

4. Where a transfer is made from one Member State to another, the residence permit in the Member State of departure shall expire and the obligations towards the persons concerned relating to temporary protection in the Member State of departure shall come to an end. The new host Member State shall grant temporary protection to the persons concerned.

5. The Member States shall use the model pass set out in Annex I for transfers between Member States of persons enjoying temporary protection.

CHAPTER VII

Administrative cooperation

Article 27

1. For the purposes of the administrative cooperation required to implement temporary protection, the Member States shall each appoint a national contact point, whose address they shall communicate to each other and to the Commission. The Member States shall, in liaison with the Commission, take all the appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

2. The Member States shall, regularly and as quickly as possible, communicate data concerning the number of persons enjoying temporary protection and full information on the national laws, regulations and administrative provisions relating to the implementation of temporary protection.

CHAPTER VIII

Special provisions

Article 28

1. The Member States may exclude a person from temporary protection if:

(a) there are serious reasons for considering that:

(i) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(ii) he or she has committed a serious non-political crime outside the Member State of reception prior to his or her admission to that Member State as a person enjoying temporary protection. The severity of the expected persecution is to be weighed against the nature of the criminal offence of which the person concerned is suspected. Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators;

(iii) he or she has been guilty of acts contrary to the purposes and principles of the United Nations;

(b) there are reasonable grounds for regarding him or her as a danger to the security of the host Member State or, having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of the host Member State.

2. The grounds for exclusion referred to in paragraph 1 shall be based solely on the personal conduct of the person concerned. Exclusion decisions or measures shall be based on the principle of proportionality.

CHAPTER IX

Final provisions

Article 29

Persons who have been excluded from the benefit of temporary protection or family reunification by a Member State shall be entitled to mount a legal challenge in the Member State concerned.

Article 30

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 31

1. Not later than two years after the date specified in Article 32, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. The Member States shall send the Commission all the information that is appropriate for drawing up this report.

2. After presenting the report referred to at paragraph 1, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

Article 32

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

2. When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 33

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 34

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 20 July 2001.

For the Council

The President

J. VANDE LANOTTE

ANNEX I

Model pass for the transfer of persons enjoying temporary protection

PASS

Name of the Member State delivering the pass:

Reference number (*):

Issued under Article 26 of Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of effort between Member States in receiving such persons and bearing the consequences thereof.

Valid only for the transfer from ..... (1) to ..... (2).

The person in question must present himself/herself at ..... (3) by ..... (4).

Issued at: .....

SURNAME: .....

FORENAMES: .....

PLACE AND DATE OF BIRTH: .....

In case of a minor, name(s) of responsible adult: .....

SEX: .....

NATIONALITY: .....

Date issued: .....

PHOTO

SEAL

Signature of the beneficiary: ..... For the competent authorities: .....

The pass-holder has been identified by the authorities ..... (5) (6)

The identity of the pass-holder has not been established .....

This document is issued pursuant to Article 26 of Directive 2001/55/EC only and in no way constitutes a document which can be equated to a travel document authorising the crossing of the external border or a document proving the individual's identity.

(*) The reference number is allocated by the country from which the transfer to another Member State is made.
(1) Member State from which the transfer is being made.
(2) Member State to which the transfer is being made.
(3) Place where the person must present himself/herself on arrival in the second Member State.
(4) Deadline by which the person must present himself/herself on arrival in the second Member State.
(5) On the basis of the following travel or identity documents, presented to the authorities.
(6) On the basis of documents other than a travel or identity document.

ANNEX II

The information referred to in Articles 10, 15 and 26 of the Directive includes to the extent necessary one or more of the following documents or data:

(a) personal data on the person concerned (name, nationality, date and place of birth, marital status, family relationship);

(b) identity documents and travel documents of the person concerned;

(c) documents concerning evidence of family ties (marriage certificate, birth certificate, certificate of adoption);

(d) other information essential to establish the person's identity or family relationship;

(e) residence permits, visas or residence permit refusal decisions issued to the person concerned by the Member State, and documents forming the basis of decisions;

(f) residence permit and visa applications lodged by the person concerned and pending in the Member State, and the stage reached in the processing of these.

The providing Member State shall notify any corrected information to the requesting Member State.

EUROPEAN
COMMISSION

Brussels, 23.9.2020
COM(2020) 609 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

on a New Pact on Migration and Asylum

'We will take a human and humane approach. Saving lives at sea is not optional. And those countries who fulfil their legal and moral duties or are more exposed than others, must be able to rely on the solidarity of our whole European Union… Everybody has to step up here and take responsibility.'

President von der Leyen, State of the Union Address 2020

1. INTRODUCTION: A NEW PACT ON MIGRATION AND ASYLUM

Migration has been a constant feature of human history with a profound impact on European society, its economy and its culture. With a well-managed system, migration can contribute to growth, innovation and social dynamism. Key societal challenges faced by the world today – demography, climate change, security, the global race for talent, and inequality – all have an impact on migration. Policy imperatives such as free movement in the Schengen area, safeguarding fundamental rights, ensuring security, and filling skills gaps, all call for an effective migration policy. The task facing the EU and its Member States, while continuing to address urgent needs, is to build a system that manages and normalises migration for the long term and which is fully grounded in European values and international law.

The **New Pact on Migration and Asylum** offers a fresh start to address this task. The refugee crisis of 2015-2016 revealed major shortcomings, as well as the complexity of managing a situation which affects different Member States in different ways. It unearthed genuine concerns, and brought to the surface differences which need to be acknowledged and overcome. Above all, it highlighted a fundamental truth inherent in the nature of the EU: that **every action has implications for others**. While some Member States continue to face the challenge of external border management, others must cope with large-scale arrivals by land or sea, or overpopulated reception centres, and others still face high numbers of unauthorised movements of migrants. A new, durable **European framework** is needed, to manage the interdependence between Member States' policies and decisions and to offer a proper response to the opportunities and challenges in normal times, in situations of pressure and in crisis situations: one that can provide certainty, clarity and decent conditions for the men, women and children arriving in the EU, and that can also allow Europeans to trust that migration is managed in an effective and humane way, fully in line with our values.

- 20.9 million non-EU nationals were **legally resident** in EU Member States in 2019, some 4.7% of the EU total population.
- EU Member States issued around 3.0 million **first residence permits** to non-EU nationals in 2019, including around 1.8 million for a duration of at least 12 months.
- 1.82 million **illegal border crossings** were recorded at the EU external border at the peak of the refugee crisis in 2015. By 2019 this had decreased to 142 000.
- The number of **asylum applications** peaked at 1.28 million in 2015 and was 698 000 in 2019.
- On average every year around 370,000 applications for international protection are rejected but only around a third of these persons are **returned** home.
- The EU hosted some 2.6 million **refugees** at the end of 2019, equivalent to 0.6% of the EU population.

The New Pact recognises that **no Member State should shoulder a disproportionate responsibility** and that all Member States should **contribute to solidarity** on a constant basis.

It provides a comprehensive approach, bringing together policy in the areas of **migration, asylum, integration and border management**, recognising that the overall effectiveness depends on progress on all fronts. It creates faster, seamless **migration processes** and **stronger governance** of migration and borders policies, supported by modern IT systems and more effective agencies. It aims to reduce unsafe and irregular routes and promote sustainable and safe legal pathways for those in need of protection. It reflects the reality that most migrants come to the EU through legal channels, which should be better matched to EU labour market needs. And it will foster trust in EU policies by closing the existing **implementation gap.**

This common response needs to include **the EU's relationships with third countries**, as the internal and external dimensions of migration are inextricably linked: working closely with partners has a direct impact on the effectiveness of policies inside the EU. Addressing the root causes of irregular migration, combatting migrant smuggling, helping refugees residing in third countries and supporting well-managed legal migration are valuable objectives for both the EU and our partners to pursue through comprehensive, balanced and tailor-made partnerships.

In designing the New Pact, the Commission undertook dedicated high-level and technical consultations with the European Parliament, all Member States, and a wide variety of stakeholders from civil society, social partners and business. The New Pact has been shaped by the lessons of the inter-institutional debates since the Commission proposals of 2016 to reform the Common European Asylum System. It will preserve the compromises already reached on the existing proposals and add new elements to ensure the balance needed in a common framework, bringing together all aspects of asylum and migration policy. It will close gaps between the various realities faced by different Member States and promote mutual trust by delivering results through effective implementation. Common rules are essential, but they are not enough. The interdependency of Member States also makes it indispensable to ensure full, transparent and consistent implementation on the ground.

The New Pact on Migration and Asylum:

- robust and fair management of external borders, including identity, health and security checks;
- fair and efficient asylum rules, streamlining procedures on asylum and return;
- a new solidarity mechanism for situations of search and rescue, pressure and crisis;
- stronger foresight, crisis preparedness and response;
- an effective return policy and an EU-coordinated approach to returns;
- comprehensive governance at EU level for better management and implementation of asylum and migration policies;
- mutually beneficial partnerships with key third countries of origin and transit;
- developing sustainable legal pathways for those in need of protection and to attract talent to the EU; and
- supporting effective integration policies.

2. A COMMON EUROPEAN FRAMEWORK FOR MIGRATION AND ASYLUM MANAGEMENT

Since the refugee crisis of 2015-2016, the challenges have changed. Mixed flows of refugees and migrants have meant increased complexity and an intensified need for coordination and solidarity mechanisms. The EU and the Member States have significantly stepped up cooperation on migration and asylum policy. Member States' responses to the recent situation in the Moria reception centre have shown responsibility-sharing and solidarity in action. The plan of the Commission to work with national authorities on a joint pilot for a new reception centre shows how cooperation can work in the most operational of ways. To support the implementation of this joint pilot, the Commission will set up an integrated task force together with Member States and EU Agencies. However, *ad hoc* responses cannot provide a sustainable answer and major structural weaknesses remain, both in design and implementation. Inconsistencies between national asylum and return systems, as well as shortcomings in implementation, have exposed inefficiencies and raised concerns about fairness. And at the same time, the proper functioning of migration and asylum policy inside the EU also needs reinforced cooperation on migration with partners outside the EU.

A comprehensive approach is therefore needed which acknowledges collective responsibilities, addresses the most fundamental concerns expressed in the negotiations since 2016 – in particular in relation to solidarity – and tackles the implementation gap. This approach will build on progress made since 2016 but will also introduce a common European framework and better governance of migration and asylum management, as well as a new solidarity mechanism. It will also make procedures at the border more consistent and more efficient, as well as ensuring a consistent standard of reception conditions.

Building on the progress made since 2016

The Commission's previous proposals to reform the **Common European Asylum System** aimed to create a fair and swift process guaranteeing access to the asylum procedure, as well as equal treatment, clarity and legal certainty for asylum seekers, and addressing shortcomings on return. These goals remain valid and the New Pact has sought to maintain as much as possible the progress made and the compromises reached between the European Parliament and the Council.

The Commission supports the provisional political agreements already reached on the Qualification Regulation and the Reception Conditions Directive. These proposals should be agreed as soon as possible. The **Qualification Regulation** would further harmonise the criteria for granting international protection, as well as clarifying the rights and obligations of beneficiaries and setting out when protection should end, in particular if the beneficiary has become a public security threat or committed a serious crime. The recast of the **Reception Conditions Directive** would bring more harmonised rules and improved reception conditions for asylum applicants, including earlier access to the labour market and better access to education for child migrants. It would also make clear that reception conditions are only to be provided in the responsible Member State, disincentivising unauthorised movements, and rules on detention would be clarified. The regulation to set up a fully-fledged **European Union Agency for Asylum** is another essential building block in a coherent and operational system whose swift adoption would bring immediate benefits. The proposal for a **Union Resettlement and Humanitarian Admission Framework Regulation** would provide a stable EU framework for the EU contribution to global resettlement efforts. The Commission's 2018 proposal amending the **Return Directive** also remains a key priority, to close loopholes and streamline procedures so that asylum and return work as part of a single system[1].

[1] See section 2.5.

2.1 New procedures to establish status swiftly on arrival

The external border is where the EU needs to close the gaps between external border controls and asylum and return procedures. This process should be swift, with clear and fair rules for authorisation to enter and access to the appropriate procedure. The Commission is proposing to establish a seamless procedure at the border applicable to all non-EU citizens crossing without authorisation, comprising pre-entry screening, an asylum procedure and where applicable a swift return procedure – thereby integrating processes which are currently separate.

The first step should be a **pre-entry screening**[2] applicable to all third-country nationals who cross the external border without authorisation. This screening will include identification, health and security checks, fingerprinting and registration in the Eurodac database. It will act as a first step in the overall asylum and return system, increase transparency for the people concerned at an early stage and build trust in the system. It will foster closer cooperation between all relevant authorities, with support from EU Agencies. The screening will accelerate the process of determining the status of a person and what type of procedure should apply. To ensure that the same checks are conducted for all irregular arrivals before legal entry to the territory of a Member State, Member States will also need to carry out the screening if a person eludes border controls but is later identified within the territory of a Member State.

The Commission is also proposing a targeted amendment of its 2016 proposal for a new Asylum Procedures Regulation[3] to allow for more effective while flexible use of border procedures as a second stage in the process. The rules on the asylum and return **border procedures** would come together in a single legislative instrument. Border procedures allow for the fast-tracking of the treatment of an application, much like acceleration grounds such as the concepts of safe countries of origin or safe third countries. Asylum claims with low chances of being accepted should be examined rapidly without requiring legal entry to the Member State's territory. This would apply to claims presented by applicants misleading the authorities, originating from countries with low recognition rates likely not to be in need of protection, or posing a threat to national security. Whilst asylum applications made at the EU's external borders must be assessed as part of EU asylum procedures, they do not constitute an automatic right to enter the EU. The normal asylum procedure would continue to apply to other asylum claims and become more efficient, bringing clarity for those with well-founded claims. In addition, it should be possible to relocate applicants during the border procedure, allowing for procedures to be continued in another Member State.

For those whose claims have been rejected in the asylum border procedure, an EU return border procedure would apply immediately. This would eliminate the risks of unauthorised movements and send a clear signal to smugglers. It would be a particularly important tool on routes where there is a large proportion of asylum applicants from countries with a low recognition rate.

All necessary guarantees will be put in place to ensure that every person would have an individual assessment and essential guarantees remain in full, with full respect for the principle of *non-refoulement* and fundamental rights. Special attention to the needs of the most vulnerable would include a general exemption from the border procedures where the necessary guarantees cannot be secured. To guarantee effective access to asylum procedures

[2] Proposal for a Regulation introducing a screening of third country nationals at the external borders, COM(2020) 612 of 23 September 2020.

[3] Amended proposal for a Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM(2020) 611 of 23 September 2020.

and respect for fundamental rights, Member States, working closely with the Fundamental Rights Agency, will put in place an effective monitoring mechanism, already at the stage of the screening as an additional safeguard.

The new procedures will allow asylum and migration authorities to more efficiently assess well-founded claims, deliver faster decisions and thereby contribute to a better and more credible functioning of asylum and return policies. This will be of benefit both to Member States, and to the EU as a whole: the work should be supported by resources and expertise from EU agencies as well as EU funds.

The Asylum Procedures Regulation would also establish an accessible, effective and timely decision-making process, based on simpler, clearer and shorter procedures, adequate procedural safeguards for asylum seekers, and tools to prevent restrictions being circumvented. A greater degree of harmonisation of the safe country of origin and safe third country concepts through EU lists, identifying countries such as those in the Western Balkans, will be particularly important in the continued negotiations, building on earlier inter-institutional discussions.

2.2 A common framework for solidarity and responsibility sharing

Drawing on the experience of the negotiations on the 2016 proposals to reform the Common European Asylum System, it is clear that an approach that goes beyond the limitations of the current Dublin Regulation is required. Rules for determining the Member State responsible for an asylum claim should be part of a common framework, and offer smarter and more flexible tools to help Member States facing the greatest challenges. The Commission will therefore withdraw its 2016 proposal amending the Dublin Regulation to be replaced by a new, broader instrument for a common framework for asylum and migration management – **the Asylum and Migration Management Regulation**[4]. This reform is urgent and a political agreement on the core principles should be reached by the end of 2020.

This new common framework will set out the principles and structures needed for an integrated approach for migration and asylum policy, which ensures a fair sharing of responsibility and addresses effectively mixed arrivals of persons in need of international protection and those who are not. This includes a new **solidarity mechanism** to embed fairness into the EU asylum system, reflecting the different challenges created by different geographical locations, and ensuring that all contribute through solidarity so that the real needs created by the irregular arrivals of migrants and asylum seekers are not handled by individual Member States alone, but by the EU as a whole. Solidarity implies that all Member States should contribute, as clarified by the European Court of Justice[5].

The new solidarity mechanism will primarily focus on relocation or return sponsorship. Under return sponsorship, Member States would provide all necessary support to the Member State under pressure to swiftly return those who have no right to stay, with the supporting Member State taking full responsibility if return is not carried out within a set period. Member States can focus on nationalities where they see a better chance of effecting returns. While each Member State would have to contribute to relocation and/or return sponsorships and a distribution key would be applied, Member States will have the flexibility to decide whether and to what extent to share their effort between persons to be relocated and those to whom return sponsorship would apply. There would also be the possibility to contribute through other forms of solidarity such as capacity building,

[4] Proposal for a Regulation on asylum and migration management, COM(2020) 610 of 23 September 2020.

[5] Judgment in Joined Cases C-715/17, C-718/17 and C-719/17 Commission v Poland, Hungary and the Czech Republic.

operational support, technical and operational expertise, as well as support on the external aspects of migration. Whilst always leaving Member States with viable alternatives to relocation, a safety net will ensure that the pressure on a Member State is effectively alleviated by relocation or return sponsorship. The specific situation of search and rescue cases and particularly vulnerable groups should also be acknowledged, and the Commission will draw up a pool of projected solidarity measures, consisting mainly of relocations, indicated by Member States per year, based on the Commission's short-term projections for anticipated disembarkations on all routes as well as vulnerable groups projected to need relocation.

Current rules on the shift of **responsibility** for examining an application for international protection between Member States can act as an incentive for unauthorised movement, in particular when the shift of responsibility results from the behaviour of the applicant (for example, when an applicant absconds). The system therefore needs to be strengthened and loopholes closed. While the current criteria for determining responsibility will continue to apply, the rules on responsibility for examining an application for international protection should be refined to make the system more efficient, discourage abuses and prevent unauthorised movements. There should also be clear obligations for the applicant, and defined consequences if they do not comply. An additional step will be to amend the Long-term Residents Directive so that beneficiaries of international protection would have an incentive to remain in the Member State which granted international protection, with the prospect of long-term resident status after three years of legal and continuous residence in that Member State. This would also help their integration into local communities.

2.3 Mutual trust through robust governance and implementation monitoring

To be effective, border management, asylum and return policies must work well at the national level, and in the case of the integration of migrants at the local level. National policies therefore need to be coherent with the overall European approach. The new Asylum and Migration Management Regulation will seek to achieve this through closer European cooperation. It will improve planning, preparedness and monitoring at both national and EU level. A structured process would offer EU help so that Member States could assist one another in building a resilient, effective, and flexible system, with **national strategies** integrating asylum and return policies at national level. A **European strategy** would guide and support the Member States. The Commission will also prepare a report on preparedness and contingency, based on Member State reporting on an annual basis. This would bring a forward-looking perspective on addressing the risks and opportunities of migration management, to improve both the ability and the readiness to respond.

Key to trust in EU and national policies is consistency in implementation, requiring enhanced monitoring and operational support by EU Agencies. This includes more systematic Commission monitoring of both existing and new rules, including through infringement procedures.

Systems of quality control related to management of migration, such as the Schengen evaluation mechanism and the European Border and Coast Guard Agency (Frontex) vulnerability assessments, will play a key role. Another important step will be the future monitoring of the asylum systems included in the latest compromise on the proposal for a new **European Union Agency for Asylum**. The new mandate would respond to Member States' growing need for operational support and guidance on the implementation of the common rules on asylum, as well as bringing greater convergence. It would boost mutual trust through new monitoring of Member States' asylum and reception systems and through the ability for the Commission to issue recommendations with assistance measures. This legislation should be adopted still this year to allow this practical support to be quickly

available, while acknowledging that new structures such as the monitoring may need some time to be put in place.

2.4 Supporting children and the vulnerable

The EU asylum and migration management system needs to provide for the special needs of vulnerable groups, including through resettlement. This Commission has identified the needs of children as a priority, as boys and girls in migration are particularly vulnerable[6]. This will be taken fully into account in broader initiatives to promote the rights and interests of children, such as the Strategy on the Rights of the Child, in line both with international law on rights of refugees and children and with the EU Charter of Fundamental Rights[7].

The reform of EU rules on asylum and return is an opportunity to **strengthen safeguards and protection standards** under EU law for migrant children. The new rules will ensure that the best interests of the child are the primary consideration in all decisions concerning migrant children and that the right for the child to be heard is respected. Representatives for unaccompanied minors should be appointed more quickly and given sufficient resources. The European Network on Guardianship[8] should be strengthened and play a stronger role in coordination, cooperation and capacity building for guardians. Unaccompanied children and children under twelve years of age together with their families should be exempt from the border procedure unless there are security concerns. In all other relevant asylum procedures, child-specific procedural guarantees and additional support should be effectively provided. The system needs to be geared to reflect the particular needs of children at every stage, providing effective alternatives to detention, promoting swift family reunification, and ensuring that the voice of child protection authorities is heard. Children should be offered adequate accommodation and assistance, including legal assistance, throughout the status determination procedures. Finally, they should also have prompt and non-discriminatory access to education, and early access to integration services.

The risks of trafficking along migration routes are high, notably the risk for women and girls of becoming victims of trafficking for sexual exploitation or other forms of gender-based violence. Trafficking networks abuse asylum procedures, and use reception centres to identify potential victims[9]. The early identification of potential non-EU victims will be a specific theme of the Commission's forthcoming approach towards the eradication of trafficking in human beings, as set out in the recent Security Union Strategy[10].

2.5 An effective and common EU system for returns

EU migration rules can be credible only if those who do not have the right to stay in the EU are effectively returned. Currently, only about a third of people ordered to return from Member States actually leave. This erodes citizens' trust in the whole system of asylum and migration management and acts as an incentive for irregular migration. It also exposes those staying illegally to precarious conditions and exploitation by criminal networks. The effectiveness of returns today varies from Member State to Member State, depending to a

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6 Communication on the protection of children in migration, COM(2017) 211 of 12 April 2017, recommending a comprehensive set of measures to strengthen their protection at every step of the migratory process.

7 The EU Child Guarantee will also take into account the special needs of children in migration, as well as the Action Plan on integration and inclusion (see section 8 below).

8 The Network was announced in the 2017 Communication (see footnote 6). It brings together guardianship authorities and agencies, (local) authorities and international and non-governmental organisations in order to promote good guardianship services for unaccompanied and separated children in the EU.

9 Europol 2020, European Migrant Smuggling Centre 4th Annual report – 2019.

10 EU Security Union Strategy, COM(2020) 605 of 24 July 2020.

large extent on national rules and capacities, as well as on relations with particular third countries. A **common EU system for returns** is needed which combines stronger structures inside the EU with more effective cooperation with third countries on return and readmission. It should be developed building on the recast of the Return Directive and effective operational support including through Frontex. This approach would benefit from the process proposed under the Asylum and Migration Management Regulation to identify measures if required to incentivise cooperation with third countries[11]. The common EU system for returns should integrate return sponsorship and serve to support its successful implementation.

The main building block to achieve an effective EU return system is the 2018 proposal to recast the Return Directive. This would bring key improvements in the management of return policy. It would help prevent and reduce absconding and unauthorised movements, with common criteria to assess each case and the possibility to use detention for public order and security concerns. It would boost assisted voluntary return programmes, as the most efficient and sustainable way to enhance return. It would also improve delivery, with tailor-made IT tools and a clear obligation for those in the procedure to cooperate, as well as accelerating procedures. It is important that the European Parliament and the Council find agreement on provisions on common assessment criteria and detention. The Commission is ready to work closely with the other institutions to find swift agreement on a revised Directive that brings these improvements: this also would be helped by bringing together the rules on the asylum and return border procedures in the new Asylum Procedures Regulation, closing existing loopholes and further reducing the possibilities to circumvent the asylum system.

National return efforts also need **operational support**. Work on return is often hampered by scarce financial and human resources in Member States. Embedding return in national strategies under the common framework should result in better planning, resourcing and infrastructure for return and readmission operations.

Frontex must play a leading role in the common EU system for returns, making returns work well in practice. It should be a priority for Frontex to become the operational arm of EU return policy, with the appointment of a dedicated Deputy Executive Director and integrating more return expertise into the Management Board[12]. The deployment of the new standing corps will also assist return. Frontex will also support the introduction of a return case management system at EU and national level, covering all steps of the procedure from the detection of an irregular stay to readmission and reintegration in third countries. In this way the Agency can realise its full potential to support return, linking up operational cooperation with Member States and effective readmission cooperation with third countries.

An effective system to ensure return is a common responsibility and it will need strong governance structures to ensure a more coherent and effective approach. To this end, the Commission will appoint a **Return Coordinator**, supported by a new **High Level Network for Return**. The Coordinator will provide technical support to bring together the strands of EU return policy, building on positive experiences of Member States in managing returns and facilitating a seamless and interlinked implementation of the return process. A strategic focus will be provided by an operational strategy on returns.

Return is more effective when carried out voluntarily and accompanied with strong reintegration measures. Promoting voluntary return is a key strategic objective, reflected in

[11] Return policy needs to be fully integrated with the readmission policy set out in section 6.5.

[12] The EBCG Regulation requires that one of the three deputy executive directors should be assigned a specific role and responsibilities in overseeing the Agency's tasks regarding returns.

the Commission's 2018 proposal on the Return Directive as well as in a forthcoming Strategy on voluntary return and reintegration. This strategy will set out new approaches to the design, promotion and implementation of assisted voluntary return and reintegration schemes[13], setting common objectives and promoting coherence both between EU and national initiatives and between national schemes. This work can also draw on the reinforced mandate on return of the European Border and Coast Guard.

2.6 A new common asylum and migration database

A seamless migration and asylum process needs proper management of the necessary information. For this purpose, **Eurodac** should be further developed to support the common framework[14]. The 2016 Commission proposal, on which a provisional political agreement was reached by the European Parliament and the Council, would already enlarge the scope of Eurodac. An upgraded Eurodac would help to track unauthorised movements, tackle irregular migration and improve return. The data stored would be extended to address specific needs, with the necessary safeguards: for example, the European Parliament and the Council had already agreed to extend its scope to resettled persons.

These changes should now be complemented to allow an **upgraded database** to count individual applicants (rather than applications), to help apply new provisions on shifting responsibility within the EU, to facilitate relocation, and to ensure better monitoring of returnees. The new system would help create the necessary link between asylum and return procedures and provide additional support to national authorities dealing with asylum applicants whose application has already been rejected in another Member State. It could also track support for voluntary departure and reintegration. The new Eurodac would be fully interoperable with the border management databases, as part of an all-encompassing and integrated migration and border management system.

Key actions

The Commission:

- Proposes an Asylum and Migration Management Regulation, including a new solidarity mechanism;
- Proposes new legislation to establish a screening procedure at the external border;
- Amends the proposal for a new Asylum Procedures Regulation to include a new border procedure and make asylum procedures more effective;
- Amends the Eurodac Regulation proposal to meet the data needs of the new framework for EU asylum and migration management;
- Will appoint a Return Coordinator within the Commission, supported by a new High Level Network for Returns and a new operational strategy; and
- Will set out a new Strategy on voluntary returns and reintegration.

The European Border and Coast Guard Agency (Frontex) should:

- Fully operationalise the reinforced mandate on return and provide full support to Member States at national level; and
- Appoint a Deputy Executive Director for Return,

The European Parliament and the Council should:

[13] See section 6.5.

[14] Amended proposal for a Regulation on the establishment of 'Eurodac', COM(2020) 614 of 23 September 2020.

- Adopt the Asylum and Migration Management Regulation, as well as the Screening Regulation and the revised Asylum Procedures Regulation, by June 2021;
- Give immediate priority to adoption of the Regulation on the EU Asylum Agency by the end of the year to allow effective European support on the ground;
- Ensure adoption of the revised Eurodac Regulation this year;
- Ensure quick adoption of the revised Reception Conditions Directive and the Qualification Regulation; and
- Ensure the swift conclusion of the negotiations on the revised Return Directive.

3. A ROBUST CRISIS PREPAREDNESS AND RESPONSE SYSTEM

The New Pact's goal of putting in place a comprehensive and robust migration and asylum policy is the best protection against the risk of crisis situations. The EU is already better prepared today than it was in 2015, and the common framework for asylum and migration management will already put the EU on a stronger footing, reinforcing preparedness and making solidarity a permanent feature. Yet the EU will always need to be ready for the unexpected.

The EU must be ready to address **situations of crisis and force majeure** with resilience and flexibility – in the knowledge that different types of crises require varied responses. The effectiveness of response can be improved through preparation and foresight. This needs an evidence-based approach, to increase anticipation and help to prepare EU responses to key trends[15]. A new **Migration Preparedness and Crisis Blueprint**[16] will be issued to help move from a reactive mode to one based on readiness and anticipation. It will bring together all existing crisis management tools and set out the key institutional, operational and financial measures and protocols which must be in place to ensure preparedness both at EU and national level.

The Blueprint entails continuous anticipation and monitoring of Member States' capacities, and provides a framework for building resilience and organising a coordinated response to a crisis. At the request of a Member State, operational support would be deployed, both from EU agencies and by other Member States. This would build on the hotspot approach and draw on recent experience of crisis response and civil protection. The Blueprint will be immediately effective, but will also act as important operational support to the EU's ability to respond under the future arrangements. It will set out the array of measures that can be used to address crises related to a large number of irregular arrivals. Experience, however, tells us that we also need to add a new element to the toolbox.

A new legislative instrument would provide for **temporary and extraordinary measures needed in the face of crisis**[17]. The objectives of this instrument will be twofold: firstly to provide flexibility to Member States to react to crisis and force majeure situations and grant immediate protection status in crisis situations, and secondly, to ensure that the system of solidarity established in the new Asylum and Migration Management Regulation is well adapted to a crisis characterised by a large number of irregular arrivals. The circumstances of crisis demand urgency and therefore the solidarity mechanism needs to be stronger, and

[15] This work stream will be supported through the Knowledge Centre on Migration and Demography in the Commission's Joint Research Centre.

[16] Commission Recommendation on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint), C(2020) 6469 of 23 September 2020.

[17] Proposal for a Regulation addressing situations of crisis and force majeure in the field of migration and asylum, COM(2020) 613 of 23 September 2020.

the timeframes governing that mechanism should be reduced[18]. It would also widen the scope of compulsory relocation, for example to applicants for and beneficiaries of immediate protection, and return sponsorship.

In situations of crisis that are of such a magnitude that they risk to overwhelm Member States' asylum and migration systems, the practical difficulties faced by Member States would be recognised through some limited margin to temporarily derogate from the normal procedures and timelines, while ensuring respect for fundamental rights and the principle of *non-refoulement*[19].

Protection, equivalent to subsidiary protection, could also be immediately granted to a pre-defined group of people, notably to people who face an exceptionally high risk of indiscriminate violence due to armed conflict in their country of origin. Given the development of the concepts and rules of qualification for international protection, and in view of the fact that the new legislation would lay down rules for granting immediate protection status in crisis situations, the Temporary Protection Directive would be repealed[20].

Key actions

The Commission:

- Presents a Migration Preparedness and Crisis Blueprint; and
- Proposes legislation to address situations of crisis and force majeure and repealing the Temporary Protection Directive.

The European Parliament and the Council should:

- Prioritise work on the new crisis instrument.

The Member States, the Council and the Commission should:

- Start implementation of the Migration Preparedness and Crisis Blueprint.

4. INTEGRATED BORDER MANAGEMENT

Integrated border management is an indispensable policy instrument for the EU to protect the EU external borders and safeguard the integrity and functioning of a Schengen area without internal border controls. It is also an essential component of a comprehensive migration policy: well-managed EU external borders are an essential component in working together on integrated policies on asylum and return.

4.1 Stepping up the effectiveness of EU external borders

The management of EU external borders is a shared responsibility of all Member States and Schengen Associated Countries, and of the EU and its agencies. This also means that where there are shortcomings, the impact is twofold, both an extra challenge for the Member State in question, and consequences such as unauthorised movements which affect the credibility

[18] Advancing the obligation to relocate an irregular migrant to the territory of the sponsoring Member State.

[19] Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.

[20] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States.

of the entire EU system. Effective management of EU external borders is a key element for a Schengen area without internal border controls.

European Integrated Border Management is implemented by the European Border and Coast Guard, composed of the Member States' border and coastguard authorities and Frontex. It is designed to prevent fragmentation and ensure coherence between different EU policies.

The Commission will launch the preparatory process in view of submitting the policy document for the **multiannual strategic policy and implementation cycle** in the first half of 2021. This cycle will ensure a unified framework to provide strategic guidelines to all relevant actors at the European and national level in the area of border management and return, through linked strategies: an EU technical and operational strategy set out by Frontex, and national strategies by Member States. This will allow all the relevant legal, financial and operational instruments and tools to be coherent, both within the EU and with our external partners. It will be discussed with the European Parliament and the Council.

The EU must be able to support Member States at the external border with speed, scale and flexibility. The swift and full implementation of the new **European Border and Coast Guard** Regulation is a critical step forward. It strengthens day-to-day cooperation and improves the EU's reaction capacity. Developing common capabilities and linked planning in areas like training and procurement will mean more consistency and more effectiveness. Frontex's yearly vulnerability assessments are particularly important, assessing the readiness of Member States to face threats and challenges at the external borders and recommending specific remedial action to mitigate vulnerabilities. They complement the evaluations under the Schengen evaluation mechanism, carried out jointly by the Commission and the Member States. The vulnerability assessments will also help to target the Agency's operational support to the Member States to best effect.

The new Regulation sets up a standing corps of operational staff, bringing together personnel from the Agency as well as from Member States, and exercising executive powers: a major reinforcement of the EU's ability to respond to different situations at the external borders. A **standing corps with a capacity of 10 000 staff** remains essential for the necessary capability to react quickly and sufficiently. The first deployment of the standing corps should be ready for 1 January 2021.

4.2 Reaching full interoperability of IT systems

Strong external borders also require up-to-date and **interoperable IT systems** to keep track of arrivals and asylum applicants. Once operational, different systems will form an integrated IT border management platform checking and keeping track of the right to stay of all third country nationals, whether visa-free or visa holders, arriving in a legal manner on EU territory, helping the work of identifying cases of overstaying[21].

Interoperability will connect all European systems for borders, migration, security and justice, and will ensure that all these systems 'talk' to each other, that no check gets missed because of disconnected information, and that national authorities have the complete, reliable and accurate information needed. It will bring a major boost to the fight against identity fraud. Each system will keep its established safeguards. It is essential that these new and upgraded information systems are **operational and fully interoperable by the end of**

[21] The systems participating in interoperability are: the Entry/Exit System, the European Travel Information and Authorisation System, the Visa Information System, the European Criminal Records Information System for third-country nationals, Eurodac, and the Schengen Information System.

2023, as well as the upgrade of the Schengen Information System. The Commission will also table the necessary amendments in the proposed revision of the **Eurodac** Regulation to integrate it into this approach, so that Eurodac also plays a full part in controlling irregular migration and detecting unauthorised movements within the EU. Trust in the Schengen area will be further reinforced by **making the visa procedure fully digitalised by 2025**, with a digital visa and the ability to submit visa applications online.

The tight schedule for delivering the new architecture of EU information systems requires both monitoring and support for preparations in the Member States and in the agencies. The Commission's **rapid alert process for IT systems** will enable early warning and, if needed, fast and targeted corrective action. This will inform a bi-annual **High-Level Implementation Forum** of top coordinators from Member States, the Commission and the agencies.

4.3 A common European approach to search and rescue

Since 2014, attempts to reach Europe on unseaworthy vessels have increased, with many lives lost at sea. This has prompted the EU, Member States, and private actors to significantly step up maritime search and rescue capacity in the Mediterranean. The EU joint naval operation EUNAVFOR MED Sophia and Frontex-coordinated operations – such as Themis, Poseidon and Indalo – have contributed to over 600 000 rescues since 2015.

Assisting those in distress at sea is a moral duty and an obligation under international law. While national authorities remain ultimately responsible for implementing the relevant rules under international law, search and rescue is also a key element of the European integrated border management, implemented as a shared responsibility by Frontex[22] and national authorities, making the boosting of Frontex's access to naval and aerial capacity essential.

Dangerous attempts to cross the Mediterranean continue to bring great risk and fuelling criminal networks. The disembarkation of migrants has a significant impact on asylum, migration and border management, in particular on coastal Member States. Developing a more coordinated EU approach to the evolving search and rescue practice, grounded in solidarity, is crucial. Key elements should include:

- Recognising the **specificities of search and rescue in the EU legal framework for migration and asylum**. Since January 2019, at the request of Member States, the Commission has coordinated the relocation of more than 1 800 disembarked persons following rescue operations by private vessels. While the Commission will continue to provide operational support and proactive coordination, a more predictable solidarity mechanism for disembarkation is needed. The new Asylum and Migration Management Regulation will cater for help through relocation following disembarkations after search and rescue operations. This should help to ensure the continuity of support and to avoid the need for *ad hoc* solutions.
- **Frontex should provide increased operational and technical support** within EU competence, as well as deployment of maritime assets to Member States, to improve their capabilities and thus contribute to saving lives at sea.
- **Cooperation and coordination among Member States** needs to be significantly stepped up, particularly in view of the search and rescue activities that have developed over the past years with the regular involvement of private actors. The Commission is

[22] Regulation (EU) 656/2014 sets out a specific set of rules for external sea borders surveillance in the context of the operational cooperation coordinated by Frontex, which covers search and rescue incidents arising during Frontex joint operations.

issuing a Recommendation on cooperation between Member States in the context of operations carried out by vessels owned or operated by private entities for the purpose of performing regular rescue activities, with a view to maintaining safety of navigation and ensuring effective migration management[23]. This cooperation should also be channelled through an expert group on search and rescue established by the Commission to encourage cooperation and the exchange of best practices.

- The Commission is also providing Guidance on the effective implementation of **EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence**[24], and how to prevent the criminalisation of humanitarian actors[25].
- The **EU will strengthen cooperation with countries of origin and transit** to prevent dangerous journeys and irregular crossings, including through tailor-made Counter Migrant Smuggling Partnerships with third countries[26].

4.4 A well-functioning Schengen area

The Schengen area is one of the major achievements of European integration. But it has been put under strain by difficulties in responding to changing situations at the Union's border, by gaps and loopholes, and by diverging national asylum, reception and return systems. These elements increase unauthorised movements, both of asylum seekers and of migrants who should be returned. Measures already agreed and which now need to be adopted by the European Parliament and the Council will help to bring more consistency in standards in asylum and migration systems. Further steps under the New Pact – on screening and border procedures, on reinforced external borders, on more consistent asylum and return procedures under the more integrated approach of the common framework – also add up to a major reinforcement of Schengen.

Concerns about existing shortcomings have contributed to the triggering of **temporary internal border controls**. The longer these controls continue, the more questions are raised about their temporary nature, and their proportionality. Temporary controls may only be used in exceptional circumstances to provide a response to situations seriously affecting public policy or internal security. As a last resort measure, they should last only as long as the extraordinary circumstances persist: for example, in the recent emergency circumstances of the COVID-19 pandemic, internal border control measures were introduced but most of them have now been lifted.

Building on experience from the multiple crises of the last five years, the Commission will present a **Strategy on the future of Schengen**, which will include initiatives for a stronger and more complete Schengen. This will include a fresh way forward on the Schengen Borders Code, with conclusions to be drawn on the state of play of the negotiations on the Commission's proposal of 2017. It will also cover how to improve the Schengen evaluation mechanism to become a fully effective tool for evaluating the functioning of Schengen and for ensuring that improvements are effectively implemented. An efficient **Schengen evaluation mechanism** is an essential tool for an effective Schengen area, building trust through verifying how Member States implement the Schengen rules. It is important that

[23] Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities, C(2020) 6468 of 23 September 2020.

[24] Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence, C(2020) 6470 of 23 September 2020.

[25] See section 5.

[26] See section 5.

Member States remedy deficiencies identified during the evaluations. Where Member States persistently fail to do so, or where controls at internal borders are kept in place beyond what is necessary, the Commission will more systematically consider the launching of infringement procedures.

There are also alternatives to internal border controls – for example, police checks can be highly effective, and new technology and smart use of IT interoperability can help make controls less intrusive. At the moment, readmission agreements also remain between Member States which could also be implemented more effectively.

Building on the work already in place to promote these measures[27], the Commission will put in place a **programme of support and cooperation** to help Member States to maximise the potential of these measures. The Commission will establish a dedicated **Schengen Forum,** involving the relevant national authorities such as Ministries of Interior and (border) police at national and regional level in order to stimulate more concrete cooperation and more trust. Once a year, a discussion in the Forum should be organised at political level to allow national Ministers, Members of the European Parliament and other stakeholders to bring political momentum to this process.

Key actions

The Commission:

- Adopts a Recommendation on cooperation between Member States concerning private entities' rescue activities;
- Presents guidance to Member States to make clear that rescues at sea cannot be criminalised;
- Will adopt a Strategy on the future of Schengen which reinforces the Schengen Borders Code and the Schengen evaluation mechanism;
- Will establish a Schengen Forum to foster concrete cooperation and ways to deepen Schengen through a programme of support and cooperation to help end internal border controls; and
- Will launch a new European group of experts on search and rescue.

The Commission, the Member States and Frontex should:

- Ensure the swift and full implementation of the new European Border and Coast Guard Regulation; and
- Ensure the implementation and interoperability of all large scale IT systems by 2023.

5. REINFORCING THE FIGHT AGAINST MIGRANT SMUGGLING

Smuggling involves the organised exploitation of migrants, showing scant respect for human life in the pursuit of profit. This criminal activity therefore damages both the humanitarian and the migration management objectives of the EU. The new 2021-2025 **EU Action Plan against migrant smuggling** will focus on combatting criminal networks, and in line with the EU's Security Union Strategy, it will boost cooperation and support the work of law enforcement to tackle migrant smuggling, often also linked to trafficking in human beings. The Action Plan will build on the work of Europol and its European Migrant Smuggling Centre, Frontex, Eurojust and the EU Agency for Law Enforcement Training. New measures and strengthened inter-agency cooperation will address challenges in the areas of financial

[27] C(2017) 3349 final of 12 May 2017 and C(2017) 6560 final of 27 September 2017.

investigations, asset recovery and document fraud, and new phenomena such as digital smuggling[28].

Existing rules to clamp down on migrant smuggling[29] have proven an effective legal framework to combat those who facilitate unauthorised entry, transit and residence. Reflection is ongoing on how to modernise these rules[30]. The Commission will bring clarity to the issue of criminalisation for private actors through **guidance on the implementation** of the counter-smuggling rules, and make clear that carrying out the legal obligation to rescue people in distress at sea cannot be criminalised.

Finding employment in the EU without the required legal status is one of the drivers for smuggling to the EU. The Commission will assess how to strengthen the effectiveness of the **Employers Sanctions Directive** and evaluate the need for further action. The Commission will also work with the European Labour Authority to coordinate the efforts of the national authorities and ensure the efficient implementation of the Directive, which is indispensable to deter irregular migration by ensuring effective prohibition of the employment of irregularly staying third-country nationals.

Combatting smuggling is a common challenge requiring international cooperation and coordination as well as effective border management. The July 2020 Ministerial Conference between the EU and African partners confirmed the mutual determination to address this problem[31]. The new EU Action Plan against migrant smuggling will stimulate cooperation between the EU and third countries, through targeted **counter migrant smuggling** partnerships, as part of broader partnerships with key third countries. This will include support to countries of origin and transit in capacity-building both in terms of law enforcement frameworks and operational capacity, encouraging effective action by police and judicial authorities. The EU will also improve information exchange with third countries and action on the ground, through support to common operations and joint investigative teams, as well as information campaigns on the risks of irregular migration and on legal alternatives. EU agencies should also work more intensively with partner countries. Europol will strengthen cooperation with the Western Balkans and the Commission and Europol will work towards similar agreements with Turkey and others in the neighbourhood. The Commission will also include this in its cooperation with the African Union (AU).

Common Security and Defence Policy operations and missions will continue making an important contribution, where the fight against irregular migration or migrant smuggling is part of their mandates. Complementing existing missions, such as EUCAP Sahel Niger and EUBAM Libya, Operation EUNAVFOR MED IRINI is now under way in the Central Mediterranean and helps to disrupt smuggling networks.

Immigration Liaison Officers provide a valuable connection in the fight against irregular migration and migrant smuggling. The full implementation of the Regulation on the European network of immigration liaison officers[32] will further consolidate this network and enhance the fight against smuggling.

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[28] The use, in particular by organised criminal groups, of modern information and communication technology to facilitate migrant smuggling, including advertising, organising, collecting payments, etc.

[29] The 'Facilitators' Package' of Directive 2002/90/EC and the Accompanying Council Framework Decision on facilitation of unauthorised entry, transit and residence Directive.

[30] Directive 2002/90/EC and Council Framework Decision 2002/946/JHA.

[31] The Ministerial Conference took place on 13 July 2020 and brought together Ministers of the Interior of Algeria, Libya, Mauritania, Morocco and Tunisia with their counterparts from Italy (chair), France, Germany (participating as the Council Presidency), Malta and Spain, as well as the Commission.

[32] Regulation 2019/1240.

Key actions

The Commission will:

- Present a new EU Action Plan against Migrant Smuggling for 2021-2025;
- Assess how to strengthen the effectiveness of the Employers Sanctions Directive; and
- Build action against migrant smuggling into partnerships with third countries.

6. WORKING WITH OUR INTERNATIONAL PARTNERS

The majority of migrants undertake their journeys in a regular and safe manner, and well-managed migration, based on partnership and responsibility-sharing, can have positive impacts for countries of origin, transit and destination alike. In 2019, there were over 272 million international migrants[33], with most migration taking place between developing countries. Demographic and economic trends, political instability and conflict, as well as climate change, all suggest that migration will remain a major phenomenon and global challenge for the years to come. Migration policies that work well are in the interest of partner countries, the EU, and refugees and migrants themselves.

The prerequisite in addressing this is cooperation with our partners, first and foremost based on bilateral engagement, combined with regional and multilateral commitment. **Migration is central to the EU's overall relationships with key partner countries of origin and transit.** Both the EU and its partners have their own interests and tools to act. Comprehensive, balanced and tailor-made partnerships, can deliver mutual benefits, in the economy, sustainable development, education and skills, stability and security, and relations with diasporas. Working with partners also helps the EU to fulfil its obligations to provide protection to those in need, and to carry out its role as the world's major development donor. Under the New Pact, engagement with partner countries will be stepped up across all areas of cooperation. The Commission and the High Representative will immediately start work, together with Member States, to put this approach into practice through dialogue and cooperation with our partners.

6.1 Maximising the impact of our international partnerships

The EU needs a fresh look at its priorities, first in terms of the place of migration in its external relations and other policies, and then in terms of what this means for our overall relations with specific partners. In comprehensive partnerships, **migration should be built in as a core issue, based on an assessment of the interests of the EU and partner countries**. It is important to address the complex challenges of migration and its root causes to the benefit of the EU and its citizens, partner countries, migrants and refugees themselves. By working together, the EU and its partners can improve migration governance, deepen the common efforts to address shared challenges and benefit from opportunities.

The approach needs to deploy a wide range of policy tools, and have the flexibility to be both tailor-made and able to adjust over time. Different policies such as development cooperation, security, visa, trade, agriculture, investment and employment, energy, environment and climate change, and education, should not be dealt with in isolation. They are best handled as part of a tailor-made approach, at the core of a real **mutually beneficial partnership**. It is also important to bear in mind that migration issues such as border management or more effective implementation of return and readmission can be politically sensitive for partners. Tackling the issues we see today – the loss of life first and foremost,

[33] World Migration Report 2020, International Organisation for Migration, 2019, p.2.

but also shortcomings in migration management – means working together so that everyone assumes their responsibilities.

EU level engagement alone is not sufficient: effective coordination between **the EU level and Member States** is essential at all levels: bilateral, regional and multilateral. Consistent messaging between the EU and Member States on migration and joint outreach to partners have proven to be critical to showing the EU's common commitment. The EU should in particular draw on the experience and privileged relationships of some Member States with key partners – experience has shown that the full involvement of Member States in the EU migration partnerships, including through the pooling of funds and expertise via the various EU Trust Funds, is key to success.

The EU has credibility and strength through its role in the **international and multilateral** context, including through its active engagement in the United Nations (UN) and close cooperation with its agencies. The EU should build on the important progress made at the **regional** level, through dedicated dialogues and frameworks[34] and through partnerships with organisations such as the African Union. Further innovative partnerships could building on the positive example of the AU-EU-UN Taskforce on Libya. The specific context of the post-Cotonou framework with States in Africa, the Caribbean and the Pacific is of particular importance in framing and effectively operationalising migration cooperation.

Dialogue has deepened with a range of key partners in recent years[35]. The EU's **neighbours** are a particular priority. Economic opportunity, particularly for young people, is often the best way to reduce the pressure for irregular migration. The ongoing work to address migrant smuggling is one example of the critical importance of relations with the countries of **North Africa**. The **Western Balkans** require a tailor-made approach, both due to their geographical location and to their future as an integral part of the EU: coordination can help to ensure they are well equipped as future Member States to respond constructively to shared challenges, developing their capacities and border procedures to bring them closer to the EU given their enlargement perspective. The 2016 EU-Turkey Statement reflected a deeper engagement and dialogue with **Turkey**, including helping its efforts to host around 4 million refugees[36]. The Facility for Refugees in Turkey continues to respond to essential needs of millions of refugees, and continued and sustained EU funding in some form will be essential[37].

Migration is an integral part of the approach under the Joint Communication towards a Comprehensive **Strategy with Africa** to deepen economic and political ties in a mature and wide-ranging relationship[38] and give practical support. The reality of multiple migration routes also underlines the need to work with partner countries in **Asia**[39] and **Latin America**.

With all these partners, we need to recognise that the COVID-19 pandemic is already causing massive disruption. This must be a key part of a vision of cooperation based on

[34] Including the Valletta process between the EU and African countries. Other key regional processes include the Budapest, Prague, Rabat and Khartoum processes.

[35] Progress report on the Implementation of the European Agenda on Migration, COM(2019) 481, 16 October 2019.

[36] The Facility for Refugees in Turkey has mobilised €6 billion.

[37] For example, in July 2020 the EU agreed a €485 million extension to humanitarian support under the Facility, to allow the extension to the end of 2021 of programmes helping over 1.7 million refugees to meet their basic needs and over 600,000 children to attend school.

[38] Joint Communication "Towards a comprehensive Strategy with Africa", JOIN(2020) 4 final of 9 March 2020.

[39] Notably with the Silk Road countries: Afghanistan, Bangladesh, Iran, Iraq, and Pakistan.

mutual interests, helping to build strengthened, resilient economies delivering growth and jobs for local people and at the same time reducing the pressure for irregular migration.

EU funding for refugees and migration issues outside the EU, amounting to over €9 billion since 2015, has proven to be indispensable to the delivery of the EU's migration objectives. In July 2020 the European Council underlined that this must be developed further and in a more coordinated manner in programmes across the relevant headings of the EU budget[40]. Strategic, policy-driven programming of the EU's external funding will be essential to implement this new comprehensive approach to migration. The 10% target for migration-related actions proposed in the Neighbourhood, Development and International Cooperation Instrument recognises that resources need to match the needs of the EU's increased international engagement, as well as being sufficiently flexible to adjust to circumstances. The proposed architecture of the EU's external financial instruments also provides for additional flexibilities to respond to unforeseen circumstances or crises.

6.2 Protecting those in need and supporting host countries

The EU's work to address emergency and humanitarian needs is based on principles of humanity, impartiality, neutrality and independence. Over 70 million people, men, women and children are estimated to have been forcibly displaced worldwide, with almost 30 million refugees and asylum seekers[41]. The vast majority of these are hosted in developing countries and the EU will maintain its commitment to help.

The EU can build on a track record of cooperation with a wide range of partners in delivering this support. The humanitarian evacuation of people from Libya to Emergency Transit Mechanisms in Niger and Rwanda for onward resettlement helped the most vulnerable to escape from desperate circumstances. Assisting refugees affected by the Syrian crisis and their hosting countries will continue to be essential. Millions of refugees and their host communities in Turkey, Lebanon, Jordan or Iraq are benefitting from daily support, through dedicated instruments such as the EU's Facility for Refugees in Turkey and the EU Regional Trust Fund in Response to the Syrian crisis.

As reiterated in December 2019 at the Global Refugee Forum, the EU is determined to maintain its strong commitment to providing life-saving **support to millions of refugees and displaced people**, as well as fostering sustainable development-oriented solutions[42].

6.3 Building economic opportunity and addressing root causes of irregular migration

The **root causes** of irregular migration and forced displacement, as well as the immediate factors leading people to migrate, are complex[43].

The EU is the world's largest provider of **development assistance**. This will continue to be a key feature in EU engagement with countries, including on migration issues. Work to build stable and cohesive societies, to reduce poverty and inequality and promote human development, jobs and economic opportunity, to promote democracy, good governance,

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[40] European Council conclusions of 21 July 2020, paragraphs 19, 103, 105, 111 and 117.

[41] The United Nations High Commissioner for Refugees reports that in 2018 almost 71 million persons were forcibly displaced persons, including almost 26 million refugees and 3.5 million asylum seekers (UNHCR Global Trends – Forced Displacement in 2018, https://www.unhcr.org/5d08d7ee7.pdf).

[42] In recent years most of the EU humanitarian budget (80% of €1.2 billion in 2018 and of €1.6 billion in 2019) went to projects helping the immediate needs of the forcibly displaced and their host communities to meet their immediate, basic needs in conflict, crisis and protracted displacement.

[43] See the work produced and supported by the Joint Research Centre Knowledge Centre on Migration and Demography on International Migration Drivers (2018) and the Atlas of Migration (2019).

peace and security, and to address the challenges of climate change can all help people feel that their future lies at home. In the Commission proposals for the next generation of external policy instruments, migration is systematically factored in as a priority in the programming. Assistance will be targeted as needed to those countries with a significant migration dimension. Flexibility has been built into the proposals for the instruments since experience of recent years has shown that the flexibility of instruments such as Trust Funds is key to rapid delivery when required, compared to funding predetermined for specific countries or programmes.

Many other policies can be harnessed to help build stability and prosperity in partner countries[44]. Conflict prevention and resolution, as well as peace, security and governance, are often the cornerstone of these efforts. Trade and investment policies already contribute to addressing root causes by creating jobs and perspectives for millions of workers and farmers worldwide. Boosting investment through vehicles such as the External Investment Plan can make a significant contribution to economic development, growth and employment. Better exploiting the potential of remittances can also help economic development. Cooperation in education, skills and research, as well as in policies such as digital, energy or transport, also helps to deepen economic development. The EU will use these policies wherever relevant in the engagement with partner countries under the New Pact.

6.4 Partnerships to strengthen migration governance and management

Supporting the EU's partners in developing effective **migration governance and management** capacity will be a key element in the mutually beneficial partnerships the EU seeks to develop. The EU can support capacity building in line with partners' needs. This will help partner countries manage irregular migration, forced displacement and combat migrant smuggling networks[45]. Tools such as strategic communication will be further deployed, providing information on legal migration opportunities and explaining the risks of irregular migration, as well as countering disinformation. In addition, depending on the contexts and situations, the EU can assist partner countries in strengthening capacities for border management, including by reinforcing their search and rescue capacities at sea or on land, through well-functioning asylum and reception systems, or by facilitating voluntary returns to third countries or the integration of migrants[46].

EU cooperation with partner countries in the area of migration governance will continue to ensure the protection of the rights of migrants and refugees, combat discrimination and labour exploitation, and ensure that their basic needs are met through the provision of key services. Support may also be targeted at maximising the positive impact of migration and reducing the negative consequences for partner countries, for example by reducing the transfer costs of remittances, reducing "brain drain", or facilitating circular migration.

Member States have a key role to play in providing such practical support, as demonstrated by the fruitful cooperation in the fight against migrant smuggling, where joint investigation teams benefit from the hands-on expertise of national administrations.

The EU should use all the tools at its disposal to bring operational support to the new partnerships, including through a much deeper involvement of **EU agencies**. Frontex's

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[44] This broad-based approach is fully acknowledged in the EU-Africa Alliance (A new Africa–Europe Alliance for Sustainable Investment and Jobs, COM(2018) 643 of 12 September 2018).

[45] See Section 5.

[46] Including through the posting of European Migration Liaison Officers, currently stationed in 10 third countries, with another four ready to be posted as soon as the COVID-19 situation allows.

enhanced scope of action should now be used to make cooperation with partners operational. Cooperation with the Western Balkans, including through EU status agreements with the Western Balkan partners, will enable Frontex border guards to work together with national border guards on the territory of a partner country. Frontex can also now provide practical support to develop partners' border management capacity and to cooperate with partners to optimise voluntary return. The Commission will continue encouraging agreements with its neighbours[47]. As for asylum, the possibilities today to work with third countries are limited, but well-functioning migration management on key routes is essential both to protection and to asylum and return procedures. The new EU Asylum Agency would be able to work on capacity building and operational support to third countries, and support EU and Member State resettlement schemes, building on the existing cooperation with UN agencies such as the UN Refugee Agency UNHCR and the International Organisation for Migration.

6.5 Fostering cooperation on readmission and reintegration

Strands of work such as creating economic opportunity, increasing stability or tackling migrant smuggling can reduce the number of irregular arrivals to the EU and the numbers of those in the EU with no right to stay. Nevertheless, for those with no right to stay, an effective system of returns needs to be in place. Some of them may take up voluntary return options, and this should be proactively supported. Currently, one of the key gaps in European migration management is the difficulty to effectively return those who do not take up this option. Working closely with countries of origin and transit is a prerequisite for a well-functioning system of returns, readmission and reintegration.

Action taken by Member States[48] in the field of returns needs to go hand in hand with a new drive to improve cooperation on readmission with third countries, complemented by cooperation on reintegration, to ensure the sustainability of returns. This first and foremost requires the full and effective implementation of the twenty-four existing **EU agreements and arrangements** on readmission with third countries, the completion of ongoing readmission negotiations and as appropriate the launch of new negotiations, as well as practical cooperative solutions to increase the number of effective returns.

These discussions should be seen in the context of the full range of the EU's and Member States' policies, tools and instruments, which can be pulled together in a strategic way. A first step was made by introducing a link between cooperation on readmission and visa issuance in the Visa Code[49]. Based on information provided by Member States, the Commission will assess at least once a year **the level of cooperation of third countries on readmission,** and report to the Council. Any Member State can also notify the Commission if it is confronted with substantial and persistent practical problems in the cooperation with a third country on readmission, triggering an *ad hoc* assessment. Following an assessment, the Commission can propose to apply restrictive visa measures, or in case of good cooperation, propose favourable visa measures.

Visa policy can also be used to curb **unfounded asylum applications** from visa-free countries, keeping in mind that almost a quarter of asylum applications received by Member States were lodged by applicants who can enter the Schengen+ area visa-free. More cooperation and exchange of information would help to detect visa abuse. The **Visa**

[47] Status agreements were successfully negotiated with all Western Balkans countries (not including Kosovo). The status agreements with Albania, Montenegro and Serbia have already been signed and have entered into force, whereas signature of agreements with North Macedonia and Bosnia and Herzegovina is still pending.

[48] See section 2.5 above.

[49] Regulation (EC) No 810/2009 as amended.

Suspension Mechanism provides for the systematic assessment of visa-free countries against criteria including irregular migration risks and abusive asylum applications. This can ultimately result in the removal of third countries from the visa-free list.

To deliver on the goal set out by the European Council[50] to **mobilise relevant policies and tools**, joint efforts need to be taken a step further. This is why the proposed Asylum and Migration Management Regulation includes the possibility that the Commission, when reporting to the Council on the state of play of the cooperation on readmission, could identify further effective measures to incentivise and improve cooperation to facilitate return and readmission, including in other policy areas of interest to the third countries[51], while taking into account the Union's overall interests and relations with the third country. In this respect, close cooperation with the High Representative will be important. The Commission, the High Representative and the Member States should ensure that progress on readmission accompanies progress in other areas under the partnerships. This would require more coordination, and flexibility in legislative, policy and funding instruments, bringing together action at both EU and Member State level.

An important component of the future **Voluntary Return and Reintegration Strategy** will consist in setting out new approaches in third countries and include better linkages with other development initiatives and national strategies, to build third countries' capacity and ownership. The effective implementation of the Strategy will require close cooperation with Frontex under its reinforced mandate on return and as part of the common EU system for returns.

6.6 Developing legal pathways to Europe

Safe channels to offer protection to those in need remove the incentive to embark on dangerous journeys to reach Europe, as well as demonstrating solidarity with third countries hosting refugees. Legal migration can bring benefit to our society and the economy. While Member States retain the right to determine volumes of admission for people coming from third countries to seek work, the EU's common migration policy needs to reflect the integration of the EU economy and the interdependence of Member States' labour markets. This is why EU policies need to foster a level playing field between national labour markets as migration destinations. They should also help Member States use their membership of the EU as an asset in attracting talent.

Resettlement is a tried and tested way to provide protection to the most vulnerable refugees. Recent years have already seen a major increase in resettlement to the EU, and this work should be further scaled up. The Commission is recommending to formalise the *ad hoc* scheme of approximately 29 500 resettlement places already being implemented by Member States, and to cover a two-year period, 2020-2021[52] (due to the COVID-19 pandemic, it will not be possible to fulfil all resettlement pledges during 2020). To ensure a seamless continuation of EU resettlement efforts beyond 2021 and to confirm the EU's global lead on resettlement, the Commission will invite Member States to make pledges from 2022 onwards. This will be supported by the EU budget and include complementary pathways to protection, such as humanitarian admission schemes and measures such as study or work-related schemes. The EU will also support Member States wishing to establish **community**

[50] European Council conclusions of 18 October 2018.

[51] The EU's humanitarian assistance is provided in line with the principles of humanity, impartiality, neutrality, and independence.

[52] Commission Recommendation on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways, C(2020) 6467 of 23 September 2020.

or private sponsorship schemes through funding, capacity building and knowledge-sharing, in cooperation with civil society, with the aim of developing a European model of community sponsorship, which can lead to better integration outcomes in the longer term.

The EU also works with its partner countries on legal pathways to Europe as part of migration partnerships, opening the way for cooperation on schemes to match people, skills and labour market needs through legal migration. At the same time, developing legal pathways should contribute to the reduction of irregular migration, which often leads to undeclared work and labour exploitation in the EU. The Commission will reinforce support to Member States to scale up legal migration together with partner countries as a positive incentive and in line with the EU's skills and labour market needs, while fully respecting Member States' competencies.

The EU has a strong track record in labour mobility schemes. Legal migration pilot projects[53] have shown that by providing targeted support, the EU can help Member States implement schemes that meet the needs of employers. The EU has also opened Erasmus+ and vocational training to third country nationals and offered support grants for the mobilisation of the diaspora. However, the scope and ambition of existing schemes remains limited.

A reinforced and more comprehensive approach[54], would offer cooperation with partner countries and help boost mutually-beneficial international mobility. The Commission will therefore launch **Talent Partnerships** in the form of an enhanced commitment to support legal migration and mobility with key partners. They should be launched first in the EU's Neighbourhood, the Western Balkans, and in Africa, with a view to expanding to other regions. These will provide a comprehensive EU policy framework as well as funding support for cooperation with third countries, to better match labour and skills needs in the EU, as well as being part of the EU's toolbox for engaging partner countries strategically on migration. Strong engagement of Member States will be essential, as will involvement of the private sector and the social partners, and ownership from partner countries. The Commission will organise a high-level conference with Member States and key EU stakeholders to launch the Talent Partnerships.

The Talent Partnerships should be inclusive, building strong cooperation between concerned institutions (such as Ministries of Labour and Education, employers and social partners, education and training providers, and diaspora associations). The Commission will stimulate this cooperation through dedicated outreach and build a network of involved enterprises.

The Talent Partnerships will provide a single framework to mobilise EU and Member States' tools. EU funding streams in the area of external relations, home affairs, research, and education (Erasmus+) could all contribute. The Partnerships would combine direct support for mobility schemes for work or training with capacity building in areas such as labour market or skills intelligence, vocational education and training, integration of returning migrants, and diaspora mobilisation. Greater focus on education would help to support and reinforce investment in local skills.

As part of the comprehensive approach to migration and mobility, visa measures can act as a positive incentive in the engagement with third countries. Full implementation of the

[53] Eight Member States are currently involved in six such projects with Egypt, Morocco, Tunisia, Nigeria and Senegal. Key themes include mobility for ICT experts, opportunities for study and traineeships in Europe, and boosting the capacity of third countries to manage migration and support reintegration.

[54] This would be in line with the Global Skills Partnerships, bilateral agreements through which a country of destination gets directly involved in creating human capital among potential migrants in the country of origin prior to migration.

recently revised **Visa Code**[55] and additional efforts on visa facilitation with third countries will bring more consistency and should encourage *bona fide* short-term mobility, including student exchanges. Short-term mobility could complement other legal pathways to improve upstream cooperation with third countries (for example, in stemming irregular migratory flows).

Key actions

The Commission, where relevant in close cooperation with the High Representative and Member States, will:

- Launch work immediately to develop and deepen tailor-made comprehensive and balanced migration dialogues and partnerships with countries of origin and transit, complemented by engagement at the regional and global level;
- Scale up support to help those in need and their host communities;
- Increase support for economic opportunity and addressing the root causes of irregular migration;
- Step up the place of migration in the programming of the new instruments in the next Multiannual Financial Framework;
- Ensure full and effective implementation of existing EU readmission agreements and arrangements and examine options for new ones;
- Make use of the Visa Code to incentivise and improve cooperation to facilitate return and readmission, as well as working through the Asylum and Migration management Regulation when in place;
- Take forward the recommendation on legal pathways to protection in the EU, including resettlement; and
- Develop EU Talent Partnerships with key partner countries to facilitate legal migration and mobility.

The European Parliament and the Council should:

- Conclude swiftly negotiations on the Framework Regulation on Resettlement and Humanitarian Admission.

7. ATTRACTING SKILLS AND TALENT TO THE EU

Working with third countries on legal pathways is fully in line with the EU's interests. Europe has an ageing and shrinking population[56]. The structural pressure this is expected to create on the labour market is complemented by specific skills shortages in different localities and sectors such as health, medical care, and agriculture. The contribution of legally staying migrants to reducing skills gaps and increasing the dynamism of the EU labour market was recognised in the recently updated **Skills Agenda for Europe**[57].

Activating and upskilling the domestic workforce is necessary but not sufficient to address all existing and forecasted labour and skills shortages. This is already happening: in 2018, Member States issued over 775,000 first residence permits to third country nationals for employment purposes[58]. Workers from third countries are filling key shortages in a number

[55] Regulation (EC) No 810/2009 as amended.
[56] Report on the Impact of Demographic Change, COM(2020) 241 of 17 June 2020.
[57] European Skills Agenda for sustainable competitiveness, social fairness and resilience, COM(2020) 274 of 1 July 2020.
[58] Eurostat (online data code: migr_pop1ctz). This figure does not include UK data.

of occupations across Member States[59], including in occupations that were key to the COVID-19 response[60]. In a joint statement with the Commission, the European Social and Economic Partners have highlighted the potential of migrant workers to contribute to the green and digital transitions by providing the European labour market with the skills it needs[61]. Nevertheless, the EU is currently losing the global race for talent[62]. While Member States are responsible for deciding on the number of persons they admit for labour purposes, an improved framework at EU level would put Member States and businesses in the best possible position to attract the talents they need.

In addition to launching Talent Partnerships, it is important to complete the unfinished work of reforming the **EU Blue Card Directive,** to attract highly skilled talent[63]. The Commission acknowledges the diversity of labour market situations across Member States and their wish for flexibility through retaining national schemes tailored to specific labour market needs. At the same time, the reform must bring real EU added value in attracting skills through an effective and flexible EU-wide instrument. This requires more inclusive admission conditions, improved rights, swift and flexible procedures, improved possibilities to move and work in different Member States, and a level playing field between national and EU systems. The new EU-wide scheme should be open to recognising high-level professional skills and relevant experience. It should also be inclusive, covering categories such as highly skilled beneficiaries of international protection, to benefit from their skills and foster their integration into EU societies. The Commission calls on the European Parliament and the Council to finalise negotiations swiftly, and is ready to work towards a compromise along these lines.

The international mobility of students and researchers can increase the pool of expertise available to European universities and research institutions, boosting our efforts to manage the transition towards a green and digital economy. Full implementation of the recently revised **Directive on Students and Researchers**[64] is essential to make it easier and more attractive to come to the EU, and to promote the circulation of knowledge by moving between Member States. Talent Partnerships may also directly support schemes facilitating the mobility of students and researchers.

More could be done to increase the impact of the EU legal migration framework on Europe's demographic and migration challenges[65]. There are a number of inherent shortcomings in the EU legal migration system (such as fragmentation, limited coverage of EU rules, inconsistencies between different Directives, and complex procedures) that could be addressed through measures ranging from better enforcement to new legislation. The Commission will first ensure that the current framework is implemented fully and effectively, by intensifying cooperation and dialogue with Member States.

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[59] OECD (2018), "The contribution of migration to the dynamics of the labour force in OECD countries: 2005-2015", OECD Social, Employment and Migration Working Papers, No. 203, OECD Publishing, Paris.

[60] For instance, non-EU immigrants represented in 2018 around 6% of health professionals in the EU, 14% of personal care workers, 10% of refuse workers, 16% of agricultural labourers (without counting in seasonal workers), 25% of cleaners and helpers and 27% of food preparation assistants.

[61] https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/legal-migration-policy/joint-statement-commission-economic-social-partners-renewal-european-partnership-integration.pdf

[62] See for example: Recruiting immigrant workers: Europe, OECD and EU (2016), OECD Publishing, Paris.

[63] COM(2016) 378 of 7 June 2016.

[64] Directive (EU) 2016/801.

[65] See Fitness check on EU legal migration legislation (SWD(2019) 1055 of 29 March 2019). On demographic issues, see also: Demographic Scenarios for the EU – Migration, Population and Education (Commission, 2019).

The Commission will also address the main shortcomings in three new sets of measures, responding to the overall objective of attracting the talent the EU needs. Admission of workers of different skills levels to the EU, and intra-EU mobility of third-country workers already in the EU, would both be facilitated.

- A revision of the **Directive on long-term residents**[66], which is currently under-used and does not provide an effective right to intra-EU mobility. The objective would be to create a true EU long-term residence status, in particular by strengthening the right of long-term residents to move and work in other Member States.
- A review of the **Single Permit Directive**[67], which has not fully achieved its objective to simplify the admission procedures for all third-country workers. This would look at ways to simplify and clarify the scope of the legislation, including admission and residence conditions for low and medium skilled workers.
- Further explore an **EU Talent Pool** for third-country skilled workers which could operate as an EU-wide platform for international recruitment, through which skilled third-country nationals could express their interest in migrating to the EU, and could be identified by EU migration authorities and employers based on their needs[68].

The Commission has also launched a **public consultation on attracting skills and talent**. This aims to identify additional areas where the EU framework could be improved, including through possible new legislation. It also invites new ideas to boost the EU's attractiveness, facilitate skills matching, and better protect labour migrants from exploitation. As part of the consultation, the Commission will pursue its dialogue with social and economic partners on all these initiatives. The results will inform the development of an EU Talent Pool and help the Commission to decide what other initiatives are needed to address the long-term challenges in this area.

Key actions

The Commission will:

- Launch a debate on the next steps on legal migration, with a public consultation; and
- Propose a Skills and Talent package including a revision of the Long-term Residents Directive and a review of the Single Permit Directive, as well as setting out the options for developing an EU Talent Pool.

The European Parliament and the Council should:

- Conclude negotiations on the EU Blue Card Directive.

8. SUPPORTING INTEGRATION FOR MORE INCLUSIVE SOCIETIES

Part of a healthy and fair system of migration management is to ensure that everyone who is legally in the EU can participate in and contribute to the well-being, prosperity and cohesion of European societies. In 2019, almost 21 million non-EU nationals were legally resident in the EU[69]. Successful integration benefits both the individuals concerned, and the local communities into which they integrate. It fosters social cohesion and economic dynamism. It

[66] Directive 2003/109/EC.
[67] Directive 2011/98/EU.
[68] See the work carried out by the OECD: Building an EU Talent Pool - A New Approach to Migration Management for Europe, 2019.
[69] Source of statistics in this paragraph: Eurostat. UK figures not included.

sets positive examples for how Europe can manage the impacts of migration and diversity by building open and resilient societies. But despite numerous success stories, too many migrants and households with migrant backgrounds still face challenges in terms of unemployment, lack of educational or training opportunities and limited social interaction. For example, in 2019, there was still a significant shortfall in the employment prospects of non-EU nationals – at around 60% of 20-64 year olds, compared to around 74% for host-country nationals. This creates concern amongst citizens on the pace and depth of integration – and a legitimate public policy reason to make this work.

The integration of migrants and their families is therefore a key part of the broader EU agenda to promote social inclusion. While integration policy is primarily a Member State responsibility, the EU has stepped up its support to Member States and other relevant stakeholders since the adoption of the 2016 Action Plan[70]. The European Integration Network works to boost cooperation and mutual learning between the national authorities responsible for integration. The EU has also strengthened cooperation with local and regional authorities and civil society and has created new partnerships with employers and social and economic partners[71]. The Commission has recently renewed the European Partnership for Integration with social and economic partners to offer opportunities for refugees to integrate into the European labour market[72]. This should lead to further dialogue and future cooperation to attract the skills our economy needs.

This work now needs to be deepened, to ensure that meaningful opportunities are provided for all to participate to our economy and society. As part of the priority on promoting our European way of life, the Commission will adopt an **Action Plan on integration and inclusion for 2021-2024.** The integration of migrants and their families will be a key aspect of this. This work will provide strategic guidance and set out concrete actions to foster inclusion of migrants and broader social cohesion, bringing together relevant stakeholders and recognising that regional and local actors have a key part to play. It will draw on all relevant policies and tools in key areas such as social inclusion, employment, education, health, equality, culture and sport, setting out how migrant integration should be part of efforts to achieve the EU's goals on each. Ensuring migrants fully benefit from the European Pillar of Social Rights will be a key objective. It will recognise that people with a migrant background (e.g. foreign born or second generation migrants) often face similar integration challenges to third-country nationals. The actions will include direct support to those active 'on the ground' and cover the full range of measures needed to accompany migrants and their families along the path to successful integration and social inclusion. The Commission is now consulting to seek the views of stakeholders, citizens and migrants on possible actions to promote the integration and social inclusion of migrants and EU citizens with a migrant background.

To ensure that migrants are actively involved in the development of EU migration policies, the Commission is creating an informal expert group on the views of migrants. One of its first tasks will be to provide input to the preparation of the Action Plan on integration and inclusion, but it will also be able to provide advice and expertise to the Commission on the design and implementation of initiatives in any area of migration and asylum.

Key actions

[70] COM(2016) 377 final of 7 June 2016.

[71] Initiatives European Partnership on Integration and Employers together for integration; support to the Committee of Regions initiative Cities and Regions for integration.

[72] https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1561

The Commission will:

- Adopt a comprehensive Action Plan on integration and inclusion for 2021-2024; and
- Implement the renewed European Partnership for Integration with social and economic partners and look into expanding the future cooperation to the area of labour migration.

9. NEXT STEPS

This New Pact on Migration and Asylum sets out the end-to-end approach needed to make migration management in Europe fair, efficient and sustainable. The EU will now have to show the will to make the New Pact a reality. This is the only way to prevent the recurrence of events such as those seen in Moria this month: by putting in place a system to match the scale of the challenge. A common European framework for migration management is the only way to have the impact required. Bringing policies together in this way is essential to provide the clarity and results needed for citizens to trust that the EU will deliver results that are both robust and humane.

Such a system can only function if it has the tools needed to deliver. This means a strong legal framework able to give the clarity and focus needed for mutual confidence, with robust and fair rules for those in need of international protection and those who do not have the right to stay. It requires migration to be at the heart of mutually beneficial partnerships with third countries to effectively improve migration management. It calls for an intelligent approach to legal migration to support the economic need for talent and the social need for integration. It also requires sufficient budget to reflect the common responsibilities and the common benefits of EU migration policies, inside and outside the EU.

Finally, it needs the engagement and commitment of all. That is why the New Pact has been built on careful consultations: with the European Parliament and the Council, the Member States, and with stakeholders. It is grounded in our values but will also provide the results needed. The Commission considers that the result is a balance of interests and needs which deserves the support of all. The Commission now calls on the European Parliament and the Council to bring a new impetus. A first step should be to reach a common understanding on the new solidarity mechanism as well as the responsibility elements in the form of the new screening and border procedure by the end of this year, followed swiftly by adopting the full package of legislation required. By working together, the EU can and must ensure that a truly common migration and asylum policy is quickly made a reality.

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Brussels, 23.9.2020
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ANNEX

ANNEXES

to the

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

on a New Pact on Migration and Asylum

Roadmap to implement the New Pact on Migration and Asylum

Actions	Indicative Timetable
A common European framework for migration and asylum management	
The Commission:	
• Proposes an Asylum and Migration Management Regulation, including a new solidarity mechanism	Q3 2020
• Proposes new legislation to establish a screening procedure at the external border	Q3 2020
• Amends the proposal for a new Asylum Procedures Regulation to include a new border procedure and make asylum procedures more effective	Q3 2020
• Amends the Eurodac Regulation proposal to meet the data needs of the new framework	Q3 2020
• Will appoint a Return Coordinator within the Commission, supported by a new High Level Network for Returns and a new operational strategy	Q1 2021
• Will set out a new Strategy on voluntary returns and reintegration	Q1 2021
The European Border and Coast Guard Agency (Frontex) should:	
• Fully operationalise the reinforced mandate on return and provide full support to Member States at national level	Q4 2020
• Appoint a Deputy Executive Director for Return	Q2 2021
The European Parliament and the Council should:	
• Adopt the Asylum and Migration Management Regulation, as well as the Screening Regulation and the revised Asylum Procedures Regulation	Q2 2021
• Give immediate priority to adoption of the Regulation on the EU Asylum Agency	Q4 2020
• Ensure quick adoption of the revised Eurodac Regulation	Q4 2020
• Ensure quick adoption of the revised Reception Conditions Directive and the Qualification Regulation	Q2 2021
• Ensure the swift conclusion of the negotiations on the revised Return Directive	Q2 2021
A robust crisis preparedness and response system	
The Commission:	
• Presents a Migration Preparedness and Crisis Blueprint	Q3 2020
• Proposes legislation to address situations of crisis and *force majeure* and repealing the Temporary Protection Directive	Q3 2020
The European Parliament and the Council should:	
• Prioritise and conclude work on the new crisis instrument	Q2 2021
The Member States, the Council and the Commission should:	
• Start implementation of the Migration Preparedness and Crisis Blueprint	Q4 2020

Integrated border management	
The Commission:	
• Adopts a Recommendation on cooperation between Member States concerning private entities' rescue activities	Q3 2020
• Presents guidance to Member States to make clear that rescue at sea cannot be criminalised	Q3 2020
• Will adopt a Strategy on the future of Schengen	Q1 2021
• Will establish a Schengen Forum	Q4 2020
• Will launch a new European group of experts on search and rescue	Q4 2020
The Commission, the Member States and Frontex should:	
• Ensure the swift and full implementation of the new European Border and Coast Guard Regulation	Q4 2020
• Ensure the implementation and interoperability of all large scale IT systems	Q4 2023
Reinforcing the fight against migrant smuggling	
The Commission will:	
• Present a new EU Action Plan against Migrant Smuggling for 2021-2025	Q2 2021
• Start assessment how to strengthen the effectiveness of the Employers Sanctions Directive	Q4 2020
• Build action against migrant smuggling into partnerships with third countries	Q4 2020
Working with our international partners	
The Commission, in close cooperation with the High Representative and Member States, will:	
• Launch work immediately to develop and deepen tailor-made comprehensive and balanced migration dialogues and partnerships	Q4 2020
• Scale up support to help those in need and their host communities	Q4 2020
• Increase support for economic opportunity and addressing the root causes of irregular migration	Q4 2020
• Step up the place of migration in the programming of the new instruments in the next Multiannual Financial Framework	Q4 2020
• Examine options for new EU readmission agreements and arrangements	Q4 2020
• Make use of the Visa Code to incentivise and improve cooperation to facilitate return and readmission, also preparing for the new provisions of the Asylum and Migration Management Regulation	Q1 2021
• Take forward the recommendation on legal pathways to protection in the EU, including resettlement	Q4 2020
• Develop EU Talent Partnerships with key partner countries	Q4 2020
The European Parliament and the Council should:	
• Conclude swiftly negotiations on the Framework Regulation on Resettlement and Humanitarian Admission	Q4 2020

Attracting skills and talent to the EU	
The Commission will:	
• Launch a debate on the next steps on legal migration, with a public consultation	Q3 2020
• Propose a Skills and Talent package including a revision of the Long-term Residents Directive and a review of the Single Permit Directive, as well as setting out the options for developing an EU Talent Pool	Q4 2021
The European Parliament and the Council should:	
• Conclude negotiations on the EU Blue Card Directive	Q4 2020
Supporting integration for more inclusive societies	
The Commission will:	
• Adopt a comprehensive Action Plan on integration and inclusion for 2021-2024	Q4 2020
• Implement the renewed European Partnership for Integration with social and economic partners and look into expanding the future cooperation to the area of labour migration	Q1 2021

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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

EU strategy on the rights of the child

We need a strategy that is inclusive of all children and that supports children in vulnerable situations and we need a strategy that promotes and supports our right to participate in decisions that affect us. Because nothing that is decided for children should be decided without children. It's time to normalise child participation.

(Children's conclusions, 13th European Forum on the rights of the child, 2020).

Introduction

Children's rights are human rights. Every child in Europe and across the world should enjoy the same rights and be able to live free of discrimination, recrimination or intimidation of any kind.

This is a social, moral and human imperative on which children – who account for almost one in five people living in the EU[1] and one in three in the world[2] – and the wider community depends on. It is about ensuring all children can fulfil their potential and play a leading role in society– whether it be in fighting for fairness and equality, strengthening democracy or driving the twin green and digital transitions.

This is why the **protection and promotion of the rights of the child is a core objective of the European Union**'s work at home and abroad[3]. It is enshrined in the Charter of Fundamental Rights of the EU[4] which guarantees the protection of children's rights in implementing Union law. It cuts across all policy areas and forms part of the core priorities of the European Commission, as set out in President von der Leyen's Political Guidelines[5].

This **strategy's overarching ambition is to build the best possible life for children in the European Union and across the globe**. It reflects the rights and the role of children in our society. They inspire and are at the forefront of raising awareness on the nature and climate change crises, discrimination and injustice. They are as much the citizens and leaders of today as they are the leaders of tomorrow. This strategy seeks to fulfil our shared responsibility to join forces to respect, protect and fulfil the rights of every child; and to build together with children healthier, resilient, fairer and equal societies for all.

The United Nations Convention on the Rights of the Child[6] (UNCRC), which all EU Member States have ratified, continues to guide our action in this field. More than 30 years after its entry into force, significant progress has been made and children are increasingly recognised as having their own set of rights.

The Convention recognises the right of all children to have the best possible start in life, to grow up happy and healthy, and to develop to their full potential. This includes the right to live in a clean and healthy planet, a protective and caring environment, to relax, play, and enjoy cultural and artistic activities, and to enjoy and respect the natural environment.

[1] A child is a person below 18 years old. Population data. [yth_demo_010], [yth_demo_020], Eurostat, 2020
[2] Demographics. State of the World's Children 2019 Statistical Tables, UNICEF
[3] Article 3(3) of the Treaty on European Union (TEU) establishes the objective for the EU to promote the protection of the rights of the child. Article 3(5) TEU sets forth that in its relations with the wider world, the Union shall contribute to (…) the protection of human rights, in particular the rights of the child.
[4] EU Charter of Fundamental Rights,2012/C 326/02
[5] *A Union that strives for more. My agenda for Europe*. By candidate for President of the European Commission Ursula von der Leyen. Political Guidelines for the next European Commission 2019-2024
[6] Convention on the Rights of the Child, United Nations, 1989

Families and communities also need to be provided with the necessary support so that they can ensure children's wellbeing and development.

Never before have children across the EU enjoyed the rights, opportunities and security of today. This is notably thanks to EU policy actions, legislation and funding over the last decade, working alongside Member States. In past decades, the Commission has put forward important initiatives addressing child trafficking, child sexual abuse and exploitation, missing children, and on promoting child-friendly justice systems. We have elaborated and included child-friendly provisions in asylum and migration policies and law. We have stepped up efforts to make the internet safer for children and continue to combat poverty and social exclusion. The revamped 2017 EU Guidelines for the promotion and protection on the rights of the child were a milestone for children's rights globally, together with the many humanitarian and developmental programmes promoting the right to health and education. The impact of these initiatives has largely improved the life of children in the EU, and the concrete fulfilment of their rights.

This progress was hard won but should not be taken for granted. Now is the time to build on those efforts, address persisting and emerging challenges and to define a comprehensive strategy to protect and promote children's rights in today's ever-changing world.

Too many children still face severe and regular violations of their rights. Children continue to be victims of different forms of violence; suffer from socio-economic exclusion and discrimination, in particular on the grounds of their sex, sexual orientation, racial or ethnic origin, religion or belief, disability – or that of their parents. Children's concerns are not sufficiently listened to, and their views are often not considered enough in matters important to them.

The **COVID-19 pandemic has exacerbated existing challenges and inequalities and created new ones**. Children have been exposed to increased domestic violence and online abuse and exploitation, cyberbullying[7] and more child sexual abuse material has been shared online[8]. Procedures such as on asylum or family reunification experienced delays. The shift to distance learning disproportionately affected very young children, those with special needs, those living in poverty, in marginalised communities, such as Roma children, and in remote and rural areas, lacking access to internet connections and IT equipment. Many children lost their most nutritious daily meal, as well as access to services that schools provide. The pandemic also strongly affected children's mental health, with a reported increase in anxiety, stress and loneliness. Many could not participate in sports, leisure, artistic and cultural activities that are essential for their development and well-being.

The EU needs a new, comprehensive approach to reflect new realities and enduring challenges. By adopting this first comprehensive strategy on the rights of the child, the Commission is committing to putting children and their best interests at the heart of EU policies, through its internal and external actions and in line with the principle of subsidiarity. This strategy aims to bring together all new and existing EU legislative, policy and funding instruments within one comprehensive framework.

It proposes a series of targeted actions across **six thematic areas**, each one defining the priorities for EU action in the coming years. This will be supported by strengthening the **mainstreaming of children's rights** across all relevant EU policies. The specific needs of

[7] *How children (10-18) experienced online risks during the COVID-19 lockdown in spring 2020*, JRC, European Commission, 2020

[8] *Exploiting Isolation: Offenders and victims of online child sexual abuse during the COVID-19 pandemic*, Europol, 2020

certain groups of children, including those in situations of multiple vulnerabilities and facing intersecting forms of discrimination, are duly taken into account.

This strategy builds on previous Commission communications on the rights of the child[9], and on the existing legal and policy framework[10]. It also contributes to achieving the aims of the European Pillar of Social Rights[11]. The strategy is anchored in the UNCRC and its three Optional Protocols, the UN Convention on the Rights of Persons with Disabilities (UNCRPD)[12] and will contribute to achieving the United Nations Sustainable Development Goals (SDGs)[13]. It also links to the Council of Europe standards on the rights of the child, as well as with its Strategy for the Rights of the Child (2016-2021)[14].

The strategy draws upon the substantive contributions from the European Parliament[15], Member States, child rights organisations, other stakeholders and individuals, collected during the preparatory phase, including through an open public consultation[16] and the 2020 European Forum on the Rights of the Child[17].

This strategy has been developed **for children and together with children**. The **views and suggestions of over 10.000 children** have been taken on board in preparing this strategy[18]. Children have also been involved in preparing its child-friendly version[19]. This marks a new chapter and an important step for the EU towards genuine child participation in its decision-making processes.

1. Participation in political and democratic life: An EU that empowers children to be active citizens and members of democratic societies

"If not us, then who?" (Boy, 16, 13th European Forum on the Rights of the Child, 2020)

The sight of young people lining the streets around the world to call for climate action or as child human rights defenders[20] show us that children are active citizens and **agents of change**. While in most EU Member States children do not have the rights to vote until age 18, they do have the right to be active members of democratic societies and can help to shape, implement and evaluate political priorities.

[9] Towards an EU Strategy on the Rights of the Child, COM(2006)367 and An EU Agenda for the Rights of the Child, COM(2011)60

[10] See Annex 2 - Rights of the Child - EU *acquis* and policies

[11] The European Pillar of Social Rights in 20 principles

[12] Convention on the Rights of Persons with Disabilities, United Nations, 2006

[13] UN Sustainable Development Goals: a 2030 Agenda. See Annex 1: Comparative table detailing the relevant rights enshrined in the EU Charter of Fundamental Rights, the UN Convention on the Rights of the Child and the goals and targets of the UN Sustainable Development Goals, as protected and promoted by the different strands of this strategy.

[14] Council of Europe Strategy for the Rights of the Child (2016-2021). The Council of Europe is also preparing the future strategic framework, for the period 2022-2027.

[15] European Parliament Resolution of 26 November 2019 on children's rights on the occasion of the 30th anniversary of the UN Convention on the Rights of the Child (2019/2876(RSP)) – European Parliament Resolution of 11 March 2021 on children's rights in view of the EU Strategy on the rights of the child (2021/2523(RSP))

[16] Summary report of the open public consultation to the EU Strategy on the Rights of the Child, 2021

[17] 13th European Forum on the Rights of the Child, 2020

[18] UNICEF, Eurochild, Save the Children, Child Fund Alliance, World Vision: *Our Europe, Our Rights, Our Future*. - SOS Children's Villages consultation with children in residential care and children receiving family strengthening services and the summary report, Defence for Children International, Terre des Hommes and its partners.

[19] EU strategy on the rights of the child: child-friendly versions

[20] *Report of the 2018 Day of General Discussion on Protecting and Empowering Children as Human Rights Defenders*, UN Committee on the Rights of the Child, 2018; *Implementation Guide on the Rights of Child Human Rights Defenders*, Child Rights Connect, 2020

There are good examples of how different levels of governments and public authorities are promoting children's meaningful participation, leading to a real influence on decisions in the public sphere[21]. At EU level, these include EU Youth Dialogues[22] and the Learning Corner[23].

Nonetheless, **too many children do not feel considered enough in decision-making**[24]. Challenges include stereotypes and perceptions that children's participation is difficult, costly, demanding resources and expertise. Gender stereotypes, in particular, limit boys' and girls' aspirations and create barriers to their participation and life choices. While a majority of children seem to be aware of their rights, only one in four consider their rights respected by the whole of society[25]. This adversely affects child participation in schools, in sports, culture and other leisure activities, in justice and migration systems or the health-care sector, as well as in families.

This is why, the EU needs to promote and improve the **inclusive and systemic participation of children at the local, national and EU levels**. This will be driven through a new **EU Children's Participation Platform,** to be established in partnership with the European Parliament and child rights organisations, to ensure children are better involved in decision-making. The Conference on the Future of Europe also presents an excellent opportunity to put child participation into action.

The Commission will also help children, professionals working with and for children, the media, the public, politicians and policy-makers to increase awareness of children's rights, and to ensure the right of the child to be heard and listened to. It will also promote a meaningful and inclusive participation of children in the policy-making process of the European institutions and EU agencies, notably through child-specific consultations where relevant.

Key actions by the European Commission:

- establish, jointly with the European Parliament and child rights organisations, an EU Children's Participation Platform, to connect existing child participation mechanisms at local, national and EU level, and involve children in the decision-making processes at EU level;
- create space for children to become active participants of the European Climate Pact through pledges or by becoming Pact Ambassadors. By involving schools in sustainable climate, energy and environment education, the Education for Climate Coalition will help children to become agents of change in the implementation of the Climate Pact and the European Green Deal[26];
- develop and promote accessible, digitally inclusive and child friendly versions and formats of the Charter of Fundamental Rights, and other key EU instruments;
- develop and promote guidelines on the use of child friendly language in documents and in stakeholders' events and meetings with child participants;
- include children within the Fundamental Rights Forum of the EU Agency for Fundamental Rights (FRA) and the Conference on the Future of Europe;
- conduct child-specific consultations for relevant future initiatives;

[21] *Study on child participation in EU political and democratic life*, European Commission, 2021 and its accessible version
[22] EU Youth Dialogues (16-30 years old)
[23] Learning corner
[24] Europe Kids Want survey, *Sharing the view of children and young people across Europe*, UNICEF and Eurochild, 2019
[25] *Our Europe. Our Rights. Our Future*, *op. cit.*
[26] European Green Deal

– strengthen expertise and practice on child participation among Commission staff and the staff of EU agencies, including on child protection and safeguarding policies.

The European Commission invites Member States to:

– establish, improve and provide adequate resources for new and existing mechanisms of child participation at local, regional and national level, including through the Council of Europe's child participation self-assessment tool [27];
– increase awareness and knowledge of the rights of the child, including for professionals working with and for children, through awareness campaigns and training activities;
– strengthen , education on citizenship, equality and participation in democratic processes in school curricula at local, regional, national and EU level;
– support schools in their efforts to engage pupils in the school's daily life and decision-making.

2. Socio-economic inclusion, health and education: An EU that fights child poverty, promotes inclusive and child-friendly societies, health and education systems.

"I think that at some point I feel some anxiety. I would like to talk to a psychologist to give me an opinion on how it would be good to deal with things." (Child, Greece).

"School lets you open up to the world and talk to people. School is life." (Child seeking asylum, France).

Each child has the right to an adequate standard of living, and to equal opportunities, from the earliest stage of life. Strengthening the socio-economic inclusion of children is essential to address the passing of poverty and disadvantage through generations. Social protection and support to families is essential in this respect.

Each child has the right to the highest attainable standard of healthcare and quality education, irrespective of their background and where they live. However, children at risk of poverty and social exclusion are more likely to experience difficulties in accessing essential services, in particular in rural, remote and disadvantaged areas.

The European Pillar of Social Rights[28] and the 2013 Commission Recommendation 'Investing in Children: breaking the cycle of disadvantage'[29] remain important tools to reduce child poverty and improving child well-being. The EU funding instruments are equally key to support these policy objectives. Between 2021 and 2027, Member States with a rate of child at-risk-of-poverty or social exclusion higher than the EU average (in 2017-2019) will have to earmark 5% of the European Social Fund Plus (ESF+) for combatting child poverty, while all others should equally allocate appropriate amounts. The European Regional Development Fund (ERDF) will contribute to investments in infrastructure, equipment and access to mainstream and quality services, with a strong focus on the poorest regions of the Union, where public services tend to be less developed. The Recovery and Resilience Facility will help achieve fast and inclusive recovery from the COVID-19 pandemic, including through the promotion of policies for children and youth, and enhancing economic, social and territorial cohesion.

[27] Child Participation Assessment Tool, Council of Europe
[28] The European Pillar of Social Rights in 20 principles
[29] Commission Recommendation Investing in Children: breaking the cycle of disadvantage (2013/112/EU)

2.1 Combating child poverty and fostering equal opportunities

Despite a decrease over the past years, in 2019, 22.2% of children in the EU were at risk of poverty or social exclusion. Depending on the Member State, the poverty risk for children raised by a single parent, in families with three or more children, living in rural and the most remote areas of the EU, or with a migrant or Roma background is up to three times higher than that of other children[30]. Around half of children whose parents' level of education was low, were at risk of poverty or social exclusion, compared with less than 10% of children whose parents' level of education was high. Children from low-income families are at the higher risk of severe housing deprivation or overcrowding, and are more exposed to homelessness.

This translates into deep inequality of opportunities, which remains an issue for children even in countries with low levels of poverty and social exclusion[31]. Children from disadvantaged backgrounds are less likely than their better-off peers to perform well in school, enjoy good health and realise their full potential later in life.

All children, including those with disabilities and from disadvantaged groups, have an equal right to live with their families and in a community. Integrated child protection systems, including effective prevention, early intervention and family support, should provide children without or at risk of losing parental care the necessary conditions to prevent family separation. Poverty should never be the only reason for placing children in care. The shift to quality community and family-based care, and support for ageing out of care, need to be ensured.

With the Action Plan on implementing the European Pillar of Social Rights[32], the Commission has set out the ambitious target of reducing by at least 15 million the number of people at risk of poverty or social exclusion in the EU by 2030 – including at least 5 million children. One of its main deliverables is the Commission's proposal for Council recommendation establishing the **European Child Guarantee**[33], which complements this Strategy and calls for specific measures for children at risk of poverty or social exclusion. The proposal recommends to Member States that they guarantee access to quality key services for children in need: early childhood education and care, education (including school-based activities), healthcare, nutrition, and housing.

The Commission monitors how Member States address child poverty or social exclusion in the **European Semester** process and, where necessary, propose relevant country specific recommendations. The reinforced Youth Guarantee[34] stipulates that all young people from the age of 15 receive an offer of employment, education, traineeship or apprenticeship within a period of four months of becoming unemployed or leaving formal education.

Key actions by the European Commission:

- establish a **European Child Guarantee;**
- ensure the complementarity with the **European Strategy for the rights of persons with disabilities**[35] to respond to the needs of children with disabilities and provide better access to mainstream services and independent living.

[30] Commission proposal for a Joint Employment Report 2021 Commission proposal for a Joint Employment Report, 2021
[31] *Combating child poverty: an issue of fundamental rights*, FRA, 2018
[32] The European Pillar of Social Rights Action Plan, COM(2021) 102 final
[33] Proposal for a Council Recommendation establishing a European Child Guarantee, COM(2021)137
[34] Council Recommendation on A Bridge to Jobs – Reinforcing the Youth Guarantee, (2020/C 372/01)
[35] Strategy for the rights of persons with disabilities 2021-2030, COM(2021) 101 final

The European Commission invites Member States to:

- swiftly adopt in the Council the Commission proposal for a Council recommendation establishing the European Child Guarantee and implement its provisions;
- implement the reinforced Youth Guarantee and promote the involvement of young people in Youth Guarantee services.

2.2 Ensuring the right to healthcare for all children

Vaccination is the main tool to prevent serious, contagious, and sometimes deadly diseases, and is a basic element of childcare. Thanks to widespread vaccination, smallpox has been eradicated and Europe made polio-free. However, outbreaks of vaccine-preventable diseases still occur due to insufficient vaccination coverage rates. The COVID-19 pandemic has also threatened the continuity of childhood vaccination programmes in Europe. The European Commission and EU Member States share the objectives to fight disinformation, improve vaccine confidence, and ensure equitable access to vaccines for all.

In 2020, over 15,500 children and adolescents were diagnosed with cancer in the EU, with over 2,000 young patients losing their lives to it. Cancer constitutes the primary cause of death by disease beyond the age of one. Up to 30% of children affected by cancer suffer severe long-term consequences and the number of childhood cancer survivors continues to grow.

Adopting a healthy and active lifestyle at a young age will help reduce cancer risks later in life. The **Europe's Beating Cancer Plan**[36] steps up early preventive actions and launches new initiatives on paediatric cancer to help young patients recover and ensure an optimal quality of life. Children suffering with cancer have often at their disposal a reduced number of validated treatments. The revised Regulation on medicines for children, a flagship initiative of the Pharmaceutical Strategy for the EU[37], aims to foster targeted medicinal products for children, including paediatric oncology.

Childhood is a crucial stage in life in determining future physical and mental health. However, children's mental health issues are widespread and can sometimes be linked to isolation, education environment, social inclusion and poverty, and the prolonged use of digital tools. Up to 20% of children worldwide experience mental health issues, which if untreated, severely influence their development, educational attainment and their potential to live fulfilling lives. School is recognised amongst the fundamental determinants of mental health of children[38]. The European Education Area[39] will also address mental health and well-being in education. Cultural participation, spending time in nature and physical exercise can have a positive impact on children's mental health[40], by building self-esteem, self-acceptance, confidence and self-worth.

Migrant children often suffer from mental health problems from situations experienced in the country of origin, on the migratory route, from uncertainty or degrading treatment in the country of arrival. The ongoing work of the European Asylum Support Office (EASO) Vulnerables Network ('VEN') focuses, amongst other things, on mental health for asylum

[36] Communication Europe's Beating Cancer Plan, COM(2021) 44 final
[37] Communication Pharmaceutical Strategy for Europe COM(2020) 761 final
[38] European Framework for Action on Mental Health and Wellbeing, Joint Action on Mental health and Well-being 2013-2016
[39] Council Resolution on a strategic framework for European cooperation in education and training towards the European Education Area and beyond (2021-2030) (2021/C 66/01)
[40] *What is the evidence on the role of the arts in improving health and well-being?*, WHO, 2019

seekers. Some other groups of children, such as children with disabilities and LGBTIQ children, might have specific needs when it comes to mental and physical health that need to be addressed in an appropriate way.

A healthy diet, together with regular physical activity, **is vital to children's full physical and mental development.** Even today, there are children in the EU who suffer from hunger, in particular Roma and Travellers children[41], making them more susceptible to diseases and preventing their proper brain development. Homeless children and migrant children residing in overcrowded or substandard reception facilities also face similar problems.

On the other hand, during the past 30 to 40 years, the increased availability and affordability of ultra-processed, unhealthy foods, led to escalating overweight and obesity. One in three children in the EU aged 6-9 is overweight or obese. This can increase the risk of diabetes, cancer, cardiovascular diseases or premature deaths. Commission actions include the School fruit, vegetables and milk scheme[42], and the 2014-2020 EU Action Plan on Childhood Obesity[43], which will be evaluated in view of a follow-up.

The Commission Farm to Fork Strategy[44] calls on the food industry and the retail sectors to make healthy and sustainable food options increasingly available and affordable. In this context, the Commission will propose harmonised mandatory front-of-pack nutrition labelling to facilitate informed, healthy food choices, and will set nutrient profiles to restrict the promotion (via nutrition or health claims) of foods high in fat, sugars and salt. The HealthyLifestyle4All campaign will promote healthy lifestyles for all, across generations and social groups, notably children.

Key actions by the European Commission:

- step-up the implementation of the Council Recommendation to strengthen EU cooperation on vaccine-preventable diseases[45];
- provide information and exchange of best practices to address children's mental health, via the Best Practice Portal[46] and the Health Policy Platform;
- review the EU school scheme legal framework to refocus on healthy and sustainable food;
- develop best practices and a voluntary code of conduct to reduce online marketing to children of products high in sugar, fat and salt within the Joint Action on Implementation of Validated Best Practices in Nutrition.

The European Commission invites Member States to:

- identify children as a priority target group in their national mental health strategies;
- build up networks with families, schools, youth, and other stakeholders and institutions involved in mental health of children.

2.3 Building inclusive, quality education

All children have the right to develop their key competences and talents, starting in early childhood and throughout their schooling and vocational training, also in non-formal learning

[41] *Roma and Travellers in six countries*, FRA, 2020
[42] School fruit, vegetables and milk scheme, European Commission
[43] EU Action Plan on Childhood Obesity (2014-2020), European Commission
[44] Farm to Fork Strategy, COM(2020) 381 final
[45] Council Recommendation on strengthened cooperation against vaccine-preventable diseases 2018/C 466/01
[46] Best Practice Portal, Public Health, European Commission

settings. **Access to inclusive, non-segregated, quality education should be guaranteed**, amongst others, **through a non-discriminatory treatment** regardless of racial and ethnic origin, religion or belief, disability, nationality, residence status, sex and sexual orientation.

Early childhood education and care (ECEC) is particularly beneficial to children's cognitive, language and social development. Both the ET2020 benchmark[47] and the Barcelona objectives[48] on participation of children to ECEC have been met at EU level, although with a wide variation across Member States.

Enrolment rates in ECEC for children with disabilities and children from disadvantaged groups, children with a migrant background and Roma children, are much lower, even though they are among the children who would benefit the most from participation. Countries have targeted measures to facilitate ECEC access to children living in poverty, yet few countries target support measures to children from migrant backgrounds or those from regional or ethnic minorities[49]. This is particularly problematic for children with a migrant background, for whom access to ECEC is particularly beneficial in terms of language development. The Commission will propose the revision of the Barcelona targets to support further upward convergence among Member States of participation in early childhood education and care[50].

Designing inclusive school education means building meaningful learning experiences in different environments. To this end, the Commission will put forward proposals to support online and distance learning in primary and secondary education which will promote the development of more flexible and inclusive education via a blend of different learning environments (school site and distance) and tools (digital, including online, and non-digital), while taking into account the particular issues of disadvantaged groups and communities.

Despite recent progress, early leavers from education and training still represent around 10% of young people in the EU (and more than 60% among Roma youth) and only 83% have completed upper secondary education (only 28% among Roma). Of Roma children in primary schools, 44% attend segregated primary schools, undermining their chances of succeeding in subsequent stages of education[51]. Children with disabilities leave school early, and fewer learners with disabilities complete a university degree (gap of 14.4 percentage points). There is a persistent gender gap, with more boys than girls leaving school early. Moreover, the 2018 results from Programme for International Student Assessment (PISA) of the Organisation for Economic Cooperation and Development (OECD)[52] show that one in five young Europeans still lack adequate reading, maths or science competences. To help address this trend and support all students to complete their upper secondary education, the Commission will put forward a recommendation to open up pathways for school success with a focus on disadvantaged pupils.

Vocational education and training (VET) can help equip students with a balanced mix of vocational skills and key competences to thrive in the evolving labour market and society, as well as to foster inclusiveness and equal opportunities.

Key actions by the European Commission

[47] European policy cooperation (ET 2020 framework), Education and Training, European Commission
[48] *Barcelona objectives on the development of childcare facilities for young children with a view to increase female labour participation, strike a work-life balance for working parents and bring about sustainable and inclusive growth in Europe (the „Barcelona objectives")*, European Commission, 2018
[49] *Key data on early childhood education and care in Europe* - 2019 Edition, Eurydice, 2019
[50] Communication on Gender Equality Strategy 2020-2025 (COM/2020/152 final)
[51] Analytical document accompanying the EU Roma Strategic framework SWD (2020) 530 final, Annex 2 – Baselines for EU headline indicators, European Commission
[52] PISA 2018 Results *What School Life Means for Students' Lives*, OECD. Average across OECD countries.

- propose, in 2022, the revision of the Barcelona targets to support further upward convergence among Member States of participation in early childhood education and care;
- propose a Council recommendation on online and distance learning in primary and secondary education;
- propose a new initiative "Pathways to School Success", that will also contribute to decouple educational attainment and achievement from social, economic and cultural status.
- set up an expert group for creating supportive learning environments for groups at risk of underachievement and supporting well-being at school;
- support Member States in implementing the 2020 Council recommendation on VET for sustainable competitiveness, social fairness and resilience;
- promote the Toolkit for inclusion in early childhood education and care[53].

The European Commission invites the Member States to:

- work towards achieving the targets proposed within the European Education Area;
- continue implementing fully, in close cooperation with the European Commission, all relevant actions recommended in the Action Plan on Integration and Inclusion 2021-2024[54] in the area of education and training.

3. Combating violence against children and ensuring child protection: an EU that helps children grow free from violence

"The fact that we live in an institution says absolutely nothing about us, except that we have already experienced something in our lives." (Child, Slovenia).

"I wish there were fewer fights and tensions in my family." (Child, Greece).

Violence against children, in all its possible forms is widespread. Children can be victims, witnesses, as well as perpetrators of violence – starting from their own homes, in school, in leisure and recreational activities, in the justice system, offline as well as online.

It is estimated that half of all children worldwide suffer some form of violence each year. Nearly three quarters of the world's children between the age of 2 and 4 regularly suffer physical punishment and/or psychological violence at the hands of parents and caregivers[55]. In Europe, 1 in 5 children will fall victim to some form of sexual violence[56], while children account for almost a quarter of victims of trafficking in the EU - the majority being girls trafficked for sexual exploitation[57]. More than 200 million women and girls worldwide are survivors of female-genital mutilation[58], including over 600.000 in the EU[59]. 62% of intersex

[53] Toolkit for inclusion in early childhood education and care, European Commission, 2020
[54] Action plan on Integration and Inclusion 2021-2027 COM(2020)758 final
[55] *Global status report on preventing violence against children*, UNICEF/WHO, 2020
[56] One in Five campaign, Council of Europe
[57] Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM(2020) 661 final SWD(2020) 226 final
[58] *Female Genital mutilation/cutting: a global concern*, UNICEF, 2016
[59] FGM in Europe. End FGM

people[60] who had undergone a surgery said neither they nor their parents gave fully informed consent before medical treatment or intervention to modify their sex characteristics[61].

The COVID-19 pandemic has led to an increase in certain forms of violence, such as domestic violence, while complaint and reporting mechanisms need to adapt to the new circumstances. The capacity and access to the child helplines (116 111) and the missing children hotlines (116 000) need to be improved.

Exposure to violence severely affects a child's physical, psychological and emotional development. It may affect their ability to go to school, to interact socially and to thrive. It can lead to mental health issues, chronic diseases, self-harm tendencies, even suicide. Children in vulnerable situations can be particularly affected.

Violence in schools and among peers is common. According to the 2018 PISA results, 23% of students reported being bullied at school (physical, verbal or relational bullying) at least a few times a month. A recent LGBTI survey by the Fundamental Rights Agency found that 51% of 15-17 years old respondents reported harassment in school.

In 2019, 12% of global international migrants (or 33 million) were children. Children in migration, including child refugees, are very often exposed to risks of abuse and have suffered from extreme forms of violence – war, violent conflict, exploitation, human trafficking, physical, psychological and sexual abuse - before and/or after their arrival on EU territory[62]. Children may go missing or become separated from their families. Risks increase when children travel unaccompanied or are obliged to share overcrowded facilities with adult strangers. The particular vulnerability of children in the migration context or due to their migration background requires additional and targeted protection and support. This is also true for those outside the EU, such as the almost 30.000 children, including children of foreign fighters, estimated to live in the Al Hol camp in Syria, suffering from conflict trauma and extremely dire living conditions[63].

The Commission will address and support Member States to combat violence, including gender-based violence, against all children. As part of this, the Commission will continue to support Member States and monitor the implementation of the actions identified in the 2017 Communication on the protection of children in migration[64].

The Commission will also work with all stakeholders to raise awareness on all forms of violence to ensure effective child-friendly prevention, protection and support for child victims and witnesses of violence. The CERV programme[65] will continue to fund child protection projects.

The Commission will seek solutions to address the lack of comparable, age and sex-disaggregated data on violence against children at national and EU levels, and draw on the expertise of the Fundamental Rights Agency, as appropriate.

This strategy will complement, and reinforce where necessary, the actions envisaged under the new EU strategy on combatting trafficking in human beings, as well as the EU strategy for

[60] Intersex people: who are born with sex characteristics that do not fit the typical definition of male or female, LGBTIQ Equality Strategy
[61] *A long way to go for LGBTI equality*, FRA, 2020
[62] Communication on the protection of children in migration, COM(2017) 211 final
[63] *Protect the rights of children of foreign fighters stranded in Syria and Iraq*, UNICEF, 2019
[64] Communication on the protection of children in migration, *op. cit.*
[65] Citizenship, Equality, Rights and Values Programme (2021-2027), European Union

a more effective fight against child sexual abuse[66]. As part of this, the Commission is also exploring setting up a European centre to prevent and counter child sexual abuse to work with companies and law enforcement bodies, to identify victims and bring offenders to justice.

The promotion of integrated child protection systems is intrinsically linked to the prevention and protection from violence. With the child at the centre, all relevant authorities and services should work together to protect and support the child, in their best interests. The Commission will further support the establishment of Children's houses (*Barnahus*[67]) in the EU. Special attention should be given to prevention measures, including family support.

Key actions by the European Commission:

- put forward a legislative proposal to combat gender-based violence against women and domestic violence, while supporting the finalisation of the EU's accession to the Council of Europe Convention on preventing and combatting violence;
- table a recommendation on the prevention of harmful practices against women and girls, including female genital mutilation;
- present an initiative aimed at supporting the development and strengthening of integrated child protection systems, which will encourage all relevant authorities and services to better work together in a system that puts the child at the centre;
- support the exchange of good practices on ending non-vital surgery and medical intervention on intersex infants and adolescents to make them fit the typical definition of male or female without their or their parents' fully informed consent (intersex genital mutilation).

The European Commission invites the Member States to:

- raise awareness of, and invest in capacity building and measures for (i) a more effective prevention of violence, (ii) protection of victims and witnesses, including with the necessary safeguards for child suspects or accused;
- provide adequate support to children with specific vulnerabilities who suffer violence, as well as to violence that occur in schools;
- adopt legislation to ban corporal punishment in all settings, if not yet available, and work towards its elimination;
- improve the functioning of child protection systems at national level, in particular:

✓ establish (where not yet available), and improve child helpline (116 111) and missing children hotline (116 000)[68], including through funding and capacity building;

✓ promote national strategies and programmes to speed up de-institutionalisation and the transition towards quality, family- and community-based care services including with an adequate focus on preparing children to leave care, including for unaccompanied migrant children.

[66] EU Strategy for a more effective fight against child sexual abuse, COM(2020)607

[67] Barnahus

[68] Commission Decision on reserving the national numbering range beginning with 116 for harmonised numbers for harmonised services of social value, (2007/116/EC), subsequently amended, and Directive establishing the European Electronic Communications Code, 2018/1972/EU, Article 96 - Missing children and child helpline hotlines

4. Child-friendly justice: An EU where the justice system upholds the rights and needs of children

"[Child-friendly justice is…] A child surrounded by a system in which he/she is protected/listened to/safe". (Girl, 17, Romania).

Children may be victims, witnesses, suspects or accused of having committed a crime, or be a party to judicial proceedings – in civil, criminal, or administrative justice. In all cases, **children should feel comfortable and safe to participate effectively and be heard. Judicial proceedings** must be adapted to their age and needs, must respect all their rights[69] and give primary consideration to the best interests of the child. While EU action in this field has been significant so far, and standards have been set within the Council of Europe framework[70], national justice systems must be better equipped to address children's needs and rights. Professionals sometimes lack training to interact with children in an age-appropriate way, including when communicating about the results of a proceeding, and to respect the child's best interests. The right of the child to be heard is not always observed and mechanisms to avoid multiple child's hearings or evidence gatherings are not always in place[71].

Children face difficulties to access justice and to obtain effective remedies for violations of their rights, including at European and international level. Vulnerable children are often exposed to multiple and intersecting forms of discrimination. Children with disabilities experience difficulties due to reduced accessibility of justice systems and judicial proceedings, and lack accessible information on rights and remedies. Data collection of children involved in judicial proceedings, including in the context of specialised courts, should be improved.

The COVID-19 pandemic has amplified the challenges related to children and justice. Some court proceedings have stopped or have been delayed; the right to visit family members in prison has been affected.

Children are in contact with the civil justice system following their parents' separation or divorce; or when they are adopted or placed in care. Substantive family law is a national competence. In cross-border cases, the Brussels IIa Regulation (with its 2019 Recast) or the Maintenance Regulation, and a closer judicial cooperation are key to protect the rights of children and ensure their access to justice. While unnecessary family separation should be prevented, any decision on the placement of a child in care should ensure the respect of the rights of the child[72]. Where courts or national authorities are aware of a close connection of the child with another Member State, appropriate measures to ensure these rights should be considered at the earliest possible stage.

In 2022, the Commission will update the Practice Guide for the application of the Brussels IIa Regulation (Recast). Specific challenges arise in cross-border situations, - including for families with divorced or separated parents, and for rainbow families.

In 2020, one third of the total number of asylum applications lodged were children[73]. The principle of best interests of the child must be the primary consideration in all actions or decisions concerning children in migration. Despite progress made so far including with the

[69] Children and Justice reports, FRA
[70] Child friendly justice Guidelines, Council of Europe
[71] EU Justice Scoreboard, child-friendly justice
[72] This includes respect of the right of children to maintain contact, where appropriate, with the parents or with other relatives, in line with Article 9 UNCRC
[73] Asylum and first time asylum applicants by citizenship, [migr_asyappctza], Eurostat, 2020

implementation of the 2017 Communication on the protection of children in migration, children are still not always provided with age-appropriate information on proceedings, nor effective guidance and support throughout asylum or return procedures. The Pact on Migration and Asylum underlined the need to both implement and reinforce EU law safeguards and protection standards for migrant children. The new rules, once adopted, will speed up the appointment of representatives for unaccompanied children, and will ensure the resources to support their special needs, including their transition to adulthood and independent living. Children will be always offered adequate accommodation and assistance, including legal assistance, throughout the procedures. The new rules will also strengthen solidarity between Member States in ensuring full protection for unaccompanied children.

Even today in Europe, there are children who are stateless, either since birth or, often, because of migration. Not having a nationality makes it difficult to access some of the basic services such as healthcare and education, and can lead to situation of violence and exploitation.

For **child victims of crime**, there is often a serious underreporting due to the age of the victim, a lack of awareness of their rights and a lack of accessible, age and gender-appropriate reporting and support services. Specific challenges arise in identifying victims of certain crimes, such as trafficking or sexual abuse, as highlighted in the EU Strategy on victims' rights[74].

The 2019 United Nations Global Study on children deprived of liberty[75] highlighted that too many children are still deprived of their liberty because they are in conflict with the law or related to migration and asylum procedures. National authorities, including in the EU Member States, need to make available and increase the use of **viable and effective non-custodial measures**, in line with EU *acquis*, and ensure that detention is used only as a last resort and for the shortest appropriate time. When parents are imprisoned, policies and practices respecting the right of their children should also be fostered. The complete and correct implementation and application in practice of the Procedural Safeguards Directive[76] will ensure better protection of children suspects or accused in criminal proceedings.

Key actions by the European Commission:

- propose in 2022 a horizontal legislative initiative to support the mutual recognition of parenthood between Member States;
- contribute to training of justice professionals on the rights of the child and child friendly justice, in line with the European judicial training strategy for 2021-2024[77], and through the European Judicial Training Network (EJTN)[78], the Justice and CERV programmes, as well as the European Training Platform of the EU e-justice portal[79];
- strengthen the implementation of the 2010 Guidelines on Child-friendly Justice with the Council of Europe;
- provide targeted financial support for trans-national and innovative projects to protect children in migration under the new Asylum, Migration and Integration Fund (AMIF)[80];
- support Member States in the development of effective and viable alternatives to the detention of children in migration procedures.

[74] EU Strategy on victims' rights (2020-2025), COM(2020) 258 final
[75] UN Global Study on Children Deprived of Liberty, Manfred Nowak, 2019
[76] Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings; 2016/800/EU
[77] European Judicial Training strategy for 2021-2024 COM(2020) 713 final
[78] European Judicial Training Network
[79] E-justice portal, European Judicial training platform
[80] To be adopted towards end of June/beginning of July 2021

The European Commission invites the Member States to:

- support judicial training providers and all relevant professionals' bodies to address the rights of the child and child friendly and accessible justice in their activities. To this end, allocate necessary resources for the above capacity building activities, and take advantage of the support of the FRA to strengthen capacities on topics such as child-friendly justice and children in migration;
- develop robust alternatives to judicial action: from alternatives to detention, to the use of restorative justice and mediation in the context of civil justice;
- implement the Council of Europe's Recommendation on children with imprisoned parents[81];
- strengthen guardianship systems for all unaccompanied children, including through participation to the activities of the European Guardianship Network[82];
- promote and ensure universal, free and immediate access to birth registration and certification for all children. Moreover, increase capacity of front-line officials to respond to statelessness and nationality-related problems in the context of migration;
- enhance cooperation in cases with cross-border implications, to ensure the full respect of the rights of the child.

5. Digital and information society: An EU where children can safely navigate the digital environment, and harness its opportunities

"I didn't have a computer, the internet didn't reach my village, and I didn't have any data. (...)I couldn't connect for the last 3 months, and I had to repeat." (Girl, 15, Spain).

The development of the digital environment, and the use of new technologies, have opened up many opportunities. Children play, create, learn, interact and express themselves in an online and connected environment, from a very young age. Digital technologies allow children to be part of global movements and play the role of active citizens. As digital natives, they are better placed to thrive in an increasingly digitalised and connected education and future labour market systems. The use of digital tools can help children with disabilities in learning, connecting, communicating and participating in recreational activities online, provided they are accessible.

However, children's online presence increases their exposure to harmful or illegal content, such as child sexual abuse or exploitation materials, pornography and adult content, sexting, online hate-speech or mis- and disinformation, due to the lack of effective parental control/ age verification systems. Online exposure also harbours risks of harmful and illegal contact, such as cyber-grooming and sexual solicitation, cyberbullying or online abuse and harassment. Almost one third of girls and 20% of boys experienced disturbing content once a month in the past year; and children from minorities encounter upsetting events online more frequently[83]. Amongst LGBTI 15-17 years old respondents, 15% have experienced cyber

[81] Recommendation concerning children with imprisoned parents, Council of Europe, CM/Rec(2018)5
[82] European Guardianship Network
[83] "Our Europe. Our Rights. Our Future.", *op. cit.*

harassment due to their sexual orientation[84]. More and more traffickers use Internet platforms to recruit and exploit victims, children being a particularly vulnerable target group[85].

In the context of the EU strategy for a more effective fight against child sexual abuse[86], the Commission put forward an interim proposal to allow Information and Communication Technologies (ICT) companies to continue voluntarily reporting child sexual abuse to the authorities to the extent such practices are lawful, and calls on the co-legislators to swiftly agree on its adoption. For the longer term, the Commission will present a legislative proposal to effectively tackle child sexual abuse online.

The over-exposure to screens and online activities are a concern for children's health, mental well-being, leading to heightened stress, attention deficit, eyesight problems and a lack of physical activity and sport.

The COVID-19 pandemic significantly increased the time children spend online, with schools, cultural and social life shifting online. This led to heightened online risks and a widening of digital inequalities. One child out of 10 reported no online activities and infrequent teacher contact during the spring lockdown[87]. Access to the Internet remains a challenge for a considerable number of children in the EU: it is 20% higher for high-income households, and is markedly lower in rural areas[88]. In its recent Communication on Europe's Digital Decade, the Commission's announced ambitious connectivity targets for all households in Europe[89].

The EU has developed legal instruments and policy initiatives to cater to children's rights in the digital environment[90]. When necessary, these should be adapted and updated as new threats emerge or developments and technologies change. The revised Audiovisual Media Services Directive has strengthened the protection of children from harmful content and inappropriate commercial communications. The recent Digital Services Act[91] proposes due diligence obligations for service providers to ensure safety of users online, including children. The Code of Practice on Disinformation[92] will establish a co-regulatory regime tailored for tackling the risks linked to the spread of disinformation. The new Digital Education Action Plan (2021-2027)[93] promotes digital literacy in view of tackling disinformation and puts education and training at the heart of this effort. Internationally, guidance has just been released on the interpretation of the rights of the child in the digital environment[94].

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[84] *A long way to go for LGBTI equality*, FRA, 2020.

[85] Third Report on the progress made against trafficking in human beings COM(2020) 661 final and SWD(2020) 226 final; *The challenges of countering human trafficking in the digital era*, Europol, 2020

[86] EU Strategy for a more effective fight against Child sexual abuse, *op. cit.*

[87] *How families handled emergency remote schooling during the COVID-19 lockdown in spring 2020*, 2020, JRC

[88] Eurostat. Survey on ICT usage in households and by individuals [isoc_i, ci_in_h], 2019

[89] Commission Communication on '2030 Digital Compass: the European way for the Digital Decade', COM(2021) 118 final

[90] Directive on combating the sexual abuse and sexual exploitation of children and child pornography, 2011/93/EU; Framework Decision on combating certain forms and expressions of racism and xenophobia, 2008/913/JHA; Directive on the Audiovisual Media Services, 2018/1808/EU; Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, 2016/679/EU; Directive on Unfair Commercial Practices, 2005/29/EC; Communication on Tackling online disinformation: a European Approach, COM(2018)236; European Strategy for a Better Internet for Children, COM(2012)196.

[91] Commission Proposal for a Regulation on a Single Market for Digital Services (Digital Services Act), COM/2020/825 final)

[92] The Code of Practice on Disinformation includes a set of commitments that major online platforms and trade organisations representing the ad industry and advertisers have undersigned to limit the impact of disinformation online. The signatories of the Code will be asked to strengthen the Code following a Guidance that the Commission will issue in Spring 2021.

[93] Digital Education Action Plan 2021-2027, COM(2020)624

[94] *General Comment No. 25 (2021) on Rights of children in relation to the digital environment*, UN Committee on the Rights of the Child

On data protection and privacy rules, children advocate for companies to develop understandable privacy policies for digital services and applications and ask to be involved in the design and development of new digital products they will use. The Commission is ready to support these efforts, in particular through the Youth Pledge for a Better Internet[95] and the Youth Call for Action[96].

The Commission will continue to provide support through the Digital Programme to the Safer Internet Centres and the Better Internet for Kids platform[97] to raise awareness of and build capacity around cyberbullying, recognition of mis- and disinformation, and promotion of healthy and responsible behaviour online. The upcoming Pathways to School Success initiative[98] will promote the prevention of cyberbullying. The Erasmus+ programme[99] will fund initiatives to support the acquisition of digital skills by all children.

Artificial intelligence (AI) has and will have a great impact on children and their rights[100], for example in the fields of education, leisure and healthcare provision. However, it can also entail some risks related to privacy, safety and security. The upcoming Commission proposal on a horizontal legal framework for AI will identify the use of high-risk AI systems that pose significant risks to fundamental rights, including of children.

Key actions by the European Commission:

- adopt an updated Better Internet for Kids Strategy in 2022;
- create and facilitate a child-led process aimed at developing a set of principles to be promoted and adhered to by the industry[101];
- promote the development and use of accessible ICT and assistive technologies for children with disabilities such as speech recognition, closed captioning and others[102], including in Commission's conferences and events;
- ensure the full implementation of the European Accessibility Act[103];
- step up the fight against all forms of online child sexual abuse, such as by proposing the necessary legislation including obligations for relevant online services providers to detect and report known child sexual abuse material online.

The European Commission invites the Member States to:

- ensure effective equal access to digital tools and high-speed Internet connection, digital literacy, accessible online educational material and education tools etc. for all children;
- support the development of children's basic digital competences, through the Digital Competence Framework for citizens[104];
- support media literacy actions as part of education, to develop children's ability to critically evaluate online content, and detect disinformation and abusive material;
- support and promote the work of the EU co-funded Safer Internet Centres, and support child helplines and hotlines in developing online avenues for communication;

[95] Youth Pledge for a Better Internet
[96] Youth Call for Action
[97] Better internet for kids
[98] Announced in the Communication Achieving the European Education Area by 2025 COM(2020) 625 final
[99] Erasmus+ Programme
[100] *Draft Policy Guidance on AI for Children*, UNICEF, 2020
[101] Building on the upcoming proposal of a set of digital principles as announced in the 'Digital Decade' Communication
[102] Harmonised European Standards, Accessibility requirement for ICT products and services, ETSI, 2018
[103] Directive on the accessibility requirements for products and services, 2019/882/EU
[104] Digital Competence Framework 2.0, EU Science Hub, European Commission

– encourage children's and especially girls' participation in science, technology, engineering and mathematics (STEM) studies and dismantle gender stereotypes in this field to ensure equal opportunities in the digital labour market.

The European Commission invites ICT companies to:

– ensure that children's rights, including privacy, personal data protection, and access to age-appropriate content, are included in digital products and services by design and by default, including for children with disabilities;
– equip children and parents with adequate tools to control their screen time and behaviour, and protect them from the effects of overuse of and addiction to online products;
– strengthen measures to help tackle harmful content and inappropriate commercial communication, such as through easy-to-use reporting and blocking channels or effective age-verification tools;
– continue their efforts to detect, report and remove illegal online content, including child sexual abuse from their platforms and services, to the extent that those practices are lawful.

6. The Global Dimension: an EU that supports, protects and empowers children globally, including during crisis and conflict.

"The EU has a force that unites many countries of the world for peace, cooperation, equality between people, funds projects for organisations working to protect the rights of children". (Child, Albania).

"You have got to get deep into the mining pit by a rope, take what you have been ordered and then go back to the surface. I nearly suffocated inside the pits due to an inadequate supply of oxygen" (Boy, 11, Tanzania).

The EU's commitment to promote, protect, fulfil and respect the rights of the child is a global commitment. Through this strategy, the EU aims to strengthen its position also as a key global player in this respect. The EU already plays a leading role in protecting and supporting children globally, by strengthening access to education, services, health, and in protecting from all forms of violence, abuse and neglect, including in humanitarian context.

Despite significant progress over the last decades, too many **children worldwide still suffer from or are at risk of human rights violations, humanitarian crisis, environment and climate crisis, lack of access to education, malnutrition, poverty, inequalities and exclusion**. The situation of girls is particularly difficult; they continue to be victims of discrimination and gender-based violence including child, early and forced marriages, and of female genital mutilation as early as at the age of 4.

Almost two thirds of the world's children live in a country affected by conflict. Of these, 1 in 6 live within 50km of a conflict zone[105]. This not only threatens the physical and mental health of children but it can often deprive them of education[106] and negatively impact on their future life opportunities, as well as those of the communities they come from.

Children are also victims of recruitment and use in armed conflict. Their participation in conflict seriously affects their physical, psychological and emotional well-being. Both girl and

[105] *Children affected by armed conflict*, 1990-2019, Peace Research Institute Oslo, Conflict trends, 2020
[106] Inter-agency Network for Education in Emergencies, 2020

boy child soldiers are also often victims of sexual violence, which is too often being used as a weapon of war.

An estimated 5.2 million children[107] under 5 years die each year, mostly from preventable and treatable causes, many of which are driven by poverty, social exclusion, discrimination, gender norms and neglect of basic human rights. The COVID-19 pandemic and climate change have further exacerbated existing forms of discrimination against children as well as exposure to vulnerable situations of children and families worldwide. At the height of the pandemic, some 1.6 billion children were out of school globally[108].

The EU action in the external dimension will be in line with the commitments set out in the framework of the EU Action Plan on Human Rights and Democracy 2020-2024[109] and supported by targeted actions included in other relevant initiatives, such as the Guidelines on the Promotion and Protection of the Rights of the Child[110], the Guidelines on Children and Armed Conflict[111], the EU Gender Action Plan for external action (2021-2025)[112], and the Child Rights Toolkit[113].

In all contexts, the EU will continue to contribute to ensuring quality, safe and inclusive education, social protection, health services, nutrition, clean drinking water, housing, clean indoor air, and adequate sanitation. In particular, the EU **development policies** will (i) advance universal health coverage to ensure essential services for maternal, new-born, child and adolescent health, including mental health and psychosocial support; (ii) call for food systems to deliver nutritious, safe, affordable, and sustainable diets that meet the needs and rights of children and (iii) further invest in the development of quality, accessible education systems, including early childhood, primary, lower and upper secondary schooling. In addition, financial assistance will support access to affordable and sustainable connectivity for schools, as well as to include digital skills in school curricula and teacher's training.

In **humanitarian crises**, the EU will continue to support children while applying a needs-based approach in accordance with the humanitarian principles, as well as ensure that its aid is gender and age sensitive. The EU will continue to place an emphasis on child protection, addressing all types of violence against children as well as providing mental health and psychosocial support. Moreover, continued access to safe, quality and inclusive education, is of great importance to equip children and young people with essential skills, to offer protection and sense of normality, as well as to contribute to peace, and be a vehicle for reintegration and resilience.

A total of 152 million children (9.6% of all children globally) are victims of **child labour**, with 73 million in hazardous work likely to harm their health, safety and development[114]. The Commission's political guidelines announced a zero tolerance approach against **child labour**, thus contributing to the global efforts in the framework of the UN 2021 International Year for the Elimination of Child Labour[115]. The EU Action Plan on Human Rights and Democracy[116] also includes an action to reduce substantially the global incidence of child labour, in line

[107] Children: improving survival and well-being, World Health Organisation, 2019
[108] *Policy Brief: Education during COVID-19 and beyond*, United Nations, August 2020
[109] Joint communication on an EU Action Plan on Human Rights and Democracy 2020-2024 (JOIN/2020/5 final)
[110] Guidelines on the promotion and protection on the rights of the child, 2017
[111] EU Guidelines on children in armed conflict, 2008
[112] EU Gender Action Plan for external action (2021-2025)
[113] Child Rights Toolkit. Integrating Child Rights in Development Cooperation
[114] *Global estimates of child labour*, International Labour Organisation, 2017
[115] International Labour Organisation
[116] EU Action Plan on Human Rights and Democracy 2020-2024, *op.cit.*

with the target date of 2025 proclaimed by the United Nations for the full elimination of child labour worldwide. This will cover supporting free and easily accessible compulsory education for children until reaching the minimum age for work, as well as extending social welfare programmes to help lifting families out of poverty.

EU trade and investment agreements, as well as the Generalised System of Preferences (GSP) have played an important role in promoting respect for core human and labour rights, as reflected in the UN fundamental conventions of the International Labour Organization (ILO). Particular priority will be given to the implementation of these commitments, including action against child labour The EU will insist on third countries to update regularly national lists of hazardous occupations children should never be tasked to do. The EU will also step up efforts to ensure the supply chains of EU companies are free from child labour, notably by promoting sustainable corporate governance.

In line with the Action Plan on Human Rights and Democracy, the EU will step up its efforts to ensure **meaningful child participation;** to prevent, combat and respond to all forms of violence against children, including gender-based violence; to eliminate early, forced and child marriage, female genital mutilation, child trafficking, smuggling, begging, (sexual) exploitation and neglect. Work will be intensified also to prevent and end grave violations against children affected by armed conflict, including with advocacy activities promoting compliance with International Humanitarian Law. The Action Plan also supports partner countries in building and **strengthening child-friendly justice and child protection systems**, including for migrant, refugee and forcibly displaced children and children belonging to minorities, notably Roma. The EU will continue supporting the resettlement of children and other vulnerable people in need of international protection to the EU. The EU will support actions to address the issue of street children as well as invest in the development of quality alternative care and the transition from institution-based to quality family- and community-based care for children without parental care and children with disabilities.

The EU will continue to include children's rights in the political dialogue with partner countries, and in particular in the context of accession negotiations and the stabilisation and association process. It will also promote measures to tackle violence and discrimination, in particular against vulnerable children, including support for civil society organisations. The EU will support the monitoring and collection of disaggregated data on the situation of children in the region, and continue to report on this in the annual enlargement package of country reports.

To achieve these objectives, the EU will coordinate the use of all its available spending programmes under the 2021-2027 multiannual financial framework, in particular the Neighbourhood, Development and International Cooperation instrument (NDICI), the Instrument for Pre-accession Assistance III (IPA III) and the humanitarian aid instrument.

It will also promote actions in multilateral and regional human rights fora, advocacy and awareness raising campaigns, as well as with civil society, children and adolescents, national human rights institutions, academia, the business sector and other relevant stakeholders.

Key actions by the European Commission:

- dedicate 10% of overall funding under the NDICI in Sub-Saharan Africa, Asia and the Pacific, and Americas and the Caribbean to education;
- continue allocating 10% of humanitarian aid funding for education in emergencies and protracted crises, and promote the endorsement of the Safe Schools Declaration;
- work towards making supply chains of EU companies free of child labour, notably through a legislative initiative on sustainable corporate governance;

- promote and provide technical assistance to strengthen labour inspection systems for monitoring and enforcement of child labour laws;
- provide technical assistance as Team Europe to partner countries' administrations through its programmes and facilities, such as SOCIEUX+, the Technical Assistance and Information Exchange instrument (TAIEX) and TWINNING programmes;
- prepare a Youth Action Plan by 2022 to promote youth and child empowerment and participation;
- designate Youth focal points and strengthen child protection capacities within the EU Delegations.

7. Embedding a child perspective in all EU actions

To achieve the objectives set out in the strategy, the Commission will ensure that a children's rights perspective is mainstreamed in all relevant policies, legislation and funding programmes[117]. This will be part of efforts to create **a child-friendly culture in EU policy-making** and will be supported by providing training and capacity building to EU staff, and enhanced internal coordination through the team of the Commission's coordinator for the rights of the child. A mainstreaming checklist on the rights of the child will be developed.

Reliable and comparable data are needed to develop evidence-based policies. The Commission will invite the FRA to continue providing Member States with technical assistance and methodological support, inter alia, on the design and implementation of data-collection exercises. More age and sex-disaggregation of Eurostat data, and data generated by other EU agencies, will also be pursued, as will research on specific thematic areas covered by this strategy. This will be done through the research and innovation framework programme Horizon Europe (2021-2027)[118].

The strategy will also help with the mainstreaming and coordination of initiatives at national level and among key stakeholders to ensure better implementation of existing EU and international legal obligations. For this, the Commission will also establish the **EU Network for Children's Rights** by end of 2021. Building on the work of the existing informal expert group on the rights of the child[119], the Network will reinforce the dialogue and mutual learning between the EU and Member States on children's rights, and support the implementation, monitoring and evaluation of the strategy. It will be composed of national representatives, and will include in some of its activities international and non-governmental organisations, representatives of local and regional authorities and children, among others. The Commission will also develop closer collaboration with regional and local authorities, and with other relevant institutions, regional and international organisations, civil society and ombudspersons for children.

This strategy should be read in conjunction with the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, and the European Democracy action plan. It complements targeted efforts to make EU rights and values more tangible in areas such as[120]

[117] See Annex 2
[118] Horizon Europe
[119] Informal expert group rights of the child, European Commission
[120] Communication on the protection of children in migration, COM(2017)211 final; Communication on Gender Equality Strategy 2020-2025, COM/2020/152 final; Communication on an EU Roma strategic framework for equality, inclusion and participation, COM/2020/620 final and the Council Recommendation on Roma equality, inclusion and participation (2021/C 93/01) ; Communication on a LGBTIQ Equality Strategy 2020-2025, COM/2020/698 final, Action plan on Integration and Inclusion 2021-2027, COM(2020)758 final, and Strategy for the Rights of Persons with Disabilities; Communication on an

the protection of children in migration, equality and inclusion, gender equality, anti-racism and pluralism, EU citizenship rights, victims' rights, the fight against child sexual abuse, social rights and inclusive education and training[121]. It is also in line with the priorities set out in the EU Action Plan on Human Rights and Democracy[122].

7.1 Contribution of EU funds to the strategy's implementation

EU funding is key to support the implementation of EU policies in the Member States. With this strategy, the Commission will support Member States to make the best use of EU funds in their initiatives to protect and fulfil the rights of the child. It should also encourage child rights budgeting and explore ways to track spending of EU budget in this area, so that funds are channelled towards the most pressing needs. Funding for child rights should be prioritised by Member States in the EU funding programmes, according to identified needs at national and regional level. Under the 2021-2027 multiannual financial framework,

The European Social Fund Plus (ESF+) and the European Regional Development Fund (ERDF) support investments in human capacity and infrastructure development, equipment and access to services in education, employment, housing, social, health and child care, as well as the shift from institutional to family- and community-based services.

Member States that have a rate of child at-risk-of-poverty or social exclusion higher than the EU average (in 2017-2019) will have to earmark 5% of the ESF+ for combatting child poverty, while other Member States will be required to earmark an appropriate amount. In the 2021-2027 programming period, Member States should fulfil several enabling conditions, which might have a close link to child rights measures. This includes policy frameworks in the field of poverty reduction, Roma inclusion and compliance with the UNCRPD and the Charter. The new AMIF will reinforce the protection of unaccompanied migrant children by recognising and providing financial support and incentives for their particular reception, accommodation and other special needs, with a co-financing rate up to 75%, which may be increased to 90 % for projects implemented under specific actions.

Other EU funds and programmes can be used for the realisation of children's rights , include the Justice Programme, the CERV Programme, Erasmus+, Horizon2020, the Digital Programme, the Recovery and Resilience Facility, the European Agricultural Fund for Rural Development (EAFRD), REACT-EU, and InvestEU. In addition, the Technical Support Instrument is able, on request, to provide technical support to Member States to develop capacity-building actions.

Member States are invited to ensure a coordinated approach at national, macro-regional[123], regional and local level in the programming and implementation of EU funds, as well as involve local and regional authorities, civil society organisations, including organisations working with and for children, and social and economic partners in preparing, revising, implementing and monitoring programmes for the 2021-2027 EU funds.

EU Anti-racism Plan 2020-2025 COM/2020/565 final, and the forthcoming strategy on combating antisemitism, planned for 2021; EU Citizenship Report 2020 Empowering citizens and protecting their rights, COM/2020/730 final, EU Strategy on Victims' rights (2020-2025), COM(2020)258, EU Strategy for a more effective fight against Child sexual abuse, COM(2020)607

[121] The Commission Recommendation Investing in children: breaking the cycle of disadvantage (2013/112/EU); European Pillar of social rights; European Pillar of Social Rights Action Plan, COM(2021) 102 final; Proposal for a Council Recommendation establishing a European Child Guarantee, COM(2021)137; Communication on achieving the European Education Area by 2025 COM(2020)625 final; and Digital Education Action Plan 2021-2027, COM(2020)624

[122] EU Action Plan on Human Rights and Democracy 2020-2024, JOIN(2020) 5 final.

[123] Macroregional strategy, European Commission

The strategy also addresses the inequalities exacerbated by the COVID-19 crisis, which has disproportionately affected vulnerable children. As part of this work, the Commission will encourage Member States to make full use of the possibilities offered by NextGenerationEU to mitigate the disproportionate impact of the crisis, and will help Member States to mainstream children's rights in the design and implementation of reforms through the Technical Support Instrument.

For real progress to be made on the ground, this strategy needs to be accompanied by **commitments and investments at national level**. The Commission calls on EU Member States to develop, where not yet available, robust and evidence-based national strategies on the rights of the child, in cooperation with all relevant stakeholders, including children; and in synergy with other relevant national strategies and plans. It also calls on Member States to ratify all UNCRC Optional Protocols and UNCRPD Optional protocols, and duly consider the Concluding Observations of the UN Committee on the Rights of the Child[124] and of the UN Committee on the Rights of Persons with Disabilities[125]. The Commission also invites the Member States to support all actions recommended in this strategy through appropriate financial resources, including EU funding.

Conclusion

The European Commission is fully committed to support children develop their potential as engaged, responsible citizens. For this to happen, participation in democratic life needs to start during childhood. All children have the right to express their views on matters that concern them, and to have them taken into account. To enable their active participation, we also must tackle poverty, inequalities and discrimination to break the intergenerational cycle of disadvantage.

This strategy is inclusive by design and will be inclusive in its implementation. The Commission will monitor the implementation of the strategy at EU and national level, and report on the progress at the annual European Forum on the rights of the child. Children will be part of the monitoring and evaluation, notably through the future Children's Participation Platform. The strategy's actions will be adapted where needed.

The Commission invites the European Parliament and the Council to endorse the strategy and work together on its implementation. The Commission calls on the Committee of the Regions and the European Economic and Social Committee to promote dialogue with local and regional authorities and civil society.

We all have the responsibility to listen to children and to act now. To use the words expressed by one of the members of the Eurochild Children's Council: ***"Well done is better than well said".***

[124] UN Committee on the Rights of the Child, concluding observations
[125] UN Committee on the Rights of Persons with Disabilities, concluding observations

Council of the
European Union

Brussels, 9 June 2022
(OR. fr)

10024/22

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FREMP 123

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	Conclusions on the EU Strategy on the rights of the child

Delegations will find attached the conclusions on the EU Strategy on the Rights of the Child, as approved by the Council on 9 June 2022.

ANNEX

Council conclusions on the EU Strategy on the Rights of the Child

Preamble

The Council of the European Union,

a. **Recalling** that children are fully-fledged holders of rights and that the protection and promotion of the rights of the child is a key objective of the European Union, and that children's rights are human rights, which are enshrined in the EU Charter of Fundamental Rights;

b. **Affirming** that the principles and standards of the United Nations Convention on the Rights of the Child[1], which has been ratified by all Member States, must continue to guide EU policies and actions, which have an impact on the rights of the child;

c. **Underlining** that children's rights are universal, that every person below 18 years of age shall enjoy the same rights of the child without discrimination of any kind and that the best interests of the child must be a primary consideration in all actions relating to children, whether taken by public authorities or private institutions;

d. **Highlighting** that children's rights are fundamental rights and, as such, need to be embedded in all relevant policies and legislation, both at national and EU level, in compliance with the principles of subsidiarity and proportionality, taking into consideration the respective exclusive and shared competences of Member States and of the EU in the field of family law as provided for in article 81 of the Treaty on the Functioning of the European Union;

e. **Recalling** the existing legal acts on children's rights listed in Annex 2 to the EU Strategy on the Rights of the Child;

f. **Recalling** the extensive set of standards of the Council of Europe in the field of the rights of the child, which have been accepted by Member States;

[1] Convention on the Rights of the Child, United Nations, 1989.

g. **Recalling** the adoption of Council Recommendation (EU) 2021/1004 of 14 June 2021 establishing a European Child Guarantee, which is a concrete instrument aimed at promoting equal opportunities for children at risk of poverty and social exclusion and concerns the elaboration of the second theme "socio-economic inclusion, health and education" of the EU Strategy on the Rights of the Child;

h. **Emphasising** that all children have a right to non-discriminatory access to key services, such as early education and care, health, nutrition and housing which are important for their development and wellbeing;

i. **Noting** the important role that the European Union plays in promoting, protecting and fulfilling the rights of all children worldwide;

j. **Reaffirming** the importance of joining efforts with international organisations, namely the Council of Europe and the United Nations, in protecting and promoting the rights of children in the EU and worldwide, including equal opportunities for girls;

k. **Taking note**, in this regard, of the fourth Council of Europe Strategy for the Rights of the Child (2022-2027) "Children's Rights in Action: from continuous to joint innovation" adopted by the Committee of Ministers on 23 February 2022, which aims at developing synergies with the EU Strategy on the Rights of the Child;

l. **Noting with concern**, in the light of Russia's war of aggression against Ukraine, that children are at greater risk than adults in armed conflicts and their aftermath, and affirming that they need to be protected, in particular from their conscription into and use by the army or other armed forces as well as from trafficking in human beings, illegal adoption, sexual exploitation and separation from their families; that the same is true in other crisis and emergency situations caused by terrorism, a public health crisis, an economic crisis, climate change or natural disasters;

m. Recalling the importance of the full implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims and of Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography and highlighting the importance of the EU Strategy on Combatting Trafficking in Human Beings 2021-2025;

n. **Noting with concern** the impact of the COVID-19 pandemic on children, which has contributed to exacerbated difficulties experienced especially by children in vulnerable situations, by increasing risk and widening existing inequalities in access to key services and further exposing children to violence, abuse and neglect;

o. **Recognising the need** to ensure that children are meaningfully involved and considered in the global COVID-19 recovery;

p. **Acknowledging** that children's rights need to be protected and promoted offline as well as online, and that efforts are needed in order to harness the opportunities offered by the digital environment, while limiting the risks this environment can pose to children and the fulfilment of their rights;

q. **Recalling** that children represent more than 18 % of the EU population, are already agents of change, and that they need to be heard, listened to and included in the democratic life of our societies.

The Council of the European Union,

1. **Welcomes** the development, protection and promotion of the rights of the child in the EU and on a global level, as foreseen in the comprehensive EU Strategy on the Rights of the Child, underpinned by extensive consultation and meaningful participation of children themselves;

2. **Stresses** that the Strategy is built upon the principles of equality, inclusion, gender equality and non-discrimination, and that specific groups of children face particular vulnerabilities and suffer from socio-economic exclusion and discrimination, the Council reiterates, in this regard, that discrimination of the child or his or her parents or legal guardians, 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 is prohibited;

3. **Notes** that the EU Strategy on the Rights of the Child and its six interconnected thematic priorities represent a solid basis for developing children`s rights based policies, measures, and legislation at EU and national level;

4. **Welcomes** the Commission's initiative to mainstream the children's rights perspective into all relevant EU policies, legislation and funding programs, and supports the development of a mainstreaming checklist on the rights of the child;

5. **Underlines** the importance of developing and providing child-friendly and accessible information about children's rights to the public, including to children, and in particular versions and formats of the Charter of Fundamental Rights and other key EU instruments, in multiple languages in order to fulfil children's right to be informed, and to foster effective participation by children in democratic life;

6. **Stresses** the importance to strengthen the participation of children in political and democratic life at local, national and EU level, also by establishing new and supporting existing mechanisms of meaningful participation of children and promoting equal participation of children without discrimination of any kind by ensuring that children are heard and their views taken into account;

7. **Supports** the intention of the European Commission to establish, in cooperation with the European Parliament and child rights organisations an EU Children's Participation Platform connecting existing child participation models, with the objective of setting up a strong mechanism enabling the effective and meaningful participation of children at all levels;

8. **Recognises** the importance of exchanging good practices at national and EU level, and welcomes the launch of the EU Network for Children's Rights by the European Commission with the aim of reinforcing dialogue and mutual learning between the EU Member States and civil society organisations on children's rights, and to support the implementation, monitoring and evaluation of the EU Strategy on the Rights of the Child;

9. **Welcomes** the initiative of the European Commission to strengthen collaboration with relevant regional and local authorities, and with other relevant institutions, regional and international organisations, civil society and national human rights institutions;

10. **Recognises** the role ombudspersons, including ombudspersons for children, play[...] in ensuring that children's rights are fulfilled, their best interests guaranteed, and their voices heard;

11. **Supports** the intention of the European Commission to strengthen the EU's position as a key global player and to strengthen child protection capacities within Union delegations in third countries to ensure the protection and the fulfilment of the rights of the child through the EU external policy in all contexts, notably in the area of development cooperation, in humanitarian crises and natural disasters;

12. **Welcomes** the initiative of the European Commission to work towards making supply chains of EU companies free of child labour as part of the EU efforts to eliminate child labour around the world;

13. **Supports** the initiative of the European Commission to promote youth and child empowerment and participation in the global context and to dedicate EU funding to promoting education worldwide.

The Council of the European Union,

- **Calls** upon the European Commission to work together with Member States to improve the life of all children in the EU, with regard to the EU Strategy on the Rights of the Child and to support Member States in their national efforts to strengthen the standards of the rights of the child;

- **Calls** upon the Member States to:

1) Develop, where appropriate, comprehensive and adequate policies and measures to fulfil the rights of all children without any discrimination, including by:

i. Adopting comprehensive national strategies or other equivalent integrated policies addressing the rights of the child, which are adequately resourced and supported by sufficient capacity frameworks,

ii. Strengthening cooperation and coordination between all relevant authorities and stakeholders,

iii. Making best use of EU and national funding available for the promotion and protection of the rights of the child,

iv. Improving the collection of age and sex disaggregated data in a comparable manner across the EU by respecting national circumstances and promoting child-specific research – in particular on the thematic areas covered by the EU Strategy on the Rights of the Child, in order for evidence-based and responsive policies to be designed and implemented,

v. Strengthening awareness-raising and training activities regarding the rights of the child, including for children, professionals working with and for children, policy-makers, civil servants, and public authorities, judges, prosecutors and other legal practitioners, civil and military personnel in CSDP missions, as well as national human rights institutions, civil society organisations and human rights defenders,

vi. Implementing Council Recommendation (EU) 2021/1004 establishing a European Child Guarantee, which aims to prevent and combat the social exclusion of children in need by guaranteeing effective access to a set of key services.

2) Increase Member States' efforts to prevent and combat all forms of violence against children, in particular by:

i. Promoting cooperation among support services, and supporting a holistic response to violence,

ii. Developing integrated and targeted specialist support services for child victims, in addition to or as part of general victim support services and investing in preventing secondary victimisation,

iii. Strengthening the development, evaluation and promotion of integrated child protection systems where all relevant services cooperate according to a coordinated and multidisciplinary approach, in the best interests of the child, for example the Children's Houses (Barnahus) or any other equivalent children rights [...]friendly model,

iv. Banning corporal punishment in all settings, and strengthening integrated support services for children and families,

v. Providing adequate measures to prevent and combat domestic violence and abuse, early forced and child marriage, female genital mutilation and other harmful practices and other forms of violence against children,

vi. Taking measures to protect children from discrimination on any grounds in particular based on their sex or sexual orientation, as well as on their ethnic or social origin, religion or belief, or disability and ensure a safe, supportive and inclusive environment for all children at school, in particular those belonging to vulnerable groups as referred in the recital 2 of these Conclusions while duly respecting their individuality,

vii. Inviting Member States to consider signing and ratifying the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution[2] and the Optional Protocol on a Communications Procedure[3], if they have not yet done so, and taking note that the Optional Protocol on the Involvement of Children in Armed Conflict[4] has been ratified by all EU Member States, that the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution has been ratified by the great majority of the Member States and the Optional Protocol on Communications Procedure has been ratified by some Member States,

viii. Allocating sufficient resources to prevent and combat child sexual abuse and exploitation for prevention services and law enforcement authorities,

ix. Strengthening the implementation of the legal and policy framework on preventing and combatting child sexual abuse and exploitation, in particular by fully complying with Regulation (EU) 2021/1232 and following the development of future legal instruments to combat child sexual abuse in line with the EU Strategy for a more effective fight against child sexual abuse for the period 2020 – 2025,

x. Strengthening the prevention of violence and the prevention of recidivism by developing adequate prevention and rehabilitation programmes for perpetrators of violence.

3) Develop and support the adequate implementation of EU legal guarantees for the protection of the fundamental rights of the child in crisis or emergency situations without discrimination, hearing and taking into account the opinion of the children, in accordance with age and degree of maturity, while duly respecting the child's best interests especially by:

i. Working together to improve and address child protection needs arising in emergency situations and developing, effective and viable alternatives to the detention of children in migration processes recalling that, in line with EU acquis, migration detention for children is only foreseen as a measure of last resort, where alternatives are not viable, at any rate for the shortest possible time and by offering suitable accommodation,

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2 Optional Protocol to the Convention on [...] Rights of the Child on the sale of children, child prostitution and child pornography, United Nations, 2000.

3 Optional Protocol to the Convention on the Rights of the Child on a communications procedure, United Nations, 2011.

4 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, United Nations, 2000.

ii. Setting up emergency reception procedures working towards ensuring protective accommodation, adapted to the needs of the child, guaranteeing his or her physical and mental health safety, as well as access to basic services and guaranteeing early identification of vulnerabilities,

iii. Where necessary, carrying out a reliable assessment of the child's age, with full respect for the individual's dignity, based on a multidisciplinary approach, informing the individuals in a language they can understand,

iv. Providing assistance for the inclusion of unaccompanied children, in particular by ensuring the rapid designation of a legal guardian or appropriate representation, by accompanying them in their schooling and vocational training,

v. Emphasising the importance of existing policies and, where necessary, reinforcing the implementation of policies to fight against trafficking of children and, in particular, identifying and preventing situations that present a risk of trafficking in human beings, bearing in mind that the risk of trafficking in human beings is greater in times of crises especially towards women and girls, and, bearing in mind the United Nations Protocol to prevent, suppress and punish trafficking in persons[5],

vi. Training professionals in the detection and protection of children facing crisis and of children who are victims of trafficking in human beings or who are at risk of becoming victims,

vii. Raising awareness among children, and in particular migrant children and their families, of the risks of exploitation by providing them with adequate information,

viii. Defining strategies for identifying children who are victims of trafficking in human beings, in order to ensure and guarantee their unconditional protection,

ix. Providing support, including financially, to civil society organisations specialised in the fight against trafficking in children, conducting awareness campaigns against trafficking in human beings, or providing care and support to children who are victims of trafficking in human beings,

5 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

x. Endeavouring to ensure that there is no instrumentalisation of crisis or emergency situations regarding the guardianship of children, and in particular, bearing in mind UNICEF and the Hague Conference on Private International Law recommendations, that no adoption should take place pending the duration of armed conflicts,

xi. Encouraging Member States to continue strengthening measures and alert processes to combat child abduction and to pursue the establishment of a network of national contact points to promote coordination between Member States,

4) Strengthening the Member States' justice systems, so that they are compliant with the rights of all children, in particular by:

i. Ensuring that the best interests of the child is a primary consideration in all judicial proceedings relating to children,

ii. Developing child-friendly proceedings from the very beginning, including through the provision of age-appropriate and child friendly information and possible ways of participation,

iii. Ensuring, the fulfilment of the right of the child to be heard in 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 and with EU acquis,

iv. Ensuring, that the right of the child to respect for his or her private life is protected in the best possible way during proceedings,

v. Ensuring that proceedings in cases involving children are handled without undue delay and that the decisions reached in these proceedings are systematically enforced in compliance with the existing EU legal framework and other relevant international legal means in order to ensure effective implementation of the rights of the child in compliance with the principle of subsidiarity,

vi. Providing the necessary support services to children during, and also after, the proceedings, for as long as the children need them,

vii. Promoting inter-disciplinary cooperation among different services to support the child in the best possible way before, during and after proceedings,

viii. Developing and applying robust alternatives to judicial action for young offenders – from alternatives to detention, to the use of restorative justice and in the context of civil justice the use of mediation,

ix. Developing programs for juvenile perpetrators supporting their reintegration,

5) Increasing opportunities for children to be responsible and resilient members of the digital society, in particular by:

i. Investing in ensuring equal access and support to digital means for every child,

ii. Empowering children to be conscious media users by supporting the development of media and information literacy needed to critically examine, evaluate and produce online content,

iii. Providing protection from existing and emerging risks in the digital environment by focusing on digital literacy, privacy and online safety,

iv. Developing support services for children victims of online abuse,

6) Actively contributing to the work of the EU Network for Children's Rights, which has been established by the European Commission to facilitate dialogue and mutual learning among Member States.

The Council also invites the EU Agency for Fundamental Rights to continue to provide Member States with support on topics such as child friendly justice and children in migration and other relevant areas of the EU Strategy on the Rights of the Child, as well as technical assistance and methodological support, *inter alia*, for the design and implementation of data collection exercises. In the context of Russia's war of aggression against Ukraine, the Council also invites the Agency to focus on the specific needs and challenges faced by children.

RECOMMENDATIONS

COUNCIL RECOMMENDATION (EU) 2021/1004

of 14 June 2021

establishing a European Child Guarantee

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292, in conjunction with Article 153(2) and Article 153(1)(j) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Pursuant to Article 3(3) of the Treaty on European Union, the Union combats social exclusion and discrimination and promotes equality between women and men and protection of the rights of the child.

(2) Pursuant to Article 9 of the Treaty on the Functioning of the European Union (TFEU), in defining and implementing its policies and activities, the Union takes into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

(3) Pursuant to Article 151 TFEU, the Union and the Member States have as their objectives the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of social exclusion. Pursuant to Article 153(1), point (j), TFEU, with a view to achieving those objectives, the Union supports and complements the activities of the Member States in the field of combating social exclusion.

(4) Article 24 of the Charter of Fundamental Rights of the European Union (the 'Charter') recognises that children have the right to such protection and care as is necessary for their well-being, and that the child's best interests must be a primary consideration in all actions relating to children, whether taken by public authorities or private institutions. Article 33 of the Charter stipulates that the family shall enjoy legal, economic and social protection.

(5) Article 17 of the Revised European Social Charter, done at Strasbourg on 3 May 1996, confirms the commitment to take all appropriate and necessary measures to ensure that children have the care, the assistance, the education and the training they need.

(6) The United Nations Convention on the Rights of the Child, adopted on 20 November 1989, which has been ratified by all Union Member States, stipulates in Articles 2, 3, 6, 12, 18, 24, 27, 28 and 31 that State Parties to the Convention recognise the best interests of the child to be a primary consideration and recognise the child's right: to participation and development, including the right to protection from all forms of discrimination; to life; to be heard in judicial and administrative proceedings; to enjoyment of the highest attainable standard of health; of access to healthcare services; to State assistance to ensure an adequate standard of living, education, leisure, recreational activities, and to participate fully in cultural and artistic life.

(7) Article 7 of the United Nations Convention on the Rights of Persons with Disabilities ([1]), ratified by the Union and all its Member States, stipulates that State Parties to that Convention shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

(8) Together with its Member States, the Union is fully committed to being a frontrunner in implementing the United Nations 2030 Agenda and the United Nations Sustainable Development Goals, including those on eradicating poverty, ensuring healthy lives and promoting well-being, and ensuring inclusive and equitable quality education.

(9) On 20 February 2013, the Commission adopted Recommendation 2013/112/EU ([2]) entitled 'Investing in children: breaking the cycle of disadvantage'. That Recommendation sets out an integrated approach to reducing child poverty or social exclusion and improving child wellbeing that builds on three pillars: access to resources, access to quality services, and children's right to participate.

(10) In November 2017, the European Parliament, the Council and the Commission proclaimed the European Pillar of Social Rights, setting out 20 principles to support well-functioning and fair labour markets and welfare systems. Principle 11 provides for children's right to affordable early childhood education and care of good quality, protection from poverty and to specific measures to enhance equal opportunities of children from disadvantaged backgrounds.

(11) The European Parliament, in its Resolution of 24 November 2015 ([3]), called on the Commission and the Member States to introduce a child guarantee, with a focus on children in poverty and their access to services. The European Parliament, in its Resolution of 11 March 2021 ([4]), further called on the Commission to include in the EU Strategy on the Rights of the Child concrete measures to invest in children in order to eradicate child poverty, including the establishment of a European Child Guarantee with appropriate resources, and to present its proposal for the European Child Guarantee in the first quarter of 2021, and called on the Member States to invest all possible resources, including Union funds, to fight child poverty and social exclusion and to establish child guarantee national action plans.

(12) The Joint Declaration entitled 'Overcoming poverty and social exclusion – mitigating the impact of COVID-19 on families – working together to develop prospects for strong children', signed in December 2020 by 24 ministers of the Employment, Social Policy, Health and Consumer Affairs Council, called for a European Child Guarantee based on the principles and integrated approach of Recommendation 2013/112/EU and of the European Pillar of Social Rights. The ministers reaffirmed that access to free healthcare, free education, affordable early childhood education and care, decent housing and adequate nutrition are essential for children at risk of poverty or social exclusion.

(13) The European Pillar of Social Rights Action Plan ([5]) provides a new impetus to address poverty and social exclusion in the Union, in particular by setting the target with the 2030 horizon to reduce by 15 million the number of people at risk of poverty or social exclusion, including at least 5 million children.

(14) The Union comprehensive Strategy on the Rights of the Child ([6]) helps to strengthen children's participation in society, put the best interests of the child in primary consideration, protect vulnerable children including those at risk of socioeconomic exclusion and marginalisation, protect children's rights online, foster child-friendly justice and prevent and fight violence against children. It also aims to combat discrimination against children, including on the grounds of their sex or sexual orientation or that of their parents.

([1]) Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.1.2010, p. 35).

([2]) Commission Recommendation 2013/112/EU of 20 February 2013 'Investing in children: breaking the cycle of disadvantage' (OJ L 59, 2.3.2013, p. 5).

([3]) European Parliament resolution of 24 November 2015 on reducing inequalities with a special focus on child poverty (2014/2237 (INI)).

([4]) European Parliament resolution of 11 March 2021 on children's rights in view of the EU Strategy on the rights of the child (2021/2523 (RSP)).

([5]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'The European Pillar of Social Rights Action Plan', COM(2021) 102 final.

([6]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'EU Strategy on the Rights of the Child', COM(2021) 142 final.

(15) The objective of this Recommendation is to prevent and combat social exclusion by guaranteeing the access of children in need to a set of key services, including mainstreaming a gender perspective in order to take into consideration the different situations of girls and boys, by combating child poverty and fostering equal opportunities. Children in need are persons under the age of 18 years who are at risk of poverty or social exclusion. This refers to children living in households at risk of poverty, or experiencing severe material and social deprivation, or with very low work intensity.

(16) In order to provide for effective access or effective and free access to key services, Member States should, in accordance with national circumstances and approaches, either organise and provide such services or provide adequate benefits so that parents or guardians of children in need are in a position to cover the costs or charges of those services. Particular attention is required to avoid any possible accompanying costs forming a barrier for children in need in low-income families to full access of the key services.

(17) Nearly 18 million children are at risk of poverty or social exclusion in the Union ([7]), with significant differences between Member States. The range of risk factors that can make some children especially vulnerable and exposed to poverty or social exclusion vary considerably. Therefore, national approaches to implementing this Recommendation should be tailored to specific circumstances and needs on the ground. One of the main determinants of social exclusion of children is the unequal access to key services, essential for their wellbeing and the development of their social, cognitive and emotional skills. Children living in poverty or children from disadvantaged backgrounds are more likely to face barriers in accessing early childhood education and care, inclusive education, healthcare, healthy nutrition and adequate housing. They start their lives at a disadvantage, which can have long-term implications for their development and future prospects.

(18) The intergenerational transmission of social exclusion jeopardises social cohesion over generations and generates higher costs to our welfare states, hindering economic and social resilience. Improving equal access of children in need to key services is therefore an important means of stepping up efforts to prevent and combat social exclusion. It also contributes to fostering equal opportunities for children in need and combating child poverty.

(19) Tackling disadvantage from early years is a cost-effective investment, including from a long-term perspective, as it contributes not only to the inclusion of children and their higher socioeconomic outcomes when they are adults, but also to the economy and society through better integration into the labour market and social life and improvement in the school-to-work transition, including through the full implementation of the Council Recommendation of 30 October 2020 on A Bridge to Jobs – Reinforcing the Youth Guarantee ([8]). Investing in equal opportunities for children lays the foundation for a sustainable and inclusive growth, supporting fair and resilient societies and upward social convergence. It also contributes to addressing the impact of adverse demographic developments by reducing skill and labour shortages and ensuring a better territorial coverage, while harnessing the opportunities arising from the green and digital transitions.

(20) Equal access to quality and inclusive early childhood education and care and education is central to breaking the transmission of social exclusion and securing equal opportunities for children in a disadvantaged situation. However, the limited availability and high costs of early childhood education and care can form a barrier for children from low-income families. Their attendance rates are considerably lower and result later on in worse educational outcomes and higher school drop-out rates, in particular for children with a migrant background or Roma children. Segregation and discrimination in accessing mainstream education by children with disabilities or special educational needs remains a challenge. The choice of the educational establishment needs to reflect the best interests of the child. The growing number of children with a migrant background in education systems calls for the prevention of segregated school settings and the adaptation of teaching methods, in accordance with national law and Member States' obligations under the relevant international instruments in the field.

([7]) https://ec.europa.eu/eurostat/statistics-explained/index.php/Children_at_risk_of_poverty_or_social_exclusion

([8]) Council Recommendation of 30 October 2020 on A Bridge to Jobs – Reinforcing the Youth Guarantee and replacing the Council recommendation of 22 April 2013 on establishing a Youth Guarantee (OJ C 372, 4.11.2020, p. 1).

(21) An important part of learning, including acquiring social skills, takes place by means of sport, leisure or cultural activities. Such activities are proven to be beneficial, especially for children from disadvantaged backgrounds. However, certain groups of children cannot afford them or their participation is hindered by a lack of proper infrastructure, poor accessibility or language problems.

(22) Children in need generally have hindered access to certain healthcare services, such as dental care, or to supports, such as braces, corrective lenses or spectacles. Such children also have fewer opportunities and resources to benefit from disease prevention and health promotion programmes. Income poverty and other social determinants significantly affect the overall development and health, including mental health, of children and increase the risk of ill-health in later years. Early intervention and prevention are essential, together with better access to public health prevention and promotion programmes, including vaccination, and parenting support, which can help achieve better outcomes.

(23) Access to healthy and sustainable nutrition is a challenge for low-income families in particular. Healthy food and nutrition programmes can help address problems such as poor diet, lack of physical activity, obesity or use of alcohol and tobacco, thereby reducing malnutrition and poor nutrition, which is more prevalent among children from disadvantaged backgrounds. The experience of the COVID-19 pandemic demonstrated the importance of school meal schemes for some children, who were suddenly deprived of a reliable source of nutrition during lockdown ([9]). Ensuring access of children in need to at least one healthy meal each school day is therefore paramount and could be achieved either by providing such meals or by ensuring that parents or guardians, or children, are in a position to cater for the meals, taking into account specific local circumstances and needs.

(24) Children from low-income families, with a migrant background or with a minority ethnic origin are at a higher risk of severe housing deprivation, overcrowding and energy poverty, and are more exposed to homelessness. Housing expenditure is a heavy burden for single-earner households, especially those headed by women. The provision of adequate housing and ensuring that children and their families receive adequate temporary accommodation are important mechanisms for tackling social exclusion of children and minimising the risk of homelessness. With the aim of the de-institutionalisation of children, quality community-based or family-based care should be promoted. Placing children in institutional care should be done only when it is in the best interests of the child, taking into account the child's overall situation and considering the child's individual needs. Providing support to children who leave institutional or foster care is crucial to support their independent living and social integration.

(25) The crisis caused by the COVID-19 pandemic may have far-reaching effects on the economic and social well-being of families and children, and is likely to disproportionally affect children from disadvantaged backgrounds. Low and middle-income groups face a higher risk of income loss, with a potentially significant impact on the disposable income of households due to increasing unemployment and reduced telework possibilities. The crisis is expected to exacerbate existing inequalities and is likely to result in an increase in the number of households being at risk of poverty or social exclusion. It also puts significant pressure on the availability of services. Children experiencing various forms of disadvantage are among the hardest hit by the crisis. Distance learning has been difficult for many children living in households without adequate family support, skills or equipment, including for children living in remote or rural territories with inadequate digital infrastructure.

(26) Tackling social exclusion of children and reducing the socioeconomic impact of the COVID-19 pandemic requires an integrated, person-centred and multidimensional approach and an enabling policy framework. Strengthening cooperation and coordination between services at various levels warrants effective prevention and supports social inclusion of children. Along with ensuring access to key services, across all regions and territories, including through investment in service infrastructure and the workforce, it is also necessary to improve the effectiveness and relevance of related policies, combine preventive and remedial measures and benefit to the maximum extent from existing Union instruments.

([9]) 2020 Social Protection Committee Annual Review of the Social Protection Performance Monitor (SPPM) and developments in social protection policies. Report on key social challenges and key messages, p. 58.

(27) The European Semester economic and employment coordination process, supported by the Social Scoreboard ([10]), has highlighted the challenge of child poverty or social exclusion, with a number of Member States receiving country-specific recommendations. The Employment Guidelines underline the importance of ensuring the access of everyone, including children, to certain services, such as early childhood education and care, education and healthcare, with such access serving as a necessary condition for ensuring equal opportunities.

(28) Union funds are available to support the implementation of the European Child Guarantee and further supportive measures. Within the European Social Fund Plus, all Member States will earmark an appropriate amount to tackle child poverty or social exclusion. For Member States in which the rate of children at risk of poverty or social exclusion is above the Union average, that amount is to be at least 5 % of their national European Social Fund Plus allocation. In accordance with the principles of subsidiarity and proportionality, the European Regional Development Fund and InvestEU will also support investment in enabling infrastructure, such as social housing and early childhood education and care facilities, as well as equipment and access to quality and mainstream services. As part of the Recovery Plan for Europe and the 'Next Generation EU' instrument, the Recovery and Resilience Facility offers additional Union funding for reforms, investment and policies for the next generation, children and the youth, such as education and skills, to be included in national recovery and resilience plans ([11]). The Technical Support Instrument can support Member States in designing and implementing structural reforms in the areas of education, social services, justice and health, including cross-sectoral reforms tackling child poverty and social exclusion.

(29) Member States can also benefit from the 2017-2023 EU school fruit, vegetables and milk scheme to make healthy products more available to children and improve their understanding of the benefits of healthy and sustainable food.

(30) This Recommendation should be implemented through national action plans adapted to national, regional and local circumstances. Such national action plans should identify children in need and the barriers they face in accessing and taking-up the services covered by this Recommendation. To this end, Member States are recommended to involve relevant stakeholders, including non-governmental organisations promoting children's rights. Progress in implementing this Recommendation should also be regularly monitored, for example as part of the Social Scoreboard in the context of the European Semester, including through the development of relevant monitoring indicators.

(31) This Recommendation complements Commission Recommendation 2013/112/EU, constitutes a deliverable of the European Pillar of Social Rights Action Plan, and complements the Union comprehensive Strategy on the Rights of the Child.

(32) This Recommendation fully respects the principles of subsidiarity and proportionality. It is without prejudice to principles of national procedural law and the legal traditions of the Member States and does not entail an extension of the Union's powers,

HAS ADOPTED THIS RECOMMENDATION:

OBJECTIVE AND SCOPE

1. The aim of this Recommendation is to prevent and combat social exclusion by guaranteeing access of children in need to a set of key services, thereby also contributing to upholding the rights of the child by combating child poverty and fostering equal opportunities.

2. This Recommendation applies to children in need.

DEFINITIONS

3. For the purpose of this Recommendation, the following definitions apply:

   (a) 'children in need' means persons under the age of 18 years who are at risk of poverty or social exclusion;

   (b) 'children with a migrant background' means third country national children, irrespective of their migration status, and children with the nationality of a Member State who have a third country migrant background through at least one of their foreign-born parents;

([10]) https://ec.europa.eu/eurostat/web/european-pillar-of-social-rights/indicators/social-scoreboard-indicators

([11]) In line with the Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

(c) 'children in precarious family situations' means children exposed to various risk factors that could lead to poverty or to social exclusion. This includes: living in a single-earner household; living with a parent with disabilities; living in a household where there are mental health problems or long-term illness; living in a household where there is substance abuse, or domestic violence; children of a Union citizen who has moved to another Member State while the children themselves remained in their Member State of origin; children having a teenage mother or being a teenage mother; and children having an imprisoned parent;

(d) 'effective access' means a situation in which services are readily available, affordable, accessible, of good quality, provided in a timely manner and where the potential users are aware of their existence, as well as of entitlements to use them;

(e) 'effective and free access' means a situation in which services are readily available, accessible, of good quality, provided in a timely manner and where the potential users are aware of their existence, as well as of entitlements to use them, and provided free of charge, either by organising and providing such services or by adequate benefits to cover the costs or the charges of the services, or in such a way that financial circumstances will not pose an obstacle to equal access;

(f) 'school-based activities' means learning by means of sport, leisure or cultural activities that take place within or outside of regular school hours or are organised by the school community;

(g) 'healthy meal' or 'healthy nutrition' means a balanced meal consumption, which provides children with nutrients necessary for their physical and mental development and for physical activity that complies with their physiological needs;

(h) 'adequate housing' means a dwelling that meets the current national technical standards, is in a reasonable state of repair, provides a reasonable degree of thermal comfort and is available and accessible at an affordable cost.

IN ACCORDANCE WITH NATIONAL COMPETENCES, CIRCUMSTANCES AND PRACTICES AND FULLY RESPECTING THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY, HEREBY RECOMMENDS AS FOLLOWS:

CORE RECOMMENDATIONS

4. Member States are recommended to guarantee for children in need:

(a) effective and free access to high quality early childhood education and care, education and school-based activities, at least one healthy meal each school day and healthcare;

(b) effective access to healthy nutrition and adequate housing.

5. Member States are recommended to identify children in need and within this group take into account, wherever appropriate in designing their national integrated measures, specific disadvantages experienced, in particular, by:

(a) homeless children or children experiencing severe housing deprivation;

(b) children with disabilities;

(c) children with mental health issues;

(d) children with a migrant background or minority ethnic origin, particularly Roma;

(e) children in alternative, especially institutional, care;

(f) children in precarious family situations.

ENABLING POLICY FRAMEWORK

6. While putting the best interests of the child as a primary consideration, Member States are recommended to build an integrated and enabling policy framework to address social exclusion of children, focusing on breaking intergenerational cycles of poverty and disadvantage and reducing the socioeconomic impact of the COVID-19 pandemic. To that effect, in implementing this Recommendation, Member States are recommended to:

(a) ensure consistency of social, education, health, nutrition and housing policies at national, regional and local level and, wherever possible, improve their relevance for supporting children in an integrated manner;

(b) continue and where necessary step up investment in education, adequate health and social protection systems in order to address effectively the needs of children and their families, in particular of those exposed to social exclusion;

(c) ensure adequate policies and resources, including through labour market integration measures, support measures for parents or guardians and income support to families and households, so that financial barriers do not prevent children from accessing quality services;

(d) address the territorial dimension of social exclusion, taking into account the specific needs of children according to distinctive urban, rural, remote and disadvantaged areas, based on an integrated and multidisciplinary approach;

(e) strengthen cooperation with, and involvement of, national, regional and local authorities, social economy organisations, non-governmental organisations promoting children's rights, children themselves and other stakeholders, in the design, delivery and monitoring of policies and quality services for children;

(f) take measures to promote inclusion and to avoid and tackle discrimination and stigmatisation of children in need;

(g) support strategic investment in quality services for children, including in enabling infrastructure and qualified workforce;

(h) dedicate adequate resources and make optimal use of national and Union funds, in particular the European Social Fund Plus, the European Regional Development Fund, and where appropriate REACT-EU, Invest-EU, the Recovery and Resilience Facility and the Technical Support Instrument;

(i) take into account a gender perspective throughout the enabling framework.

EARLY CHILDHOOD EDUCATION AND CARE, INCLUSIVE EDUCATION AND SCHOOL-BASED ACTIVITIES, AND A HEALTHY MEAL EACH SCHOOL DAY

7. With a view to guaranteeing effective and free access to high quality early childhood education and care, education and school-based activities and a healthy meal each school day for children in need, Member States are recommended to:

(a) identify and address financial and non-financial barriers to participation in early childhood education and care, education, and school-based activities;

(b) take measures to prevent and reduce early school leaving, taking into account a gender perspective, to re-engage children who are at risk of dropping out or have dropped out of education or training, including by providing personalised guidance and strengthening cooperation with families;

(c) provide learning support to children with learning difficulties to compensate for their linguistic, cognitive and educational gaps;

(d) adapt facilities and educational materials of early childhood education and care and of educational establishments and provide the most appropriate response to the specific needs of children with special educational needs and of children with disabilities, using inclusive teaching and learning methods; for this purpose ensure that qualified teachers and other professionals are available, such as psychologists, speech therapists, rehabilitators, social workers or teaching assistants;

(e) put in place measures to support inclusive education and avoid segregated classes in early childhood education and care establishments and in educational establishments; this may also include giving priority to, or, when needed, early access for, children in need;

(f) provide at least one healthy meal each school day;

(g) ensure provision of educational materials, including digital educational tools, books, uniforms or any required clothing, where applicable;

(h) provide high speed connectivity, digital services and adequate equipment necessary for distance learning to ensure access to educational content online, as well as to improve digital skills of children in need and teachers and make the necessary investment to tackle all forms of digital divide;

(i) provide transport to early childhood education and care and education establishments, where applicable;

(j) ensure equal and inclusive access to school-based activities, including participation in school trips and sport, leisure and cultural activities;

(k) develop a framework for cooperation of educational establishments, local communities, social, health and child protection services, families and social economy actors to support inclusive education, to provide after school care and opportunities to participate in sport, leisure and cultural activities, and to build and invest in educational establishments as centres of inclusion and participation.

HEALTHCARE

8. With a view to guaranteeing effective and free access to quality healthcare for children in need, Member States are recommended to:

   (a) facilitate early detection and treatment of diseases and developmental problems, including those related to mental health, ensure access to periodic medical, including dental and ophthalmology, examinations and screening programmes; ensure timely curative and rehabilitative follow-up, including access to medicines, treatments and supports, and access to vaccination programmes;

   (b) provide targeted rehabilitation and habilitation services for children with disabilities;

   (c) implement accessible health promotion and disease prevention programmes targeting children in need and their families, as well as professionals working with children.

HEALTHY NUTRITION

9. With a view to guaranteeing effective access to sufficient and healthy nutrition for children in need, including through the EU school fruit, vegetables and milk scheme, Member States are recommended to:

   (a) support access to healthy meals also outside of school days, including through in-kind or financial support, in particular in exceptional circumstances such as school closures;

   (b) ensure that nutrition standards in early childhood education and care and education establishments address specific dietary needs;

   (c) limit advertisement and restrict the availability of foods high in fat, salt and sugar in early childhood education and care and educational establishments;

   (d) provide adequate information to children and families on healthy nutrition for children.

ADEQUATE HOUSING

10. With a view to guaranteeing effective access to adequate housing for children in need, Member States are recommended to:

   (a) ensure that homeless children and their families receive adequate accommodation, prompt transfer from temporary accommodation to permanent housing and provision of relevant social and advisory services;

   (b) assess and revise, if necessary, national, regional and local housing policies and take action to ensure that the interests of families with children in need are duly taken into account, including addressing energy poverty and preventing the risk of homelessness; such assessment and revision should also include social housing or housing assistance policies and housing benefits and further improve accessibility for children with disabilities;

   (c) provide for priority and timely access to social housing or housing assistance for children in need and their families;

   (d) take into account the best interests of the child as well as the child's overall situation and individual needs when placing children into institutional or foster care; ensure the transition of children from institutional or foster care to quality community-based or family-based care and support their independent living and social integration.

GOVERNANCE AND REPORTING

11. With a view to sound governance, monitoring and reporting and taking due account of existing national structures and mechanisms, Member States are recommended to:

National Child Guarantee Coordinators

   (a) nominate a national Child Guarantee Coordinator, equipped with adequate resources and mandate enabling the effective coordination and monitoring of the implementation of this Recommendation;

Identifying children in need

   (b) with a view to most effective targeting of measures to children in need and taking into account national, regional and local organisations and circumstances, involve relevant stakeholders in identifying children in need and barriers they face in accessing and taking up the services covered by this Recommendation;

National action plans

(c) submit to the Commission, within nine months from the adoption of this Recommendation, an action plan, covering the period until 2030, to implement this Recommendation, taking into account national, regional and local circumstances as well as existing policy actions and measures to support children in need. The action plan should include, in particular:

(i) targeted categories of children in need to be reached by corresponding integrated measures;

(ii) quantitative and qualitative targets to be achieved in terms of children in need to be reached by corresponding measures, taking into account regional and local disparities;

(iii) measures planned or taken in implementing this Recommendation, including at regional and local level, and the necessary financial resources and timelines;

(iv) other measures planned or taken to address child social exclusion and to break intergenerational cycles of disadvantage, based in particular on enabling the policy framework provided for in paragraph 6;

(v) a national framework for data collection, monitoring and evaluation of this Recommendation, also with a view to establishing a common monitoring framework, as referred to in paragraph 12, point (d);

Outreach

(d) develop effective outreach measures towards children in need and their families, in particular at regional and local level and through educational establishments, trained social workers, family-support services, civil society and social economy organisations, with a view to raising awareness and encouraging and facilitating the take-up of the services covered by this Recommendation;

Involvement of stakeholders

(e) ensure the participation of regional, local and other relevant authorities, children and relevant stakeholders representing civil society, non-governmental organisations, educational establishments and bodies responsible for promoting social inclusion and integration, children's rights, inclusive education and non-discrimination, including national equality bodies throughout the preparation, implementation, monitoring and evaluation of the action plan;

Reporting to the Commission

(f) report every two years to the Commission on the progress in implementing this Recommendation, in line with the national action plan referred to in point (c).

IMPLEMENTATION, MONITORING AND EVALUATION

12. The Council welcomes the Commission's aim to:

(a) monitor progress in implementing this Recommendation, including its outcomes and the impact on children in need, also as part of the Social Scoreboard in the context of the European Semester, and propose, where appropriate, country-specific recommendations to Member States;

(b) work jointly with Member States, the national Child Guarantee Coordinators and the Social Protection Committee to facilitate mutual learning, share experiences, exchange good practices and follow up on the actions taken in response to this Recommendation as set out in the relevant national action plans;

(c) report regularly to the Social Protection Committee on the progress in implementing this Recommendation, on the basis of the reports from Member States;

(d) work jointly with the Social Protection Committee to:

(i) establish a common monitoring framework using existing data sources and indicators and, if necessary, develop further agreed common quantitative and qualitative outcome indicators to assess the implementation of this Recommendation;

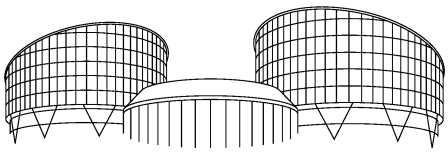
(ii) with a view to informing policy making, enhance the availability, scope and relevance of comparable data at Union level, including on children in need and their access to services, and adequacy and coverage of benefits targeted at children;

(e) review the progress made in the implementation of this Recommendation and report to the Council by five years after its adoption;

(f) strengthen awareness-raising and communication efforts and increase dissemination of results and good practice examples at Union level and among Member States and relevant stakeholders.

Done at Luxembourg, 14 June 2021.

For the Council
The President
A. MENDES GODINHO



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on the case-law of the European Convention on Human Rights

Immigration

Updated on 31 December 2021

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on a wide range of provisions of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") relating to immigration. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the former European Commission of Human Rights (hereafter "the Commission"). Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

1. The present document is intended to serve as a reference tool to the Court's case-law in immigration related cases, covering all Convention Articles that could come into play. It is divided into six chapters, in principle corresponding to the sequence of events in chronological order. It primarily refers to, rather than reproduces or elaborates on, the Court's relevant judgments and decisions, including, wherever possible, recent judgments and decisions consolidating the relevant principles. It is thus conceived as an entry point to the Court's case-law on a given matter, not as an exhaustive overview.

2. Few provisions of the Convention and its Protocols explicitly concern "aliens" and they do not contain a right to asylum. As a general rule, States have the right, as a matter of well-established international law and subject to their treaty obligations, to control entry, residence and expulsion of non-nationals. In *Soering v. the United Kingdom* the Court ruled for the first time that the applicant's extradition could raise the responsibility of the extraditing State under Article 3 of the Convention. Since then, the Court has consistently held that the removal of an alien by a Contracting State may give rise to an issue under Articles 2 and 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. The Court also adjudicates cases concerning the compliance, of the removal of migrants from and the refusal of entry into the territory of a Contracting State, with their right to respect for their private and/or family life as guaranteed by Article 8 of the Convention.

3. Many immigration related cases before the Court begin with a request for interim measures under Rule 39 of the Rules of Court, measures most commonly consisting of requesting the respondent State to refrain from removing individuals pending the examination of their applications before the Court (see section "Rule 39 / Interim measures" below for more details).

I. Access to the territory and procedures

Article 1 of the Convention

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

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 4 of the Convention

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 2 of Protocol No. 4 of the Convention

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Article 4 of Protocol No. 4 of the Convention

"Collective expulsion of aliens is prohibited."

4. As mentioned above, access to the territory for non-nationals is not expressly regulated in the Convention, nor does it say who should receive a visa.

A. Application for a visa to enter a country in order to seek asylum there

5. In *M.N. and Others v. Belgium* [GC], the applicants, a Syrian couple and their two children, travelled to Lebanon where they requested the Belgian embassy to deliver short-term visas to allow them to travel to Belgium to apply for asylum given the conflict in Syria, relying on Article 3 of the Convention. Their requests were processed and refused by the Aliens Office in Belgium. Notified by the Belgian embassy of these decisions, the applicants lodged unsuccessful appeals before the Belgian courts. The Court found that the respondent State was not exercising jurisdiction extraterritorially over the applicants by processing their visa applications and that a jurisdictional link had not been created through the applicant's appeals.

B. Access for the purposes of family reunification[1]

6. A State may, under certain circumstances, be required to allow the entry of an individual when it is a pre-condition for his or her exercise of certain Convention rights, in particular the right to respect for family life. At the same time, there is no obligation on a State under Article 8 to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country. The substantive elements, which are, in general, to be taken into consideration for determining whether a State is under a positive obligation under Article 8 of the Convention to grant family reunification, have been summarised in *M.A. v. Denmark* [GC]: (i) status in and ties to the host country of the alien requesting family reunion and his family member concerned; (ii) whether the aliens concerned had a settled or precarious immigration status in the host country when their family life was created; (iii) whether there were insurmountable or major obstacles in the way of the family living in the country of origin of the person requesting reunification; (iv) whether children were involved; (v) whether the person requesting reunion could demonstrate that he/she had sufficient independent and lasting income, not being welfare benefits, to provide for the basic cost of subsistence of his or her family members (§§ 131-135).

7. As regards the procedural requirements for processing of family reunification requests of refugees, the decision-making process has to sufficiently safeguard the flexibility (for instance in relation to the use and admissibility of evidence for the existence of family ties), speed and efficiency required to comply with the applicant's right to respect for family life (*M.A. v. Denmark* [GC], §§ 137-139 and 163; *Tanda-Muzinga v. France*; *Mugenzi v. France*; *Senigo Longue and Others v. France*). These considerations apply equally to beneficiaries of subsidiary protection, including to persons who are at a risk of ill-treatment falling under Article 3 due to the general situation in their home country and where the risk is not temporary but appears to be of a permanent or long-lasting character (*M.A. v. Denmark* [GC], § 146). Furthermore, an individualised fair-balance assessment of the interest of family unity in the light of the concrete situation of the persons concerned and the situation in their country of origin, with a view to determining the actual prospect of return or the likely duration of obstacles thereto is required (*ibid.*, §§ 149, 162 and 192-193; see also *El Ghatet v. Switzerland*, where the domestic courts had not put the best interests of the child applicant sufficiently at the centre of their balancing exercise and reasoning).

8. While States enjoy a wide margin of appreciation under Article 8 of the Convention in deciding whether to impose a waiting period for family reunification requested by persons who had not been granted refugee status but who enjoyed subsidiary protection or temporary protection, beyond the duration of two years, the insurmountable obstacles to enjoying family life in the country of origin progressively assume more importance in the fair balance assessment (*M.A. v. Denmark* [GC], §§ 161-162 and 193), it being borne in mind that the actual separation period would inevitably be

[1] See also the *Guide on Article 8 of the Convention - Right to respect for private and family life*.

even longer than the waiting period (§ 179). The Court found a breach of Article 8 in respect of the statutory waiting period of three years to which the applicant in *M.A. v. Denmark* [GC], a Syrian national who had been granted so-called "temporary protection status" in Denmark in 2015, had been subjected before he could apply for family reunification with his longstanding wife. The Court considered, in particular, that the applicant had not had a real possibility under domestic law to have an individualised assessment of whether a shorter waiting period was warranted by considerations of family unity, despite it having been accepted in the domestic proceedings that there were insurmountable obstacles in the way of the couples' enjoyment of family life in their country of origin (§§ 192-194).

9. However, where a State decides to enact legislation conferring the right on certain categories of immigrants to be joined by their spouses, it must do so in a manner compatible with the principle of non-discrimination enshrined in Article 14. The Court found a breach of Article 14 taken in conjunction with Article 8 in *Hode and Abdi v. the United Kingdom* because one applicant, the post-flight spouse of the other applicant, a recognised refugee, was not allowed to join him in the respondent State, whereas refugees married prior to the flight and immigrants with temporary residence status could be joined by their spouses.

10. Another scenario concerning family reunification of refugees was examined by the Court in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*. The first applicant had obtained refugee status and indefinite leave to remain in Canada and had asked her brother, a Dutch national, to collect her five year-old daughter (the second applicant) from the country of origin, where the child was living with her grandmother, and to look after the child until she was able to join her. Upon arrival in Belgium, instead of facilitating the reunification of the two applicants, the authorities detained and subsequently deported the second applicant to the country of origin, which amounted to a breach of Article 8 (§§ 72-91).

11. As regards the refusal to grant family reunion based on ties with another country and a difference in treatment between persons born with the nationality of the respondent State and those who acquired it later in life, see *Biao v. Denmark* [GC]. In *Schembri v. Malta*, the Court found that Article 8 did not apply to a "marriage of convenience": albeit not in the context of seeking permission to enter, but rather to remain in, the respondent State (see, more generally, section "Article 8" below), the Court found that the refusal to grant a family residence permit to the applicant's same-sex partner breached Article 14 taken in conjunction with Article 8 (*Taddeucci and McCall v. Italy*).

C. Granting visas and Article 4[2]

12. In *Rantsev v. Cyprus and Russia*, the applicant's daughter, a Russian national, had died in unexplained circumstances after falling from a window of a private property in Cyprus, a few days after she had arrived on a "cabaret-artiste" visa. The Court found that Cyprus had, inter alia, failed to comply with its positive obligations under Article 4 because, despite evidence of trafficking in Cyprus and the concerns expressed in various reports that Cypriot immigration policy and legislative shortcomings were encouraging the trafficking of women to Cyprus, its regime of "artiste visas" did not afford to the applicant's daughter practical and effective protection against trafficking and exploitation (§§ 290-293). In respect of the procedural obligation to conduct an effective investigation into the issuing of visas by public officials in human trafficking cases, see *T.I. and Others v. Greece*.

[2] See also the *Guide on Article 4 of the Convention - Prohibition of slavery and forced labour*.

D. Entry and travel bans

13. An entry ban prohibits individuals from entering a State from which they have been expelled. The ban is typically valid for a certain period of time and ensures that individuals who are considered dangerous or non-desirable are not given a visa or otherwise admitted to enter the territory. In respect of states which are part of the Schengen area, entry bans are registered into a database called the Schengen Information System (SIS). In *Dalea v. France* (dec.), the Court found that the applicant's registration on the SIS database did not breach his right to respect for his private life under Article 8 of the Convention. It considered the effects of a travel ban imposed as a result of placing an individual on an UN-administered list of terrorist suspects under Article 8 of the Convention (*Nada v. Switzerland* [GC]), as well as of a travel ban designed to prevent breaches of domestic or foreign immigration laws, under Article 2 of Protocol No. 4 to the Convention (*Stamose v. Bulgaria*).

E. Interception on the high seas and summary returns ("push-backs")[3]

14. In *Hirsi Jamaa and Others v. Italy* [GC], the applicants were part of a group of about 200 migrants, including asylum-seekers and others, who had been intercepted by the coastguard of the respondent State on the high seas within the search and rescue area of another Contracting Party. The applicants were summarily returned to Libya under an agreement concluded between Italy and Libya, and were given no opportunity to apply for asylum. The Court found that the applicants fell within the respondent State's jurisdiction for the purposes of Article 1 of the Convention as it exercised control over them on the high seas and considered that the Italian authorities knew, or should have known, that the applicants, when returned to Libya as irregular migrants, would be exposed to treatment in breach of the Convention, that they would not be given any kind of protection and that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin. It reaffirmed that the fact that the applicants had not asked for asylum or described the risks they faced as a result of the lack of asylum system in Libya did not exempt the respondent State from complying with its obligations under Article 3 of the Convention. It also found violations of Article 4 of Protocol No. 4 of the Convention and of Article 13 of the Convention taken in conjunction with Article 3 and Article 4 of Protocol No. 4 to the Convention.

[3] See also the *Guide on Article 4 of Protocol No. 4 to the Convention - Prohibition of collective expulsions of aliens*.

II. Entry into the territory of the respondent State

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 2 of Protocol No. 4 of the Convention

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Article 4 of Protocol No. 4 of the Convention

"Collective expulsion of aliens is prohibited."

A. Summary returns at the border and/or shortly after entry into the territory ("push-backs")

15. The Court has also examined cases in which border guards prevented persons from entering the respondent State's territory by not allowing them to disembark at a port (*Kebe and Others v. Ukraine*) or at a land border checkpoint (*M.A. and Others v. Lithuania*; *M.K. and Others v. Poland*), and either prevented the applicants from lodging an asylum application or, where they had submitted such applications, refused to accept them and to initiate asylum proceedings. It has also examined a number of cases concerning summary returns ("push-backs") of migrants and/or asylum-seekers who had entered the respondent State in an unauthorised manner or had tried to do so (*N.D. and N.T. v. Spain* [GC]; *Shahzad v. Hungary*; *D v. Bulgaria*; *M.H. and Others v. Croatia*), under Article 3 alone, under Article 13 taken in conjunction with Article 3 of the Convention, and/or under Article 4 of Protocol No. 4 as well as under Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4.

1. Article 3 of the Convention alone and/or in conjunction with Article 13 of the Convention

16. Where the applicants, who had presented themselves at the border seeking to lodge an asylum application and/or communicating fear for their safety, were removed in a summary manner to the third country from which they had sought to enter the respondent State's territory, the Court applied the principles which it had set out in *Ilias and Ahmed v. Hungary* [GC] in respect of the obligations under Article 3 of the Convention in respect of the removal of asylum-seekers to third intermediary countries, without an assessment, by the authorities of the removing State, of the merits of their asylum claim (see section "Removal to a third country" below). The Court found violations of Article 3 of the Convention (as well as of Article 13 taken in conjunction with Article 3) in these cases (*M.K. and Others v. Poland*; *D.A. and Others v. Poland*; for cases concerning similar factual scenarios, but predating *Ilias and Ahmed v. Hungary* [GC], see *M.A. and Others v. Lithuania* and *Sharifi and Others v. Italy and Greece*). Where applicants can arguably claim that there is no guarantee that their asylum applications would be seriously examined by the authorities in the neighbouring third country and that their return to their country of origin could violate Article 3 of the Convention, the respondent State is obliged to allow the applicants to remain with its jurisdiction until such time that their claims have been properly reviewed by a competent domestic authority and cannot deny access to its territory to persons presenting themselves at a border checkpoint who allege that they may be subjected to ill-treatment if they remain on the territory of the neighbouring state, unless adequate measures are taken to eliminate such a risk (*M.K. and Others v. Poland*, §§ 178-179). The Court added that the impugned measures did not fall within the respondent State's strict international legal obligations following from its membership in the European Union and that, consequently, the respondent State was fully responsible under the Convention for the impugned acts. More specifically, the Court found the provisions of European Union law embraced the principle of *non-refoulement* and applied it to persons who were subjected to border checks before being admitted to the territory of a Member States (*M.K. and Others v. Poland*, §§ 180-182; *D.A. and Others v. Poland*, §§ 65-67).

17. To determine whether individuals sought to request asylum and/or communicated fear for their safety in the event of removal to the authorities of the respondent State, the Court has regard not only to the records of the border guards, but also to the applicant's account, supporting documents as well as to reports regarding the situation at the border, where these indicate the existence of a systemic practice of misrepresenting statements given by asylum-seekers in official notes and/or concerns regarding access to the territory and asylum procedure, as well as to the conditions prevailing in the country of origin and/or the third country (*M.A. and Others v. Lithuania*, §§ 107-113; *M.K. and Others v. Poland*, §§ 174-177; *D.A. and Others v. Poland*, §§ 60-63; *D v. Bulgaria*,

§§ 120-128; *Hirsi Jamaa and Others v. Italy* [GC], §§ 123-136). Individuals do not have to explicitly request asylum, nor does the wish to apply for asylum need to be expressed in a particular form (*Hirsi Jamaa and Others v. Italy* [GC], § 133; *M.A. and Others v. Lithuania*, §§ 108-109; *D v. Bulgaria*, §§ 120-128). In this connection, the Court has emphasised the importance of interpretation for accessing asylum procedures as well as of training officials enabling them to detect and to understand asylum requests (*M.A. and Others v. Lithuania*, §§ 108-109; *D v. Bulgaria*, §§ 124-126). It has also considered the lack of involvement of a lawyer (*D v. Bulgaria*, § 125).

18. So far, the Court has adjudicated only one case concerning a summary return to the country of origin (*D v. Bulgaria*). The applicant was part of a group of people, who had entered Bulgaria in an unauthorised manner, hiding inside a truck and wishing to transit through the country *en route* to Western Europe. The group was not discovered upon entry but only when the truck, having crossed through the Bulgarian territory, sought to cross the border between Bulgaria and Romania. The Romanian officials arrested all passengers, prohibited them from entering Romania and handed them over to Bulgarian officials, who detained them. It applied a two-tier test in respect of the applicant's complaint under Articles 3 and 13 of the Convention (§§ 107 and 118): It examined, first, whether the applicant had sought, at least in substance, international protection by expressing to the authorities of the respondent State, prior to his removal, his fears of treatment contrary to Article 3 if he were returned to his country of origin. If the first question were answered in the affirmative, it had to be determined, as a second step, whether the authorities of the respondent State had adequately examined these risks, in a procedure in accordance with the requirements of Article 13 of the Convention, prior to returning him to his country of origin. This requires independent and rigorous scrutiny of the complaint and the possibility of suspending the implementation of the removal pending same (§ 116). In this connection, the Court reiterated the importance of guaranteeing anyone subject to a removal measure the right to obtain sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints (idem). In finding that the applicant had expressed his fears to the Bulgarian border police that he – as a former journalist for a Turkish newspaper and in view of the conditions prevailing in Turkey in the aftermath of the attempted *coup d'état* – would be subjected to treatment contrary to Article 3 if returned to Turkey, the Court did not consider it decisive that the file did not contain a written document by which the applicant had explicitly requested international protection. It had regard to the linguistic obstacles – emphasising the importance of interpretation for accessing asylum procedures –, the lack of involvement of a lawyer, the content of the applicant's statements to the border police, which had not been contested, and the conditions prevailing in Turkey at the relevant time, including in respect of journalists (§§ 120-128). The Court concluded that the Bulgarian authorities, who had hastily returned the applicant to Turkey without instituting proceedings for international protection, had removed him without examining the Article 3 risks he faced and had rendered the available remedies ineffective in practice, in breach of Articles 3 and 13 of the Convention (§§ 129-137).

2. Article 4 of Protocol No. 4[4]

19. In its case-law on Article 4 of Protocol No. 4 on summary returns and related scenarios, the Court has distinguished a number of factual situations and the relevant tests to be applied. In *N.D. and N.T. v. Spain* [GC], §§ 201 and 209-211, the Court set out a two-tier test to determine compliance with Article 4 of Protocol No. 4 in cases where individuals cross a land border in an unauthorised manner and are expelled summarily, a test which has been applied in all later cases presenting precisely the same scenario (*Shahzad v. Hungary*, §§ 59 *et seq*.; and *M.H. and Others v. Croatia**, §§ 294 *et seq*.): Firstly, it has to be taken into account whether the State provided genuine and effective access to means of legal entry, in particular border procedures, to allow all persons who face persecution to submit an application for protection, based in particular on

[4] See also the Guide on Article 4 of Protocol No. 4 to the Convention.

Article 3, under conditions which ensure that the application is processed in a manner consistent with international norms including the Convention. Secondly, where the State provided such access but an applicant did not make use of it, it has to be considered whether there were cogent reasons for not doing so which were based on objective facts for which the State was responsible. The absence of such cogent reasons could lead to this being regarded as the consequence of the applicants' own conduct, justifying the lack of individual identification. The burden of proof for showing that the applicants did have genuine and effective access to procedures for legal entry is on the respondent State and all cases decided thus far turned on whether the State had satisfied that burden of proof (location of the border crossing points, modalities for lodging applications there, availability of interpreters/legal assistance enabling asylum-seekers to be informed of their rights and information showing that applications had actually been made at those border points: compare *N.D. and N.T. v. Spain* [GC], §§ 212-217, and contrast *Shahzad v. Hungary*, §§ 63-67; *M.H. and Others v. Croatia**, §§ 295-304).

20. Where migrants entered the respondent State's territory in an unauthorised manner and, following their apprehension near the border, were provided with access to means of legal entry through the appropriate border procedure, the Court did not apply the aforementioned two-tier test, but instead assessed – in order to determine whether the expulsion was "collective" in nature – whether the individuals were afforded, prior to the adoption of expulsion orders, an effective possibility of submitting arguments against their removal and whether there were sufficient guarantees demonstrating that their personal circumstances had been genuinely and individually taken into account (*Asady and Others v. Slovakia*, § 62). Such test is, essentially, similar to the one applied to individuals who present themselves at a point of legal entry, such as a border checkpoint (see *M.K. and Others v. Poland*, §§ 204-211, and *D.A. and Others v. Poland*, §§ 81-84). Whether the requirements of this test are satisfied is a question of fact, which is to be determined by having regard to, in so far as pertinent in a given case, supporting evidence provided by the parties, including as to whether an identification process was conducted and under what conditions (whether persons were trained to conduct interviews, whether information was provided, in a language the individuals understood, about the possibility to lodge an asylum application and to request legal aid, whether interpreters were present, and whether the individuals were able, in practice, to consult lawyers and to lodge asylum applications) as well as to independent reports (*Hirsi Jamaa and Others v. Italy* [GC], § 185; *Sharifi and Others v. Italy and Greece*, §§ 214-225; *Khlaifia and Others v. Italy* [GC], §§ 245-254; *Asady and Others v. Slovakia*, §§ 63-71; *M.K. and Others v. Poland*, §§ 206-210; *D.A. and Others v. Poland*, §§ 81-83).

21. In the context of Article 4 of Protocol No 4, the legal situation of minors is linked to that of the accompanying adults, in the sense that the requirements of Article 4 of Protocol No 4 might be met if that adult was able to raise, in a meaningful and effective manner, their arguments against their joint expulsion (*Moustahi v. France*, §§ 134-135).

3. Article 13 of the Convention in conjunction with Article 3 of the Convention and/or Article 4 of Protocol No. 4

22. Where the individual has an "arguable complaint" that his removal would expose him to treatment contrary to Article 2 or 3 of the Convention, he must have an effective remedy, in practice as well as in law, at the domestic level in accordance with Article 13 of the Convention, which imperatively requires, *inter alia*, independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Articles 2 or 3 and automatic suspensive effect (see *M.S.S. v. Belgium and Greece* [GC], § 293, *M.K. and Others v. Poland*, §§ 142-148 and 212-220, and section "Procedural aspects" below). As regards Article 13 taken in conjunction with Article 4 of Protocol No. 4, the Court has made a distinction depending on whether the applicants had, at least, an arguable complaint under Article 2 or 3 of the Convention in respect of risks they faced upon their removal. Where the applicants did have such arguable claim and they

had been effectively prevented from applying for asylum and had not had access to a remedy with automatic suspensive effect, the Court found a violation of Article 13 taken in conjunction with Article 4 of Protocol No 4 (*M.K. and Others v. Poland*, §§ 219-220; *D.A. and Others v. Poland*, §§ 89-90; *Hirsi Jamaa and Others v. Italy* [GC], §§ 201-207; *Sharifi and Others v. Italy and Greece*, §§ 240-243). By contrast, the lack of suspensive effect of a removal decision does not in itself constitute a violation of Article 13 taken together with Article 4 of Protocol No 4, where an applicant does not allege that there is a real risk of a violation of the rights guaranteed by Articles 2 or 3 in the destination country (*Khlaifia and Others v. Italy* [GC], § 281). In such situation the Convention does not impose an absolute obligation on a State to guarantee an automatically suspensive remedy, but requires that the person concerned should have an effective possibility of challenging the expulsion decision by having a sufficiently thorough examination of his or her complaints carried out by an independent and impartial domestic forum (*Khlaifia and Others v. Italy* [GC], § 279; *Moustahi v. France*, §§ 156-164).

B. Confinement in transit zones and reception centres

23. In determining the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of foreigners in transit zones and reception centres for the identification and registration of migrants, the factors taken into consideration by the Court may be summarised as follows: i) the applicants' individual situation and their choices; ii) the applicable legal regime of the respective country and its purpose; iii) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events; and iv) the nature and degree of the actual restrictions imposed on or experienced by the applicants (*Z.A. and Others v. Russia* [GC], § 138; *Ilias and Ahmed v. Hungary* [GC], §§ 217-218). The Court found Article 5 of the Convention to apply to lengthy confinement in airport transit zones (see *Z.A. and Others v. Russia* [GC]). In respect of stays in land border transit zones, where applicants awaited the outcome of their asylum applications, the Court distinguished cases on their facts. It found Article 5 not to apply to a stay of twenty-three days, which did not exceed the maximum period fixed by domestic law and during which the applicants' asylum requests were processed at administrative and judicial level (*Ilias and Ahmed v. Hungary* [GC], §§ 219-249). By contrast, the Court found Article 5 to apply and to have been violated in a case where the applicants stayed in the transit zone for nearly four months, with domestic law neither providing a strictly defined statutory basis nor a maximum length of detention in the transit zone (*R.R. and Others v. Hungary*, §§ 89-92; see also §§ 48-65 in respect of the living conditions in the transit zone and Article 3, and section "Reception conditions and freedom of movement"). In *J.R. and Others v. Greece*, the applicants, Afghan nationals, arrived on the island of Chios and were arrested and placed in the Vial "hotspot" facility (a migrant reception, identification and registration centre). After one month, that facility became semi-open and the applicants were allowed out during the day. The Court considered that the applicants had been deprived of their liberty within the meaning of Article 5 during the first month of their stay in the facility, but that they were subjected only to a restriction of movement, rather than a deprivation of liberty, once the facility had become semi-open.

24. Where an individual is being held in a transit zone and refused entry into the territory, the remedy by which the alleged Article 3 risk in the event of removal is being reviewed has to be particularly speedy in order to comply with the requirements of Article 13 taken in conjunction with Article 3 of the Convention (*E.H. v. France*, § 195).

C. Immigration detention under Article 5 § 1(f)[5]

1. General principles

25. Article 5 § 1(f) of the Convention allows States to control the liberty of aliens in an immigration context in two different situations: the first limb of that provision permits the detention of an asylum-seeker or other immigrant prior to the State's grant of authorisation to enter (for the second limb, see section "Restrictions of freedom of movement and detention for purposes of removal" below). The question as to when the first limb of Article 5 § 1(f) ceases to apply, because the individual has been granted formal authorisation to enter or stay, is largely dependent on national law (*Suso Musa v. Malta*, § 97; see also *O.M. v. Hungary*, where the detention of the asylum-seeking applicant was consequently examined under Article 5 § 1(b), since domestic law created a more favourable position than required by the Convention, with the result that the Court did not consider it necessary to address the lawfulness of the detention under Article 5 § 1(f); and *Muhammad Saqawat v. Belgium*, §§ 47 and 49, as to the impact of EU law on domestic law). Such detention must be compatible with the overall purpose and requirements of Article 5, notably its lawfulness, including the obligation to conform to the substantive and procedural rules of national law. However compliance with domestic law is not sufficient, since a deprivation of liberty may be lawful in terms of domestic law but still be arbitrary (*Saadi v. the United Kingdom* [GC], § 67). In the case of massive arrivals of asylum-seekers at State borders, subject to the prohibition of arbitrariness, the lawfulness requirement of Article 5 may be considered generally satisfied by a domestic legal regime that provides, for example, for no more than the name of the authority competent to order deprivation of liberty in a transit zone, the form of the order, its possible grounds and limits, the maximum duration of the confinement and, as required by Article 5 § 4, the applicable avenue of judicial appeal (*Z.A. and Others v. Russia* [GC], § 162). The requirement of lawfulness was an issue, for example, where the detention was based on an administrative circular (*Amuur v. France*), where the legal basis was not accessible to the public (*Nolan and K. v. Russia, and Khlaifia and Others v. Italy* [GC]: readmission agreement) or where no maximum period of detention was laid down in legislation (*Mathloom v. Greece*). In *Nabil and Others v. Hungary*, the domestic courts had not duly assessed whether the conditions set out in domestic law for the prolongation of the detention - falling under the second limb of Article 5 § 1(f) - were met.

26. In respect of adults with no particular vulnerabilities, detention under Article 5 § 1(f) is not required to be reasonably necessary. However, it must not be arbitrary. "Freedom from arbitrariness" in the context of the first limb of Article 5 § 1(f) means that such detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country; and the length of the detention should not exceed that reasonably required for the purpose pursued (*Saadi v. the United Kingdom* [GC], § 74). If the place and conditions of detention are not appropriate, this may also breach Article 3 of the Convention (see, for example, *M.S.S. v. Belgium and Greece* [GC], §§ 205-234; *S.Z. v. Greece*, and *HA.A. v. Greece*).

2. Vulnerable individuals

27. Additional safeguards against arbitrary detention apply to children and other individuals with specific vulnerabilities, who, to be able to benefit from such protection, should have access to an assessment of their vulnerability and be informed about respective procedures (see *Thimothawes v. Belgium*, and *Abdi Mahamud v. Malta*). Lack of active steps and delays in conducting the

[5] See also the *Guide on Article 5 of the Convention - Right to liberty and security*.

vulnerability assessment may be a factor in raising serious doubts as to the authorities' good faith (*Abdullahi Elmi and Aweys Abubakar v. Malta*; *Abdi Mahamud v. Malta*). The detention of vulnerable individuals will not be in conformity with Article 5 § 1(f) if the aim pursued by detention can be achieved by other less coercive measures, requiring the domestic authorities to consider alternatives to detention in the light of the specific circumstances of the individual case (*Rahimi v. Greece*; *Yoh-Ekale Mwanje v. Belgium*, concerning the second limb of the provision). In addition to Article 5 § 1(f), immigration detention of children and other vulnerable individuals can raise issues under Article 3 of the Convention, with particular attention being paid to the conditions of detention, its duration, the person's particular vulnerabilities and the impact of the detention on him or her (in respect of the detention of accompanied children see *Popov v. France*, *M.D. and A.D. v. France* [concerning the detention of an infant and her breastfeeding mother], *S.F. and Others v. Bulgaria*, and *M.H. and Others v. Croatia** [§§ 183-213 in respect of Article 3 of the Convention and §§ 229-259 in respect of Article 5 § 1 of the Convention]; in respect of unaccompanied children see *Abdullahi Elmi and Aweys Abubakar v. Malta*; *Rahimi v. Greece*; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, where the Court found a violation of Article 3 in respect of both the detained child and the child's mother who was in another country, and *Moustahi v. France* concerning the detention of unaccompanied minors by arbitrary association with an unrelated adult; in respect of adults with specific health needs see *Aden Ahmad v. Malta*, and *Yoh-Ekale Mwanje v. Belgium*, and a heavily pregnant woman *Mahmundi and Others v. Greece*; in respect of the living conditions of a pregnant woman with a health condition and her children during their extended stay in the Röszke transit zone, see *R.R. and Others v. Hungary*, §§ 58-65, and sections "Confinement in transit zones and reception centres" above and "Reception conditions and freedom of movement" below. See also *O.M. v. Hungary*, § 53, with a view to the assessment of the vulnerability of the applicant, an LGBTI asylum-seeker, under Article 5 § 1(b)). The detention of accompanied children may also raise issues under Article 8 of the Convention in respect of both children and adults (see overview of the Court's case-law in *Bistieva and Others v. Poland*), as may the refusal to allow the reunion of a parent with his children, who were placed *de facto* in administrative detention by arbitrary association with an unrelated adult (*Moustahi v. France*).

3. Procedural safeguards

28. Under Article 5 § 2, any person who has been arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his deprivation of liberty, so as to be able to apply to a court to challenge its lawfulness in accordance with Article 5 § 4 (*Khlaifia and Others v. Italy* [GC], § 115). Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (*ibid.*; see *Čonka v. Belgium*; *Saadi v. the United Kingdom* [GC]; *Nowak v. Ukraine*; *Dbouba v. Turkey*).

29. Article 5 § 4 entitles a detained person to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (*Khlaifia and Others v. Italy* [GC], § 131; see, in particular, *A.M. v. France*, §§ 40-41, concerning the required scope of judicial review under Article 5 § 1(f)). Proceedings to challenge the lawfulness under Article 5 § 1(f) of administrative detention pending deportations do not need to have a suspensive effect on the implementation of the deportation order (*ibid.*, § 38). Where deportation is expedited in a manner preventing the detained person or his lawyer from bringing proceedings under Article 5 § 4, that provision is breached (*Čonka v. Belgium*). In cases where detainees had not been informed of the reasons for their deprivation of liberty, their right to appeal against their detention was deprived of all effective substance (*Khlaifia and Others v. Italy* [GC], § 132). The same holds true if the detained person is informed about the available remedies in a language he does not understand and is unable, in practice, to contact a

lawyer (*Rahimi v. Greece*, § 120). The proceedings under Article 5 § 4 must be adversarial and ensure equality of arms between the parties (see *A. and Others v. the United Kingdom* [GC], §§ 203 et seq.; and *Al Husin v. Bosnia and Herzegovina (no. 2)* in respect of national security cases). The Court found that the requirements of Article 5 § 4 had been met in a case in which the applicant had not been heard in person nor through tele- or video-conferencing in his immigration detention appeal proceedings due to infrastructure problems during the first weeks of the Covid-19 pandemic lockdown, given that his lawyer had made written submissions and had been heard by telephone and in view of the difficult and unforeseen practical problems during the initial phase of the Covid-19 pandemic (*Bah v. the Netherlands* (dec.)). It breaches Article 5 § 4 if the detainee is unable to obtain a substantive judicial decision on the lawfulness of the detention order, and hence his release from detention, because the appeal is deemed to have become "without object" as a new detention order has been issued in the meantime (*Muhammad Saqawat v. Belgium*), or if there is no judicial remedy available to challenge the lawfulness of the detention, even if it is brief (*Moustahi v. France*).

30. Article 5 § 4 also secures to persons arrested or detained the right to have the lawfulness of their detention decided "speedily" by a court and to have their release ordered if the detention is not lawful (*Khlaifia and Others v. Italy* [GC], § 131; in relation to case-law on the "speediness" requirement in respect of detention under Article 5 § 1(f), albeit with a view to the second limb of the provision, see also *Khudyakova v. Russia*, §§ 92-100; *Abdulkhakov v. Russia*, § 214; *M.M. v. Bulgaria*). Where the national authorities decide in exceptional circumstances to detain a child and his or her parents in the context of immigration controls, the lawfulness of such detention should be examined by the national courts with particular expedition and diligence at all levels (*G.B. and Others v. Turkey*, §§ 167 and 186). Where an automatic review is not conducted in compliance with the time-limits provided for by domestic law, but nonetheless speedily from an objective point of view, there is no breach of Article 5 § 4 (*Aboya Boa Jean v. Malta*).

D. Access to procedures and reception conditions

1. Access to the asylum procedure or other procedures to prevent removal

31. In addition to cases concerning the refusal to accept or examine asylum applications at the border (see "Summary returns at the border and/or shortly after entry into the territory" above), the Court has examined cases under Article 13 taken in conjunction with Article 3 where a person present on the territory was unable to lodge an asylum application (*A.E.A. v. Greece*) or where such application was not seriously examined (*M.S.S. v. Belgium and Greece* [GC], §§ 265-322).

32. The Court found that there had been no violation of Article 4 of Protocol No. 4 where the applicants were afforded a genuine and effective possibility of submitting arguments against their expulsion (*Khlaifia and Others v. Italy* [GC]).

2. Reception conditions and freedom of movement

33. Article 3 cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home (*Chapman v. the United Kingdom* [GC], § 99). Nor does Article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living (*Tarakhel v. Switzerland* [GC], § 95). However, asylum-seekers are members of a particularly underprivileged and vulnerable population group in need of special protection and there exists a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the Reception Directive (*M.S.S. v. Belgium and Greece* [GC], § 251). It may thus raise an issue under Article 3 if the asylum-seekers, including persons intending to lodge an asylum application, are not provided with accommodation and thus forced to live on the streets for months, with no resources or access to sanitary facilities, without any means

of providing for their essential needs, in fear of assault from third parties and of expulsion (*ibid.* [GC], §§ 235-264 and *N.H. and Others v. France*, both in respect of adults without health concerns and without children; contrast *N.T.P. and Others v. France*, where the applicants had been accommodated in a privately run shelter funded by the authorities and been given food and medical care and the children had been in school, and *B.G. and Others v. France*, where the applicants had temporarily stayed in a tented camp set up in a car park, with the authorities having taken measures to improve their material living conditions, in particular ensuring medical care, the children's schooling and their subsequent placement in a flat). States are obliged under Article 3 to protect and to take charge of unaccompanied children, which requires the authorities to identify them as such and to take measures to ensure their placement in adequate accommodation, even if the children do not lodge an asylum application in the respondent State, but intend to do so in another State, or to join family members there (see *Khan v. France*, concerning the situation in a makeshift camp in Calais; and *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* in respect of the situation in a makeshift camp in Idomeni; see also *M.D. v. France* regarding the reception of an asylum seeker who had identified himself as an unaccompanied minor, but in respect of whose actual age there were doubts). In *Rahimi v. Greece* (§§ 87-94), the Court also found a breach of Article 3 because the authorities did not offer the applicant, an unaccompanied child asylum-seeker, any assistance with accommodation following his release from detention. In *R.R. and Others v. Hungary*, §§ 48-65, the Court found breaches of Article 3 because the authorities, firstly, had not provided an adult asylum-seeker with sufficient food during his four months stay in the Röszke transit zone and, secondly, because of the living conditions to which his wife, who was pregnant and had a health condition, and their minor children were subjected for such period (see also sections "Confinement in transit zones and reception centres" and "Vulnerable individuals" above).

34. In *Omwenyeke v. Germany* (dec.), the applicant asylum-seeker had temporary residence for the duration of the asylum procedure, but had lost his lawful status by violating the conditions attached to his temporary residence – the obligation to stay within the territory of a certain city. The Court found that he could thus not rely on Article 2 of Protocol No. 4.

III. Substantive and procedural aspects of cases concerning expulsion, extradition and related scenarios

Article 2 of the Convention

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 6 of the Convention

"1. In the determination of his civil rights and obligations or of any criminal charge against him, ... "

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 13 of the Convention

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 4 of Protocol No. 4 of the Convention

"Collective expulsion of aliens is prohibited."

Article 1 of Protocol No. 6 of the Convention

"The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 1 of Protocol No. 7 of the Convention

"1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

(a) to submit reasons against his expulsion,

(b) to have his case reviewed, and

(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

Article 1 of Protocol No. 13 of the Convention

"The death penalty shall be abolished. No one shall be condemned to such penalty or executed."

A. Articles 2 and 3 of the Convention

1. Scope and substantive aspects of the Court's assessment under Articles 2 and 3 in asylum-related removal cases

35. The right to political asylum is not contained in either the Convention or its Protocols and the Court does not itself examine the actual asylum application or verify how the States honour their obligations under the 1951 Geneva Convention or European Union law (*F.G. v. Sweden* [GC], § 117; *Sufi and Elmi v. the United Kingdom*, §§ 212 and 226). However, the expulsion of an alien by a Contracting State may give rise to an issue under Articles 2 and 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. In these circumstances, Articles 2 and 3 imply an obligation not to deport the person in question to that country (*F.G. v. Sweden*, §§ 110-111). Removal cases concerning Article 2 – notably in respect of the risk of the applicant being subjected to the death penalty – typically also raise issues under Article 3 (see section "The death penalty: Article 1 of Protocol No. 6 and Article 1 of Protocol No. 13" below): because the relevant principles are the same for Article 2 and Article 3 assessments in removal cases, the Court either finds the issues under both Articles indissociable and examines them together (see *F.G. v. Sweden* ([GC], § 110; *L.M. and Others v. Russia*, § 108) or deals with the Article 2 complaint in the context of the related main complaint under Article 3 (see *J.H. v. United Kingdom*, § 37).

36. The Court has adjudicated a vast number of cases in which it had to assess whether substantial grounds had been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. It consolidated, to a large extent, the relevant principles in two Grand Chamber judgments *F.G. v. Sweden* ([GC], §§ 110-127) and *J.K. and Others v. Sweden* ([GC], §§ 77-105), notably as regards the risk assessment (including as regards a general situation of violence, particular circumstances of the applicant such as membership of a targeted group and other individual risk factors - which may give raise a real risk when considered separately or when taken cumulatively -, risk of ill-treatment by private groups, the reliance on the existence of an internal flight alternative, the assessment of country of origin reports, the distribution of the burden of proof, past ill-treatment as an indication of risk, and sur place activities), the nature of the Court's inquiry and the principle of *ex nunc*

evaluation of the circumstances where the applicant has not already been deported (for scenarios in which the person has already been deported, see *X v. Switzerland*; and *A.S. v. France*).

37. As regards the procedural obligations on the part of the authorities, the Court clarified in *F.G. v. Sweden* ([GC], § 127) that, considering the absolute nature of the rights guaranteed under Articles 2 and 3 of the Convention, and having regard to the vulnerable position that asylum-seekers often find themselves in, if a Contracting State is made aware of facts, relating to a specific individual, that could expose him to a risk of ill-treatment in breach of the said provisions upon returning to the country in question, the obligations under Articles 2 and 3 of the Convention entail that the authorities carry out an assessment of that risk of their own motion (*Amerkhanov v. Turkey*, §§ 53-58; *Batyrkhairov v. Turkey*, §§ 46-52; *M.D. and Others v. Russia*). As regards the distribution of the burden of proof, the Court clarified in *J.K. and Others v. Sweden* ([GC], §§ 91-98) that it is the shared duty of an asylum-seeker and the immigration authorities to ascertain and evaluate all relevant facts in asylum proceedings. On the one hand, the burden remains on asylum-seekers as regards their own personal circumstances, although the Court recognised that it was important to take into account all of the difficulties which an asylum-seeker may encounter in collecting evidence. The Court also recognised that not being assisted by a legal representative, not having access to an interpreter and not speaking the language in which the proceedings were conducted considerably affected the ability of the applicants to present their case (*M.D. and Others v. Russia*, § 92, where the applicants were subsequently assisted by legal representatives and then made substantiated submissions, §§ 93-96). On the other hand, the general situation in another State, including the ability of its public authorities to provide protection, had to be established *proprio motu* by the competent domestic immigration authorities (see, for example, *B and C v. Switzerland* in respect of the domestic authorities' obligation to assess the availability of State protection against harm emanating from non-State actors and the assessment of the risks of ill-treatment in the country of origin for the applicant as a homosexual person, and *M.D. and Others v. Russia*, §§ 97-101, where the applicants' inability to present their case, the fact that they had fled from a war-torn country and the security risks in that country had come to the attention of the domestic courts, which were thus obliged to ascertain and take into consideration information relating to the country of origin from reliable and objective sources and to carry out a comprehensive analysis of the risks the applicants would face upon their forced return). As to the significance of established past ill-treatment contrary to Article 3 in the receiving State, the Court considered that established past ill-treatment contrary to Article 3 would provide a strong indication of a future, real risk of ill-treatment, although the Court conditioned that principle on the applicant having made a generally coherent and credible account of events that is consistent with information from reliable and objective sources about the general situation in the country at issue. In such circumstances, the burden shifted to the Government to dispel any doubts about that risk (*J.K. and Others v. Sweden* ([GC], §§ 99-102). Where an individual alleges that he or she is a member of a group systemically exposed to a practice of ill-treatment, the protection of Article 3 will enter into play when the individual establishes that there serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. The Court will not then insist that the individual demonstrate the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3. This will be determined in the light of the applicant's account and the information on the situation in the country of destination in respect of the group in question (*ibid.*, §§ 103-105).

38. The Court has developed ample case-law in respect of all of the above-mentioned principles. By way of example, in respect of the weight attributed to country material see *Sufi and Elmi v. the United Kingdom* (§§ 230-234); in respect of the assessment of an applicant's credibility see *N. v. Finland*; *A.F. v. France*, and *M.O. v. Switzerland*; and in respect of the domestic authorities' obligation to assess the relevance, authenticity and probative value of documents put forward by an applicant – from the outset or later on – which relate to the core of their protection claims see *M.D. and M.A. v. Belgium*; *Singh and Others v. Belgium*, and *M.A. v. Switzerland*. Again by way of example, see *Sufi and Elmi v. the United Kingdom* where the Court determined the situation in the country of

destination to be such that the removal would breach Article 3, having regard to the situation of general violence in Mogadishu and the lack of safe access to, and the dire conditions in, IDP camps; see *Salah Sheekh v. the Netherlands* as regards a risk assessment in respect of an applicant who belonged to a group which is systematically at risk; and with regard to various forms and scenarios of gender-related persecution, such as widespread sexual violence (*M.M.R. v. the Netherlands* (dec.)), the alleged lack of a male support network (*R.H. v. Sweden*), ill-treatment of a separated woman (*N. v. Sweden*), ill-treatment inflicted by family members in view of a relationship (*R.D. v. France*, §§ 36-45), honour killings and forced marriage (*A.A. and Others v. Sweden*), and female genital mutilation (*R.B.A.B. v. the Netherlands*; *Sow v. Belgium*). As regards forced prostitution and/or return to a human trafficking network see *L.O. v. France* (dec.). In *V.F. v. France* (dec.), the Court assessed the risk under Article 4, while leaving open the extraterritorial applicability of that Article: in this latter respect, the case of *M.O. v. Switzerland* concerned the risk of forced labour upon removal and the Article 4 complaint was inadmissible due to non-exhaustion of domestic remedies.

39. Where the risk of ill-treatment emanates from a person's sexual orientation, he or she may not be asked to conceal it in order to avoid ill-treatment, as it concerns a fundamental aspect of a person's identity (*I.K. v. Switzerland* (dec.); *B and C v. Switzerland*).[6] Similar questions may arise in respect of a person's religious beliefs (see *A. v. Switzerland*).

2. Removal to a third country

40. While the majority of removal cases examined by the Court under Articles 2 or 3 concern removals to the country from which the applicant has fled, such cases may also arise in connection with the applicant's removal to a third country. In *Ilias and Ahmed v. Hungary* [GC] the Court observed that where a Contracting State sought to remove an asylum seeker to a third country without examining the asylum request on the merits, the State's duty not to expose the individual to a real risk of treatment contrary to Article 3 was discharged in a manner different from that in cases of return to the country of origin. In the former situation, the main issue was the adequacy of the asylum procedure in the receiving third country. While a State removing asylum seekers to a third country may legitimately chose not to deal with the merits of the asylum requests, it cannot therefore be known whether those persons risk treatment contrary to Article 3 in the country of origin or are simply economic migrants not in need of protection. It is the duty of the removing State to examine thoroughly whether or not there is a real risk of the asylum seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against *refoulement*, namely, against being removed, directly or indirectly, to his or her country of origin without a proper evaluation of the risks he or she faces from the standpoint of Article 3. If it is established that the existing guarantees in this regard are insufficient, Article 3 gives rise to a duty not to remove the asylum seekers to the third country concerned (§§ 130-138). To determine whether the removing State has fulfilled its procedural obligation to assess the asylum procedures of a receiving third State, it has to be examined whether the authorities of the removing State had taken into account the available general information about the receiving third country and its asylum system in an adequate manner and of their own initiative; and whether an applicant had been given a sufficient opportunity to demonstrate that the receiving State was not a safe third country in their particular case. In applying this test, the Court indicated that any presumption that a particular country is "safe", if it has been relied upon in decisions concerning an individual asylum seeker, must be sufficiently supported at the outset by the above analysis (§§ 139-141, 148 and 152). Importantly, in cases concerning the removal to a third country based on the "safe third country" concept, that is, where the authorities of the removing State have not dealt with the merits of the applicant's asylum claim, it is not the Court's task to assess whether there was an arguable claim about Article 3 risks in their country of origin, this question only being relevant where the expelling State had dealt with these risks (§ 147).

[6] See also the *Guide on LGBTI rights*.

41. In addition to the main question whether the individual will have access to an adequate asylum procedure in the receiving third country, where the alleged risk of being subjected to treatment contrary to Article 3 concerns, for example, conditions of detention or living conditions for asylum-seekers in a receiving third country, that risk is also to be assessed by the expelling State (*Ilias and Ahmed v. Hungary* [GC], § 131). The removal of asylum seekers to a third country may be in breach of Article 3, because of inadequate reception conditions in the receiving State (*M.S.S. v. Belgium and Greece* [GC], §§ 362-368) or because they would not be guaranteed access to reception facilities adapted to their specific vulnerabilities, which may require that the removing State obtains assurances from the receiving State to that end (see *Tarakhel v. Switzerland* [GC], §§ 100-122; *Ali and Others v. Switzerland and Italy* (dec.); *Ojei v. the Netherlands* (dec.)).

3. Procedural aspects[7]

42. Where the individual has an "arguable complaint" that his removal would expose him to treatment contrary to Article 2 or 3 of the Convention, he must have an effective remedy, in practice as well as in law, at the domestic level in accordance with Article 13 of the Convention, which imperatively requires, inter alia, independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Articles 2 or 3 and automatic suspensive effect (*M.S.S. v. Belgium and Greece* [GC], § 293: for an overview of the Court's case-law as to the requirements under Article 13 taken in conjunction with Articles 2 or 3 in removal cases, see, in particular, *ibid.*, §§ 286-322; *Abdolkhani and Karimnia v. Turkey*, §§ 107-117; *Gebremedhin [Gaberamadhien] v. France*, §§ 53-67; *I.M. v. France; Chahal v. the United Kingdom* [GC], §§ 147-154; *Shamayev and Others v. Georgia and Russia*, § 460). The same principles apply when considering the question of effectiveness of remedies which have to be exhausted for the purposes of Article 35 § 1 of the Convention in asylum cases (*A.M. v. the Netherlands*, §§ 63 and 65-69; see also *M.K. and Others v. Poland*, §§ 142-148 and 212-220, in respect of an immediate removal at a border crossing point). In respect of asylum-seekers the Court has found, in particular, that individuals need to have adequate information about the asylum procedure to be followed and their entitlements in a language they understand, and have access to a reliable communication system with the authorities: the Court also has regard to the availability of interpreters, whether the interviews are conducted by trained staff, whether asylum-seekers have access to legal aid, and requires that asylum-seekers be given the reasons for the decision (see *M.S.S. v. Belgium and Greece* [GC], §§ 300-302, 304, and 306-310; see also *Abdolkhani and Karimnia v. Turkey*; *Hirsi Jamaa and Others v. Italy* [GC], § 204; and *D v. Bulgaria*, §§ 120-137).

43. In respect of Article 13 taken in conjunction with Article 4 of Protocol No. 4 in connection with summary returns, see section "Article 13 of the Convention in conjunction with Article 3 of the Convention and/or Article 4 of Protocol No. 4" above).

44. Where an individual complained about a violation of Article 13 in conjunction with Articles 2 or 3 of the Convention in the event of his removal and he subsequently no longer faces a risk of removal, this does not necessarily render that complaint non-arguable or deprive the applicant of his victim status for the purposes of that complaint, given that the alleged violation of Article 13 had already occurred when the threat of removal was lifted (*Gebremedhin [Gaberamadhien] v. France*, § 56; *I.M. v. France*, § 100; *M.A. v. Cyprus*, § 118; *Sakkal and Fares v. Turkey* (dec.),§ 63; contrast *Mir Isfahani v. the Netherlands* (dec.)).

45. Article 6 of the Convention is not applicable *ratione materiae* to asylum, deportation and related proceedings (*Maaouia v. France* [GC], §§ 38-40; *Onyejiekwe v. Austria* (dec.), § 34; see *Panjeheighalehei v. Denmark* (dec.) concerning an action in damages by an asylum-seeker on account of the refusal to grant asylum).

[7] See also the *Guide on Article 13 of the Convention - Right to an effective remedy*.

46. The failure to examine an asylum application in reasonable time may breach Article 8 (see *B.A.C. v. Greece*) and the adequate nature of a remedy under Article 13 can be undermined by its excessive duration (*M.S.S. v. Belgium and Greece* [GC], § 292). Where an individual is being held in a transit zone and refused entry into the territory, the remedy by which the alleged Article 3 risk in the event of removal is being reviewed has to be particularly speedy in order to comply with the requirements of Article 13 taken in conjunction with Article 3 of the Convention (*E.H. v. France*, § 195). On the other hand, a speedy processing of an applicant's asylum claim should not take priority over the effectiveness of the essential procedural guarantees to protect him or her against arbitrary removal. An unreasonably short time-limit to submit a claim, such as in the context of accelerated asylum procedures, and/or to appeal a subsequent removal decision can render a remedy practically ineffective, contrary to the requirements of Article 13 taken together with Article 3 of the Convention (see *I.M. v. France*, where a five-day limit for lodging an initial asylum application and a 48-hour time-limit for an appeal were found to violate these provisions; see also the overview on accelerated asylum procedures in *R.D. v. France*, §§ 55-64; in respect of the existence of various remedies, with tight deadlines, taken together satisfying the requirements of Article 13 taken in conjunction with Article 3, see *E.H. v. France*, §§ 180-207).

47. The remedy required by Article 13 of the Convention in conjunction with Article 8 of the Convention does not have to have automatic suspensive effect (*De Souza Ribeiro v. France* [GC], §§ 82-83). However, there is a breach of Article 13 taken in conjunction with Article 8 if the time between the ordering of a the removal and its implementation is so short to preclude any possibility for an action to be meaningfully brought before a court, still less for that court to properly examine the circumstances and legal arguments under the Convention (*De Souza Ribeiro v. France* [GC], §§ 86-100; *Moustahi v. France*, §§ 156-164).

4. Cases relating to national security

48. The Court has often dealt with cases concerning the removal of individuals deemed to be a threat to national security (see, for example, *A.M. v. France*). It has repeatedly held that Article 3 is absolute and that it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (*Saadi v. Italy* [GC], §§ 125 and 138; *Othman (Abu Qatada) v. the United Kingdom*, §§ 183-185). The relevant Convention test, notably the requirement to carry out a full and *ex nunc* assessment whether the individual would run a real risk of treatment contrary to Article 3 in the receiving State if he or she were removed there, was considered to remain unchanged by the revocation of the person's refugee status, in accordance with the relevant rules of EU law, following a criminal conviction for acts of terrorism and the finding that the individual constituted a danger to the host State's society (see *K.I. v. France*). The Court cannot rely on the findings of the domestic authorities if they did not have all essential information before them – for example for reasons of national security – when rendering the expulsion decisions (see *X v. Sweden*).

5. Extradition

49. Extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country (*Soering v. the United Kingdom*, §§ 88-91). The question of whether there is a real risk of ill-treatment contrary to Article 3 in another State cannot depend on the legal basis for removal to that State, as there may be little difference between extradition and other removals in practice (*Babar Ahmad and Others v. the United Kingdom*, §§ 168 and 176; *Trabelsi v. Belgium*, § 116). For example, extradition requests may be withdrawn and the Contracting State may nonetheless decide to proceed with removal from its territory on other grounds; or a State may decide to remove someone who faces criminal proceedings (or has already been convicted) in another State in the absence of an extradition request; and there may be cases

where someone has fled a State because he or she fears the implementation of a particular sentence that has already been passed upon him or her and is to be returned to that State, not under any extradition arrangement, but as a failed asylum seeker (see *Babar Ahmad and Others v. the United Kingdom*, § 168, with further references). There may also be cases where a State grants an extradition request in which the individual, who has applied for asylum, is charged with politically motivated crimes (see *Mamazhonov v. Russia*) or where extradition concerns an individual recognised as a refugee in another country (*M.G. v. Bulgaria*).

50. Articles 2 and 3 of the Convention as well as Article 1 of Protocol No. 6 or Article 1 of Protocol No. 13 (see section "The death penalty: Article 1 of Protocol No. 6 and Article 1 of Protocol No. 13" below) prohibit the extradition, deportation or other transfer of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (*Al-Saadoon and Mufdhi v. the United Kingdom*, §§ 123 and 140-143; *A.L. (X.W.) v. Russia*, §§ 63-66; *Shamayev and Others v. Georgia and Russia*, § 333). It may similarly breach Article 3 to extradite or transfer an individual to a State where he faces a whole life sentence without a de facto or de jure possibility of release (see *Babar Ahmad and Others and Others v. the United Kingdom* and *Trabelsi v. Belgium*; see also *Murray v. the Netherlands* [GC], and *Hutchinson v. the United Kingdom* [GC], in respect of whole life sentences and Article 3). Ill-treatment contrary to Article 3 in the requesting State may take various forms, including poor conditions of and ill-treatment inflicted in detention (see *Allanazarova v. Russia*) or conditions of detention that are inadequate for the specific vulnerabilities of the individual concerned (*Aswat v. the United Kingdom*, concerning the extradition of a mentally-ill individual).

51. The criteria examined by the Court in respect of diplomatic assurances are set out in *Othman (Abu Qatada) v. the United Kingdom* (§§ 186-189).

52. In the specific context of surrenders in execution of European Arrest Warrants for the purpose of serving custodial sentences in a country in which detention conditions are a systemic problem, the Court found that the presumption of equivalent protection in the legal system of the European Union applied (*Bivolaru and Moldovan v. France*). However, it found that presumption to have been rebutted because the protection of Convention rights was considered to be manifestly deficient in the particular circumstances of one applicant's case, but not in respect of the other. The Court considered that the executing judicial authority had had sufficient factual information before it to find that the execution of the European Arrest Warrant would entail a real and individual risk that one applicant would be exposed to treatment contrary to Article 3 in view of the conditions of their detention in the issuing State, but that it did not have sufficient factual information to that effect in respect of the other applicant. In so doing, the Court set out how an executing judicial authority is to approach the assessment of an individualised real risk of treatment contrary to Article 3 in the case of a systemic problem (conditions of detention) in the State issuing the European Arrest Warrant as well as the corresponding obligation on an applicant to substantiate such risk.

53. Article 6 of the Convention is not applicable *ratione materiae* to extradition proceedings (*Mamatkulov and Askarov v. Turkey* [GC], §§ 81-83).

6. Expulsion of seriously ill persons

54. The Court summarised and clarified the relevant principles as to when humanitarian considerations will or will not outweigh other interests when considering the expulsion of seriously ill individuals in *Paposhvili v. Belgium* [GC] and, subsequently, in *Savran v. Denmark* [GC]. Other than the imminent death situation in *D. v. the United Kingdom*, the later *N. v. the United Kingdom* [GC] judgment had referred to "other very exceptional cases" which could give rise to an issue under Article 3 in such contexts. In *Paposhvili v. Belgium* [GC], the Grand Chamber indicated how "other very exceptional cases" was to be understood, referring to "situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she,

although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy", corresponding to a high threshold for the application of Article 3 of the Convention in such cases (*ibid.*, § 183). In *Savran v. Denmark* [GC], the Court confirmed that the *Paposhvili* test offered a comprehensive standard taking account of all the considerations that were relevant for the purposes of Article 3 of the Convention in this context and that it applied to all situations involving the removal of a seriously ill person which would constitute treatment proscribed by Article 3 of the Convention, irrespective of the nature of the illness (*ibid.*, §§ 133, 137 and 139). It clarified that the threshold test established in *Paposhvili v. Belgium* [GC], § 183, should systematically be applied to ascertain whether the circumstances of the alien to be expelled fell within the scope of Article 3 and that it is only after this threshold has been met, and thus Article 3 is applicable, that the returning State's compliance with its obligations under this provision can be assessed (*ibid.*, §§ 134-135). As regards the manner in which the threshold test is to be applied, the Court clarified that it would be wrong to dissociate the various fragments of the test from each other, given that a "decline in health" is linked to "intense suffering", and that it was on the basis of all those elements taken together and viewed as a whole that the assessment of a particular case should be made (*ibid.*, § 138).

55. Where the high threshold required for Article 3 to be applicable is met, the returning State's obligation under Article 3 is to be fulfilled primarily through appropriate domestic procedures (*Paposhvili v. Belgium* [GC], §§ 184-185; *Savran v. Denmark* [GC], § 136). In the context of these procedures, (a) it is for the applicants to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to Article 3 (*Paposhvili v. Belgium* [GC], § 186; *Savran v. Denmark* [GC], § 130); (b) where such evidence is adduced, it is for the returning State to dispel any doubts raised by it, and to subject the alleged risk to close scrutiny by considering the foreseeable consequences of removal for the individual concerned in the receiving State, in the light of the general situation there and the individual's personal circumstances; such an assessment must take into consideration general sources such as reports of the World Health Organisation or of reputable non-governmental organisations and the medical certificates concerning the person in question (*Paposhvili v. Belgium* [GC], § 187; *Savran v. Denmark* [GC], § 130); the impact of removal must be assessed by comparing the applicant's state of health prior to removal and how it would evolve after transfer to the receiving State (*Paposhvili v. Belgium* [GC], § 188; *Savran v. Denmark* [GC], § 130); (c) the returning State must verify on a case-by-case basis whether the care generally available in the receiving State is sufficient and appropriate in practice for the treatment of the applicant's illness so as to prevent him or her being exposed to treatment contrary to Article 3 (*Paposhvili v. Belgium* [GC], § 189; *Savran v. Denmark* [GC], § 130); (d) the returning State must also consider the extent to which the applicant would actually have access to the treatment, including with reference to its cost, the existence of a social and family network, and the distance to be travelled in order to have access to the required care (*Paposhvili v. Belgium* [GC], § 190; *Savran v. Denmark* [GC], § 130); (e) where, after the relevant information has been examined, serious doubts persist regarding the impact of removal on the applicant – on account of the general situation in the receiving country and/or their individual situation – the returning State must obtain individual and sufficient assurances from the receiving State, as a precondition for removal, that appropriate treatment will be available and accessible to the persons concerned so that they do not find themselves in a situation contrary to Article 3 (*Paposhvili v. Belgium* [GC], § 191; *Savran v. Denmark* [GC], § 130). In this connection, the Court stressed that the benchmark was not the level of care existing in the returning State; it was not a question of ascertaining whether the care in the receiving State would be equivalent or inferior to that provided by the healthcare system in the returning State. Nor was it possible to derive from Article 3 a right to

receive specific treatment in the receiving State which was not available to the rest of the population (*Paposhvili v. Belgium* [GC], § 189; *Savran v. Denmark* [GC], § 131).

56. The removal of a person suffering from serious illness may also breach Article 8 (*Paposhvili v. Belgium* [GC], §§ 221-226) and a person's mental illness has to be adequately taken into account when examining the proportionality of his or her expulsion in view of a criminal offence he or she has committed (*Savran v. Denmark* [GC], §§ 184, 191-197 and 201, and see section "Expulsion" below).

B. The death penalty: Article 1 of Protocol No. 6 and Article 1 of Protocol No. 13

57. Protocols No. 6 and 13 to the Convention, which have been ratified by almost all member States of the Council of Europe, contributed to the interpretation of Article 2 of the Convention as prohibiting the death penalty in all circumstances so that there is no longer any bar to considering the death penalty – which caused not only physical pain but also intense psychological suffering as a result of the foreknowledge of death – as inhuman and degrading treatment or punishment within the meaning of Article 3 (see *Al-Saadoon and Mufdhi v. the United Kingdom*, §§ 115 et seq.). At the same time, the Court has found that Article 1 of Protocol No. 13 prohibits the extradition or deportation of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (*ibid.*, § 123). Yet, in *Al-Saadoon and Mufdhi v. the United Kingdom*, which concerned the handover by the authorities of the United Kingdom operating in Iraq of Iraqi civilians to the Iraqi criminal administration under circumstances where the civilians faced capital charges, the Court, after finding a breach of Article 3, did not consider it necessary to examine whether there had also been violations of the applicants' rights under Article 2 of the Convention and Article 1 of Protocol No. 13 (*ibid.*, §§ 144-145). In *Al Nashiri v. Poland*, which concerned the extraordinary rendition to the US naval base in Guantanamo of a suspected terrorist facing the death penalty, the Court found that at the time of the applicant's transfer from Poland there was a substantial and foreseeable risk that he could be subjected to the death penalty following his trial before a military commission, in breach of Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6 (*ibid.*, §§ 576-579).

C. Flagrant denial of justice: Articles 5 and 6

58. Where a person risks suffering a flagrant breach of Articles 5 or 6 of the Convention in the country of destination, these provisions may exceptionally constitute barriers to the person's expulsion, extradition or other form of transfer. Although the Court has not yet been required to define the term "flagrant denial of justice" more precisely, it has indicated that certain forms of unfairness could amount to such treatment (see the overview in *Harkins v. the United Kingdom* (dec.) [GC], §§ 62-65): conviction in absentia with no subsequent possibility of a fresh determination of the merits of the charge; a trial which is summary in nature and conducted with a total disregard for the rights of the defence; detention without any access to an independent and impartial tribunal to have the legality of the detention reviewed; a deliberate and systematic refusal of access to a lawyer, especially for an individual detained in a foreign country; and the use in criminal proceedings of statements obtained as a result of torture of the accused or a third person in breach of Article 3.

D. Article 8[8]

1. Expulsion

59. In respect of the expulsion of foreigners, who were unlawfully present in the territory of the respondent State and could thus not be considered "settled migrants", see *Butt v. Norway*. As regards the expulsion of "settled migrants", that is, persons who have already been granted formally a right of residence in a host country and where such right is subsequently withdrawn, for instance because the person concerned has been convicted of a criminal offence, the Court has set out the relevant criteria to assess compatibility with Article 8 of the Convention in *Üner v. the Netherlands* [GC] (§§ 54-60): the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the country from which he or she is to be expelled; the time elapsed since the offence was committed and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of a marriage, and other factors expressing the effectiveness of a couple's family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; whether there are children from the marriage and, if so, their age; the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled; the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination. In addition, the duration of the exclusion order is of importance, in particular whether a ban on re-entry is of limited or unlimited duration (*Savran v. Denmark* [GC], § 182). Where appropriate, other elements relevant to the case, such as, for instance, its medical aspects, should also be taken into account (*ibid.*, § 184).

60. The Court has applied these criteria in numerous cases since *Üner v. the Netherlands* [GC], although the weight to be attached to each criterion will vary according to the specific circumstances of the case (*Maslov v. Austria* [GC], § 70). Importantly, the fact that the offence committed by an applicant was at the more serious end of the criminal spectrum is not in and of itself determinative of a case; rather, it is just one factor which has to be weighed in the balance, together with the other criteria (*Unuane v. the United Kingdom*, § 87). Where an applicant's criminal culpability was excluded on account of his mental illness when the criminal act was perpetrated, this fact should be adequately taken into account as it might have the effect of limiting the weight to be attached to the "nature and seriousness" of the offence criterion in the overall balancing of interests and, consequently, the extent to which a State could legitimately rely on the applicant's criminal acts as the basis for the expulsion and ban on re-entry (*Savran v. Denmark* [GC], §§ 193-194). The Court has found that the fact that an adult "alien" had been born and had lived all his life in the respondent State from which he was to be expelled did not bar his expulsion (*Kaya v. Germany*, § 64). However, very serious reasons are required to justify expulsion in cases concerning settled migrants, who have lawfully spent all or the major part of their childhood and youth in the host country (*Levakovic v. Denmark*, § 45). In respect of expulsions of young adults who had been convicted of criminal offences committed as a juvenile, see *Maslov v. Austria* [GC], and *A.A. v. the United Kingdom*. Where there is a significant lapse of time between the denial of the residence permit – or the final decision on the expulsion order – and the actual deportation, the developments during that period of time may be taken into account (*T.C.E. v. Germany*, § 61). In *Hasanbasic v. Switzerland*, the Court dealt with a scenario where the refusal of a residence permit and the expulsion order primarily related to the economic well-being of the country, rather than the prevention of disorder and crime. In recent cases concerning expulsion of "settled migrants" and Article 8, the Court emphasised that, where the domestic courts have carefully examined the facts, applying the Convention case-law, and

[8] See also the *Guide on Article 8 of the Convention - Right to respect for private and family life*.

adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities, except where there are strong reasons for doing so (*Ndidi v. the United Kingdom*, § 76; *Levakovic v. Denmark*). By contrast, where the domestic courts do not adequately motivate their decisions and examine the proportionality of the expulsion order in a superficial manner, preventing the Court from exercising its subsidiary role, an expulsion based on such decision would breach Article 8 (*I.M. v. Switzerland*; see also *M.M. v. Switzerland*, § 54, in respect of the requirement of judicial review of the proportionality of an expulsion order, including in situations where the legislature may seek to suggest situations of "mandatory" expulsion). This also holds true where the domestic courts do not take all relevant facts into consideration, such as an applicant's paternity of a child in the respondent State (*Makdoudi v. Belgium*). In respect of a revocation of a residence permit on the basis of undisclosed information and the existence of sufficient procedural guarantees in the specific context of national security, see *Gaspar v. Russia*.

2. Residence permits and possibility to regularise one's legal status

61. In addition to the scenarios concerning access to the territory for the purposes of family reunification (see section "Access for the purposes of family reunification" above), the Court has examined cases under Article 8 concerning the denial of – and whether there was a positive obligation to grant – a residence permit to individuals already present in the territory of the respondent State (see *Jeunesse v. the Netherlands* [GC]; *Rodrigues da Silva and Hoogkamer v. the Netherlands*; see also *Pormes v. the Netherlands*, in respect of a refusal of a residence permit to alien unlawfully staying in the host State from an early age, who only became aware of his precarious immigration status once he was an adult, and *T.C.E. v. Germany*, in respect of a person who had been convicted of criminal offences). The Court also examined, in connection with administrative charges to be paid as a precondition for the processing of the request for a residence permit, whether a foreigner had effective access to the administrative procedure by which he might, subject to fulfilling the conditions prescribed by domestic law, obtain a residence permit which would allow him to reside lawfully in the respondent State (*G.R. v. the Netherlands*). As regards the protection of a migrant's private-life interests in so far as they are affected by the uncertainty of his status and stay in a foreign country, see *Abuhmaid v. Ukraine* (see also *B.A.C. v. Greece* in respect of an asylum-seeker). In *Hoti v. Croatia* and in *Sudita Keita v. Hungary*, the Court found breaches of Article 8 because of the protracted difficulties for the applicants, stateless persons, to regularise their legal and residence status and the corresponding adverse effects on their private life. Determining an application for a residence permit based on an applicant's health status is discriminatory and breaches Article 14 taken in conjunction with Article 8 (*Kiyutin v. Russia*; *Novruk and Others v. Russia*, concerning the denial of residence permits because the applicants were HIV-positive; see also *Khachatryan and Konovalova v. Russia*, where the Court found a breach of Article 8 in respect of the refusal to renew a long-term migrant's residence permit on formal procedural grounds, because he had failed to furnish a requested medical certificate on time).

3. Nationality

62. Article 8 does not guarantee a right to acquire a particular nationality or citizenship, but an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (*Slivenko and Others v. Latvia* (dec.) [GC], § 77; *Genovese v. Malta*, § 30). The same holds true for the revocation of citizenship already obtained, with the test requiring an assessment of whether the revocation was arbitrary and of the consequences of revocation were for the applicant (see *Ramadan v. Malta*, § 85, with regard to a person who nonetheless remained in the respondent country; and *K2 v. the United Kingdom* (dec.), who was, while abroad, deprived of citizenship and excluded from the territory of the respondent State because he was considered to be a threat to national security). The relevant

principles also apply to the seizure of, and refusal to exchange, passports (*Alpeyeva and Dzhalagoniya v. Russia*, concerning the practice of invalidating passports issued to former Soviet Union Nationals). In *Usmanov v. Russia* the Court recapitulated the various approaches in its case-law in this area and opted for a consequence-based approach to determine whether the annulment of the applicant's citizenship constituted an interference with his rights under Article 8 of the Convention: it examined (i) what the consequences of the impugned measure were for the applicant and then (ii) whether the measure in question was arbitrary (§§ 53 and 58 et seq.). That approach was subsequently also applied in *Hashemi and Others v. Azerbaijan**, which concerned the refusal to issue identity cards and thereby to recognise the nationality of children born to refugees in the territory of the respondent State, despite domestic law providing for *jus soli*.

63. The right to hold a passport and the right to nationality are not civil rights for the purposes of Article 6 of the Convention (*Sergey Smirnov v. Russia* (dec.)).

E. Article 9[9]

64. In so far as a measure relating to the continuation of the applicant's residence in a given State is imposed in connection with the exercise of the right to freedom of religion, such measure may disclose an interference with Article 9 of the Convention (see *Nolan and K. v. Russia*, § 62). The enforced departure of lawfully resident foreign religious workers for reasons connected to their religious work has been found to breach Article 9 of the Convention (*Corley and Others v. Russia**, §§ 79-89). Where an individual claimed that on return to his own country he would be impeded in his religious worship, the Court did not rule out the possibility that the responsibility of the returning State might in exceptional circumstances be engaged under Article 9 of the Convention where the person concerned ran a real risk of flagrant violation of that Article in the receiving State, but found that it would be difficult to visualise a case in which a sufficiently flagrant violation of Article 9 would not also involve treatment in violation of Article 3 of the Convention (*Z and T v. the United Kingdom* (dec.).

F. Article 1 of Protocol No. 7[10]

65. Being aware that Article 6 of the Convention did not apply to procedures for the expulsion of aliens, States adopted Article 1 of Protocol No. 7, which defines the procedural safeguards applicable to this type of procedure (*Maaouia v. France* [GC], § 36). In the recent Grand Chamber judgment *Muhammad and Muhammad v. Romania* [GC], §§ 114 et seq., the Court recapitulated its case-law on the provision, which is applicable in the event of expulsion of "aliens lawfully resident in the territory of a State". Its first basic safeguard is that the person concerned may be expelled only "in pursuance of a decision reached in accordance with law". In addition to this general condition of legality, Article 1 § 1 of Protocol No. 7 provides for three specific procedural safeguards: aliens must be able to submit reasons against their expulsion, to have their case reviewed and, lastly, to be represented for these purposes before the competent authority. Article 1 § 2 of Protocol No. 7 provides for an exception, enabling States to expel an alien who is lawfully resident on its territory even before he or she has exercised the rights afforded under Article 1 § 1, in cases where such expulsion is necessary in the interests of public order or for reasons of national security. On the facts of the case, the Court found that the deportation of the applicants, Pakistani nationals living in Romania on student visas, on national security grounds was in breach of Article 1 of Protocol No. 7: the applicants neither had access to the classified documents on which that decision was based nor were they provided with any specific information as to the underlying facts and grounds for deportation. They had thus suffered a significant limitation of their right to be informed of the

[9] See also the *Guide on Article 9 of the Convention - Freedom of thought, conscience and religion*.
[10] See also the Guide to Article 1 of Protocol No. 7 - Procedural safeguards relating to expulsion of aliens.

factual elements submitted in support of their expulsion and of the content of the relevant documents, a limitation which had not been counterbalanced in the domestic proceedings. Article 1 of Protocol No. 7 is applicable even if the decision ordering the applicant to leave has not been enforced to-date (see *Ljatifi v. the former Yugoslav Republic of Macedonia*).

G. Article 4 of Protocol No. 4[11]

66. Apart from summary returns at sea (see section "Interception on the high seas and summary returns ("push-backs")" above) at or near borders described above (see section "Summary returns at the border and/or shortly after entry into the territory ("push-backs")" above), the Court has dealt with collective expulsions of aliens who had been present in the territory of the respondent State (asylum-seekers in *Čonka v. Belgium* and *Sultani v. France*; migrants in *Georgia v. Russia (I)* [GC], § 170), irrespective of whether they were lawfully resident in the respondent State or not. In *Čonka v. Belgium* and *Georgia v. Russia (I)* [GC], in which the Court found violations of Article 4 of Protocol No. 4, the individuals targeted for expulsion in each case had the same origin (Roma families from Slovakia in the former and Georgian nationals in the latter).

[11] See also the *Guide on Article 4 of Protocol No. 4 to the Convention - Prohibition of collective expulsions of aliens*.

IV. Prior to the removal and the removal itself

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Rule 39 of the Rules of Court

1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.

2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.

3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.

4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures.

A. Restrictions of freedom of movement and detention for purposes of removal[12]

67. Once a foreigner has been served with a final expulsion order, his presence is no longer "lawful" and he cannot rely on the right to freedom of movement as guaranteed by Article 2 of Protocol No. 4 (*Piermont v. France*, § 44).

68. Under the second limb of Article 5 § 1(f), States are entitled to keep an individual in detention for the purpose of his deportation or extradition. This includes detention for the purposes of surrender under the European Arrest Warrant (*De Sousa v. Portugal* (dec.), § 69). To avoid being branded as arbitrary, detention under Article 5 § 1(f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (*A. and Others v. the United Kingdom* [GC], § 164). The detention does not have to be reasonably considered necessary, for example to prevent the individual from committing an offence or fleeing, but it will be justified only for as long as the deportation or extradition proceedings are in progress (*ibid.*). It is immaterial under Article 5 § 1(f) whether the underlying decision to expel or surrender can be justified under national or Convention law (*M and Others v. Bulgaria*, § 63; *De Sousa v. Portugal* (dec.), § 79), but the detention will cease to be permissible under Article 5 § 1 (f), if the deportation, extradition or surrender proceedings are not conducted with due diligence (*A. and Others v. the United Kingdom* [GC], § 164, *Shiksaitov v. Slovakia*, § 56, and *De Sousa v. Portugal* (dec.), § 79; see also §§ 80-85 of the latter decision in respect of the notion of due diligence and the application of the equivalent protection in EU law in the context of a surrender under an European Arrest Warrant). As asylum-seekers cannot be deported prior to a determination of their asylum application, in a number of cases the Court found there to be neither a close connection between the detention of an applicant who had lodged an asylum application which had not yet been determined and the possibility of deporting him, nor good faith on the part of the national authorities (*R.U. v. Greece*, §§ 94-95; see also *Longa Yonkeu v. Latvia*, § 143; and *Čonka v. Belgium*, § 42, for examples of bad faith). Detention for the purposes of extradition may be arbitrary from the outset due to the person's refugee status prohibiting extradition (*Eminbeyli v. Russia*, § 48; see also *Dubovik v. Ukraine*, where the applicant applied for and was granted refugee status after being placed in detention for purposes of extradition; and *Shiksaitov v. Slovakia*, where the applicant, who had been recognised as a refugee in one EU

[12] See also the *Guide on Article 5 of the Convention - Right to liberty and security* and the *Guide on Article 2 of Protocol No. 4 to the Convention - Freedom of movement*.

member State, was detained in another EU member State in order to examine the admissibility of his extradition to the country of origin). Where an alien cannot be removed for the time being, for example because the removal would breach Article 3, a policy of keeping an individual's possible deportation "under active review" is not sufficiently certain or determinate to amount to "action being taken with a view to deportation" (*A. and Others v. the United Kingdom* [GC], §§ 166-167), including in national security cases (*ibid.*, §§ 162-190; see also *Al Husin v. Bosnia and Herzegovina (no. 2)*, where the Court found that the ground for the applicant's detention did not remain valid after it had become clear that no safe third country would admit the applicant; for a case where the Court found the detention of a migrant who was considered a security threat to have been in conformity with Article 5 § 1(f), see *K.G. v. Belgium*).

69. States must make an active effort to organise a removal and take concrete steps and provide evidence of efforts made to secure admission in order to comply with the due diligence requirement, for example where the authorities of a receiving state are particularly slow to identify their own nationals (see, for example, *Singh v. the Czech Republic*) or where there are difficulties in connection with identity papers (*M and Others v. Bulgaria*). For the detention to be compliant with the second limb of Article 5 § 1(f), there must be a realistic prospect that the deportation or extradition will be carried out; the detention cannot be said to be effected with a view to the alien's deportation if the deportation is, or becomes, unfeasible because the alien's cooperation is required and he is unwilling to provide it (see *Mikolenko v. Estonia*, in which the Court also considered that the authorities had at their disposal measures other than the applicant's protracted detention in the deportation centre in the absence of any immediate prospect of his expulsion; see also *Louled Massoud v. Malta*, §§ 48-74; *Kim v. Russia* and *Al Husin v. Bosnia and Herzegovina (no. 2)*; and section "Abuse of the right of individual application" in respect of *Bencheref v. Sweden* (dec.), where the applicant had claimed to be of another nationality and had refused to cooperate in order to clarify his identify). There may also be no realistic prospect of deportation in the light of the situation in the country of destination (*S.Z. v. Greece*, where the applicant's Syrian nationality was established when he submitted his passport and the worsening armed conflict in Syria was well-known).

70. The indication of an interim measure by the Court under Rule 39 of the Rules of Court (see section "Rule 39 / Interim measures" below) does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subject complies with Article 5 § 1 of the Convention (*Gebremedhin [Gaberamadhien] v. France*, § 74). Where the respondent States refrained from deporting applicants in compliance with the interim measure indicated by the Court, the Court was, in a number of cases, prepared to accept that deportation or extradition proceedings were temporarily suspended but nevertheless were "in progress", and that therefore no violation of Article 5 § 1(f) had occurred (see *Azimov v. Russia*, § 170). At the same time, the suspension of the domestic proceedings due to the indication of an interim measure by the Court should not result in a situation where the applicant languishes in prison for an unreasonably long period (*ibid.*, § 171). Article 5 § 1(f) does not contain maximum time-limits; the question whether the length of deportation proceedings could affect the lawfulness of detention under this provision thus depends solely on the particular circumstances of each case (*Auad v. Bulgaria*, § 128, and *J.N. v. the United Kingdom*). The Court has also held that automatic judicial review of immigration detention is not an essential requirement of Article 5 § 1 of the Convention (*J.N. v. the United Kingdom*, § 96). Where the authorities make efforts to organise removal to a third country in view of an interim measure indicated by the Court, detention may fall within the scope of Article 5 § 1(f) (*M and Others v. Bulgaria*, § 73).

71. As regards the detention of persons with specific vulnerabilities, the same considerations apply under the second limb of Article 5 § 1(f) as apply under the provision's first limb (see section "Vulnerable individuals" above, and, by way of example, *Rahimi v. Greece* and *Yoh-Ekale Mwanje v. Belgium*). As regards medical treatment during a hunger strike in detention pending deportation, see *Ceesay v. Austria*.

72. As regards the procedural safeguards under Article 5 §§ 2 and 4, see section "Procedural safeguards" above. There are, however, a number of cases relating specifically to the shortcomings of domestic law as regards the effectiveness of judicial review of detention pending expulsion and the requirements of Article 5 § 4 (see, for example, *S.D. v. Greece*, §§ 68-77; *Louled Massoud v. Malta*, §§ 29-47; and *A.B. and Others v. France*, §§ 126-138).

B. Assistance to be provided to persons due to be removed

73. As regards the existence and scope of a positive obligation under Article 3 to provide medical, social assistance or other forms of assistance to aliens due to be removed, see *Hunde v. the Netherlands* (dec.), and *Shioshvili and Others v. Russia* (concerning a heavily pregnant applicant and her young children, whose stay in connection with the removal was caused by the authorities).

C. The forced removal itself

74. The transfer of an individual whose state of health is particularly poor may, in itself, result in the individual concerned facing a real risk of being subjected to treatment contrary to Article 3 (*Khachaturov v. Armenia*, § 90, concerning a transfer for the purposes of extradition), even if the transfer were carried out under medical supervision (see *ibid.*, § 108). The assessment of the impact of a given transfer on the person concerned must be based on specific medical evidence substantiating the specific medical risks relied upon. This would require a case-by-case assessment of the medical condition of the individual and the specific medical risks in the light of the conditions of that particular transfer. Furthermore, that assessment would need to be made in relation to the medical condition of the person concerned at a particular point in time, considering that the specific risks substantiated at a certain moment could, depending on whether they were of a temporary or permanent nature, be eliminated with the passage of time in view of developments in that person's state of health (*ibid.*, § 91). The Court has underlined the importance of the existence of a relevant domestic legal framework and procedure whereby the implementation of a removal order would depend on the assessment of the medical condition of the individual concerned (*ibid.*, § 104). The fact that a person whose expulsion has been ordered has threatened to commit suicide does not require the State to refrain from enforcing the envisaged measure, provided that concrete measures are taken to prevent those threats from being realised, including in respect of applicants who had a record of previous suicide attempts (see *Al-Zawatia v. Sweden* (dec.), §§ 57-58).

75. In *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (§§ 64-71) the Court found a breach of Article 3 in respect of the manner in which a five-year old unaccompanied child was removed to the country of origin, without having ensured that the child would be looked after there. Situations of ill-treatment by public officials during the deportation process may breach Article 3 (see *Thuo v. Cyprus*, where the Court found no violation of the substantive limb of Article 3 on account of the alleged ill-treatment, but a violation of the provision's procedural limb due to the authorities' failure to investigate effectively the applicant's complaints about his alleged ill-treatment during the deportation process; see also section "Obligations to prevent harm and to carry out an effective investigation in other migrant-specific situations" below). Furthermore, breaches of confidentiality in the removal process - which in themselves may raise an issue under Article 8 - may lead to a risk of ill-treatment contrary to Article 3 upon return (see *X v. Sweden*, where the Swedish authorities informed their Moroccan counterparts that the applicant was a terrorist suspect).

D. Agreement to "assisted voluntary return" in Article 2 and 3 removal cases

76. In *M.A. v. Belgium* the Court found that the applicant, against whom there was an enforceable removal order and who was held with a view to deportation and accompanied by the police to the airplane, had not waived his Article 3 rights and had not lost his victim status by signing a "voluntary return" document at the airport, without the assistance of an interpreter (§§ 60-61).

E. Rule 39 / Interim measures[13]

77. When the Court receives an application, it may indicate to the respondent State under Rule 39 of the Rules of Court certain interim measures which it considers should be adopted pending the Court's examination of the case. According to its well-established case-law and practice, the Court indicates interim measures only where there is a real and imminent risk of serious and irreparable harm. These measures most commonly consist of requesting a State to refrain from removing individuals to countries where it is alleged that they would face death or torture or other ill-treatment, and may include requesting the respondent State to receive and examine asylum applications of persons presenting themselves at a border checkpoint (*M.K. and Others v. Poland*, § 235.). In many cases, interim measures concern asylum-seekers or persons who are to be extradited whose claims have been finally rejected and who do not have any further appeal with suspensive effect at the domestic level at their disposal to prevent their removal or extradition (see section "Procedural aspects" above). The Court has, however, also indicated interim measures in other kinds of immigration related cases, including with regard to the detention of children. Failure by the respondent State to comply with any Rule 39 measure indicated by the Court amounts to a breach of Article 34 of the Convention (see *Mamatkulov and Askarov v. Turkey* [GC], §§ 99-129; see also *Savriddin Dzhurayev v. Russia* and *M.A. v. France*).

13. *Rule 39 / Interim measures*

V. Other case scenarios

Article 4 of the Convention

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 12 of the Convention

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

Article 14 of the Convention

"The enjoyment of the rights and freedoms set forth in [the] 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."

A. Economic and social rights

78. Other than in the context of reception conditions and assistance to be provided to persons due to be removed (see sections "Reception conditions and freedom of movement" and "Assistance to be provided to persons due to be removed" above), the Court has dealt with a number of cases concerning the economic and social rights of migrants, asylum-seekers and refugees, primarily under the angle of Article 14 in view of the fact that, where a Contracting State decides to provide social benefits, it must to do so in a way that is compliant with Article 14. In this respect, the Court found that a State may have legitimate reasons for curtailing the use of resource-hungry public services - such as welfare programmes, public benefits and health care - by short-term and illegal immigrants, who, as a rule, do not contribute to their funding and that it may also, in certain circumstances, justifiably differentiate between different categories of aliens residing in its territory (*Ponomaryovi v. Bulgaria*, § 54).

79. Differential treatment based on the immigration status of the child of an alien, whose application for refugee status had been rejected but who had been granted indefinite leave to remain, in respect of allocating social housing may thus be justified (*Bah v. the United Kingdom*). In *Ponomaryovi v. Bulgaria*, the Court found that a requirement to pay secondary school fees based on the immigration status and nationality of the applicants was not justified. In *Bigaeva v. Greece*, the Court found that excluding foreigners from the law profession was, in itself, not discriminatory, but that there had been a breach of the applicant's right to respect for her private life in view of the incoherent approach by the authorities, which had permitted the applicant to commence an 18-month traineeship with a view to being admitted to the bar, but upon completion refused her to sit for the bar examinations on that ground that she was a foreigner. Other cases adjudicated by the Court concerned child benefits (*Niedzwiecki v. Germany*; *Weller v. Hungary*; *Saidoun v. Greece*), unemployment benefits (*Gaygusuz v. Austria*), disability benefits (*Koua Poirrez v. France*), contribution-based benefits, including pension (*Andrejeva v. Latvia* [GC]), and admission to a contribution-based social security scheme (*Luczak v. Poland*).

80. The Court also found that the requirement for persons subject to immigration control to submit an application for a certificate of approval before being permitted to marry in the United Kingdom breached Article 12 (*O'Donoghue and Others v. the United Kingdom*).

B. Trafficking in human beings[14]

81. A number of cases, dealt with by the Court under Article 4 in the context of trafficking in human beings, concerned foreigners, in connection with domestic servitude (*Siliadin v. France*; *C.N. and v. v. France*; *C.N. v. the United Kingdom*), sexual exploitation (*Rantsev v. Cyprus and Russia*; *L.E. v. Greece; T.I. and Others v. Greece*), and work in agriculture (*Chowdury and Others v. Greece*).

C. Obligations to prevent harm and to carry out an effective investigation in other migrant-specific situations[15]

82. In *M.H. and Others v. Croatia** the Court found a violation of the procedural limb of Article 2 of the Convention because the Croatian authorities failed to carry out an effective investigation into the death of a six-year old Afghan girl, who was hit by a train and died on the Serbian side of the Croatian-Serbian border after allegedly being denied the opportunity to seek asylum by the Croatian police officers and ordered to return to Serbia by following the train tracks (§§ 127-131 and 148-166). In respect of a case concerning the obligation to carry out an effective investigation into alleged ill-treatment during the deportation process, see section "The forced removal itself" above. As regards the procedural obligations under Article 3 when investigating a racist assault on a migrant, see *Sakir v. Greece*.

[14] See also the *Guide on Article 4 of the Convention - Prohibition of slavery and forced labour*.
[15] See also the *Guide on Article 2 of the Convention - Right to life* and the *Guide on Article 4 of the Convention - Prohibition of slavery and forced labour*.

VI. Procedural aspects of applications before the Court

Article 37 of the Convention

"1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

A. Applicants in poor mental health

83. The case of *Tehrani and Others v. Turkey* concerned, *inter alia*, the removal of the applicants, Iranian nationals and ex-members of the PMOI recognised as refugees by UNHCR. After one of the applicants had written to the Court that he wished to withdraw his application, his representative informed the Court that he wished to pursue the application and that the applicant was in poor mental health and needed treatment. The Government stated that the applicant did not suffer from a psychotic illness but that further diagnosis could not be carried out due to his lack of co-operation. The Court noted that one of the applicant's allegations concerned the possible risk of death or ill-treatment and considered that striking the case out of its list would lift the protection afforded by the Court on a subject as important as the right to life and physical well-being of an individual, that there were doubts about the applicant's mental state and discrepancies of the medical reports, and concluded that respect for human rights as defined in the Convention and the Protocols thereto required the examination of the application to continue (§§ 56-57).

B. Starting point of the six-month period in Article 2 or 3 removal cases

84. While the date of the final domestic decision providing an effective remedy is normally the starting-point for the calculation of the six-month time-limit for which Article 35 § 1 of the Convention provides, the responsibility of a sending State under Article 2 or Article 3 of the Convention is, as a rule, incurred only when steps are taken to remove the individual from its territory. The date of the State's responsibility under Article 2 or 3 corresponds to the date when that six-month time-limit starts to run for the applicant. Consequently, if a decision ordering a removal has not been enforced and the individual remains on the territory of the State wishing to remove him or her, the six-month time-limit has not yet started to run (see *M.Y.H. and Others v. Sweden*, §§ 38-41). The same would apply to removals concerning a sending State's responsibility for an alleged risk of a flagrant denial of rights under Article 5 and 6 in the receiving State (see section "Flagrant denial of justice: Articles 5 and 6" above).

C. Absence of an imminent risk of removal

85. In removal cases, in which the applicant no longer faces any risk, at the moment or for a considerable time to come, of being expelled and in which he has the opportunity to challenge any new expulsion order before the national authorities and if necessary before the Court, the Court normally finds that it is no longer justified to continue to examine the application within the meaning of Article 37 § 1(c) of the Convention and strikes it out of its list of cases, unless there are special circumstances relating to respect for human rights as defined in the Convention and the Protocols thereto requiring the continued examination of the application (see *Khan v. Germany* [GC]). After the Court has struck an application out of its list of cases, it can at any time decide to restore it to the list if it considers that the circumstances justify such a course, in accordance with Article 37 § 2 of the Convention.

D. Standing to lodge an application on behalf of the applicant

86. In *G.J. v. Spain* (dec.), the Court found that a non-governmental organisation did not have standing to lodge an application on behalf of the applicant, an asylum-seeker, after his expulsion, as it had not presented a written authority to act as his representative, contrary to the requirements of Rule 36 § 1 of the Rules of Court. The case of *N. and M. v. Russia* (dec.) concerned the alleged disappearance of the applicants, two Uzbek nationals, whose extradition had been requested by the Uzbek authorities. The Court had indicated to the respondent Government, under Rule 39 of the Rules of Court, that they should not be removed to Uzbekistan or any other country for the duration of the proceedings before the Court. The Court later found that the lawyer who lodged the application to the Court on behalf of the applicants did not have standing to do so: the lawyer had not presented a specific authority to represent the applicants; there were no exceptional circumstances that would allow the lawyer to act in the name and on behalf of the applicants. There was no risk of the applicants being deprived of effective protection of their rights since they had close family members in Uzbekistan with whom they had been in regular contact and who, in turn, had been in contact with the lawyer after the applicants' alleged abduction: it was open to the applicants' immediate family to complain to the Court on their own behalf and there was no information that they had been unable to lodge applications with the Court.

E. Abuse of the right of individual application

87. In *N.A. v. Finland* (revision) the Court revised and annulled its earlier judgment in that case – in which it had found that the removal of the applicant's father to Iraq had breached Articles 2 and 3 of the Convention – in its entirety and rejected the application as an abuse of the right of individual application under Article 35 § 3 (a) of the Convention, after it subsequently came to light that the documents regarding the death of the applicant's father had been forged and that he was alive in Iraq. The Court similarly found that it amounted to an abuse of the right of application where an applicant, who had alleged that his lengthy detention with a view to him being deported to his country of origin had not been justified under Article 5 § 1 (f), had claimed to be of another nationality and had refused to cooperate in order to clarify his identity, while the authorities intending to remove him were in contact over a lengthy period with their counterparts in the alleged country of nationality, and who had also tried to deceive the Court as to his nationality (see *Bencheref v. Sweden* (dec.)).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the former European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (*http://hudoc.echr.coe.int*) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, advisory opinions and legal summaries from the Case-Law Information Note), and of the former Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the 'Language versions' tab in the *HUDOC* database, a tab which can be found after you click on the case hyperlink.

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December 2021
This Factsheet does not bind the Court and is not exhaustive

Unaccompanied migrant minors in detention

See also the factsheets on "Accompanied migrant children in detention" and "Migrants in detention".

"[I]t is important to bear in mind that [the child's extreme vulnerability] is the decisive factor and ... takes precedence over considerations relating to the ... status [of] illegal immigrant." (judgment Mubilanzila Mayeka and Kaniki Mitunga v. Belgium of 12 October 2006, § 55)

"Children have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status. The [European] Court [of Human Rights] has also observed that the Convention on the Rights of the Child encourages States to take appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents ..." (judgment Abdullahi Elmi and Aweys Abubakar v. Malta of 22 November 2016, § 103)

Conditions of detention

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (see also below under "Deprivation of liberty" and "Right to respect for family life")

12 October 2006

This case concerned the nearly two months long detention at a transit centre for adults run by the Aliens Office near Brussels airport of a five-year old Congolese national travelling alone to join her mother who had obtained refugee status in Canada, and her subsequent removal to her country of origin. The applicants (the mother and the child) submitted in particular that the detention of the child had constituted inhuman or degrading treatment.

The European Court of Human Rights held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights in respect of the child, finding that her detention had demonstrated a lack of humanity and amounted to inhuman treatment. It noted in particular that the child, unaccompanied by her parents, had been detained for two months in a centre intended for adults, with no counselling or educational assistance from a qualified person specially mandated for that purpose. The care provided to her had also been insufficient to meet her needs. Furthermore, owing to her very young age, the fact that she was an illegal alien in a foreign land and the fact that she was unaccompanied by her family, the child was in an extremely vulnerable situation. However, no specific legal framework existed governing the situation of unaccompanied foreign minors and, although the authorities had been placed in a position to prevent or remedy the situation, they had failed to take adequate measures to discharge their obligation to take care of the child.

Rahimi v. Greece (see also below, under "Deprivation of liberty")

5 April 2011

This case concerned in particular the conditions in which a minor Afghan asylum-seeker, who had entered Greece illegally, was held in the Pagani detention centre on the island of Lesbos and subsequently released with a view to his expulsion.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that, even allowing for the fact that the detention had lasted for only two days, the applicant's conditions of detention had in themselves amounted to degrading treatment. It noted in particular that the conditions of detention in the centre, particularly with regard to the accommodation, hygiene and infrastructure, had been so bad that they undermined the very meaning of human dignity. Moreover, on account of his age and personal circumstances, the applicant had been in an extremely vulnerable position and the authorities had given no consideration to his individual circumstances when placing him in detention.

Mohamad v. Greece (see also below, under "Deprivation of liberty")

11 December 2014

This case concerned in particular the conditions of the detention of the applicant, an Iraqi national who was an unaccompanied minor at the time of his arrest, at the Soufli border post, pending his removal. He complained that his status as minor had not been taken into account when he had been held at the Soufli border post and about his conditions of detention there.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicant's conditions of detention at the Soufli border post had amounted to inhuman and degrading treatment. The Court noted in particular that the applicant remained imprisoned for more than five months, in unacceptable conditions as described by, *inter alia*, the European Committee for the Prevention of Torture (CPT). The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 3**, finding that the applicant had had no effective remedy by which to complain of the conditions of his detention.

Abdullahi Elmi and Aweys Abubakar v. Malta (see also below, under "Deprivation of liberty")

22 November 2016

This case concerned the detention in the Safi Barracks Centre of two Somalian nationals, during eight months, waiting for the outcome of their asylum procedure, and in particular, for the outcome of the procedure aiming at determining whether they were minors or not. They complained in particular about the conditions of their immigration detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that, in the present case, the cumulative effect of the conditions complained of, which had involved overcrowding, lack of light and ventilation, no organised activities and a tense, violent atmosphere, for a period of around eight months, had amounted to degrading treatment. These conditions had been all the more difficult in view of the applicants' vulnerable status as asylum-seekers and minor. Indeed, there had been no support mechanism for them and this, combined with the lack of information as to what was going to happen to them or how long they would be detained, had exacerbated their fears. Moreover, in the present case the applicants, who were sixteen and seventeen years of age respectively, were even more vulnerable than any other adult asylum seeker detained at the time because of their age.

H.A. and Others v. Greece (no. 19951/16)

28 February 2019

This case concerned the placement of nine migrants, unaccompanied minors, in different police stations in Greece, for periods ranging between 21 and 33 days. The migrants were subsequently transferred to the Diavata reception centre and then to special

facilities for minors. All the applicants complained in particular of their detention conditions and of a lack of an effective remedy by which to complain about those conditions. They also alleged that they had been placed in police cells and had been unable to lodge an appeal challenging the lawfulness of their detention.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the conditions of the applicants' detention in the police stations. It found in particular that the detention conditions to which the applicants had been subjected in the various police stations represented degrading treatment, and explained that detention on those premises could have caused them to feel isolated from the outside world, with potentially negative consequences for their physical and moral well-being. The Court also held that the living conditions in the Diavata centre, which had a safe zone for unaccompanied minors, had **not exceeded the threshold of seriousness required to engage Article 3** of the Convention. It further took the view that the applicants had not had an effective remedy and therefore held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 3**. Lastly, the Court held that there had been a **violation of Article 5 §§ 1 and 4** (right to liberty and security / right to a speedy decision on the lawfulness of a detention measure) of the Convention, finding in particular that the applicants' placement in border posts and police stations could be regarded as a deprivation of liberty which was not lawful. The Court also noted that the applicants had spent several weeks in police stations before the National Service of Social Solidarity ("EKKA") recommended their placement in reception centres for unaccompanied minors; and that the public prosecutor at the Criminal Court, who was their statutory guardian, had not put them in contact with a lawyer and had not lodged an appeal on their behalf for the purpose of discontinuing their detention in the police stations in order to speed up their transfer to the appropriate facilities.

Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia (no. 14165/16)

13 June 2019

This case concerned the living conditions of five unaccompanied migrant minors from Afghanistan, who entered Greece as unaccompanied migrant minors in 2016, when they were between 14 and 17 years of age. More specifically, two of the applicants complained about their living conditions at Polykastro and Filiata police stations, where they had been held in "protective custody", while four applicants complained about their living conditions at the camp in Idomeni. Three of the applicants also argued that their placement in protective custody at the police stations in Polykastro, Filiata and Aghios Stefanos had amounted to an unlawful deprivation of liberty.
The Court declared the complaints against Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia **inadmissible** as being manifestly ill-founded. It further held that there had been a **violation** by Greece **of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. Firstly, the Court found that the conditions of detention of three of the applicants in various police stations had amounted to degrading treatment, observing that being detained in these places was liable to arouse in the persons concerned feelings of isolation from the outside world, with potentially negative repercussions on their physical and mental well-being. Secondly, it noted that the authorities had not done all that could reasonably be expected of them to fulfil the obligation to provide for and protect four of the applicants, who had lived for a month in the Idomeni camp in an environment unsuitable for adolescents. That obligation was incumbent on the Greek State with regard to persons who were particularly vulnerable because of their age. The Court also held that there had been a **violation** by Greece **of Article 5 § 1** (right to liberty and security) of the Convention with regard to three applicants, finding that the placement of these applicants in the police stations had amounted to a deprivation of liberty as the Greek Government had not explained why the authorities had first placed the applicants in police stations – and in degrading

conditions of detention – rather than in alternative temporary accommodation. The detention of those applicants had therefore not been lawful.

Moustahi v. France

25 June 2020 (Chamber judgment)

This case concerned the conditions in which two Comorian children, apprehended when they unlawfully entered French territory in Mayotte, were placed in administrative detention together with adults, arbitrarily associated with one of them for administrative purposes, and expeditiously returned to the Comoros without a careful and individual examination of their situation. Both children also complained that they had been deprived of their liberty unlawfully and unjustifiably. They both, and their father, further complained of the French authorities' refusal to entrust the children to their father rather than placing them alone in administrative detention and to allow contact between them during the children's detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, in respect of both child applicants, on account of the conditions of their detention and on account of the conditions of their removal to the Comoros. Regarding the two children as unaccompanied minors, it found that they had been arbitrarily associated with one of the migrants present on the boat, who had reportedly declared that he was accompanying them. In particular, the Court was persuaded that this formality had not sought to preserve the children's best interests but rather to ensure their speedy removal to the Comoros. It also observed that the conditions of the two children's detention had been the same as those of the adults apprehended at the same time as them. Having regard to the age of the children (five and three at the time) and to the fact that they had been left to cope on their own, the Court concluded that their detention could only have caused them stress and anxiety, with particularly traumatic repercussions for their mental state. In the present case, the Court took the view that the authorities had failed to ensure that the children were treated in a manner compatible with the Convention provisions and found that this treatment exceeded the threshold of seriousness for the purposes of Article 3. The Court also held that there had been a **violation of Article 5 § 1** (right to liberty and security), a **violation of Article 5 § 4** (right to a speedy decision on the lawfulness of detention), a **violation of Article 8** (right to respect for private and family life) and a **violation of Article 4 of Protocol No. 4** (prohibition of collective expulsion of aliens) to the Convention in respect of the child applicants. It further held that there had been a **violation of Article 13** (right to an effective remedy) **in conjunction with Article 8, and of Article 13 in conjunction with Article 4 of Protocol No. 4**, as regards the complaint of a lack of effective remedies against the removal of the children. Lastly, it held that there had been **no violation of Article 13 in conjunction with Article 3** as regards the complaint of a lack of effective remedies against the conditions of removal.

Deprivation of liberty and challenging the lawfulness of detention

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (see also above, under "Conditions of detention", and below, under "Right to respect for family life")

12 October 2006

This case concerned in particular the nearly two months long detention at a transit centre for adults run by the Aliens Office near Brussels airport of a five-year old Congolese national travelling alone to join her mother who had obtained refugee status in Canada.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the minor applicant, finding that the Belgian legal system at the time and as it had functioned in the case before it had not sufficiently protected her right to liberty. It noted in particular that the child was detained in a closed centre intended for illegal foreign aliens in the same conditions as adults. Those

conditions were not adapted to the position of extreme vulnerability in which she had found herself as a result of her status as an unaccompanied foreign minor. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, finding that the child's successful appeal against detention had been rendered futile. In this respect, it noted in particular that the Belgian authorities had decided on the date of the child's departure the day after she had lodged her application to the *chambre du conseil* for release from detention, that is to say even before the *chambre du conseil* had ruled on it. They had not sought to reconsider the position at any stage. Moreover, the deportation had proceeded despite the fact that the 24 hour-period for an appeal by the public prosecutor had not expired and that a stay applied during that period.

Bubullima v. Greece

28 October 2010

The first applicant, a minor Albanian national, lived in Greece with his uncle, who had parental rights over him. Arrested by the immigration police, who instituted deportation proceedings against him on the ground that he did not have a valid residence permit, he was subsequently temporarily placed in custody, and then, once the decision to deport him had been taken, kept in detention to prevent him from escaping. He alleged that the Greek courts had failed to decide speedily on his application for release and that he had had no remedy by which to challenge the lawfulness of his detention.

The Court held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention in respect of the first applicant, finding that the remedies provided to him by domestic law had not satisfied the requirements of that provision, in particular the requirement of "speediness".

Rahimi v. Greece (see also above, under "Conditions of detention")

5 April 2011

This case concerned the detention of an unaccompanied foreign minor in an adult detention centre. The applicant alleged in particular that he had not been informed of the reasons for his arrest or of any remedies in that connection.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the applicant's detention had not been lawful. It noted in particular that the applicant's detention had been based on the law and had been aimed at ensuring his deportation. Moreover, in principle, the length of his detention – two days – could not be said to have been unreasonable with a view to achieving that aim. However, the Greek authorities had given no consideration to the best interests of the applicant as a minor or his individual situation as an unaccompanied minor. Furthermore, they had not examined whether it had been necessary as a measure of last resort to place the applicant in the detention centre or whether less drastic action might not have sufficed to secure his deportation. These factors gave cause to doubt the authorities' good faith in executing the detention measure. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. In this regard, it noted in particular that the applicant had been unable in practice to contact a lawyer. Furthermore, the information brochure outlining some of the remedies available had been written in a language which he would not have understood, although the interview with him had been conducted in his native language. The applicant had also been registered as an accompanied minor although he had had no guardian who could act as his legal representative. Accordingly, even assuming that the remedies had been effective, the Court failed to see how the applicant could have exercised them.

See also: judgment in the case of **Housein v. Greece** of 24 October 2013.

Mohamad v. Greece (see also above, under "Conditions of detention")

11 December 2014

This case concerned in particular the lawfulness of the detention of the applicant, an Iraqi national who was an unaccompanied minor at the time of his arrest, at the Soufli border post, pending his removal.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding in particular that the applicant had been arrested and detained in disregard of his status as unaccompanied minor and that when he had reached the age of majority the Greek authorities had extended his detention without taking any steps with a view to his removal.

Abdullahi Elmi and Aweys Abubakar v. Malta (see also above, under "Conditions of detention")

22 November 2016

Both applicants alleged in particular that their detention in the Safi Barracks Centre, during eight months, had been arbitrary and unlawful and that they had not had a remedy to challenge the lawfulness of their detention.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, noting in particular that the applicants where minors and that their detention, in inappropriate conditions, had been particularly lengthy. It also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, as the applicants had not had an effective remedy to challenge the lawfulness of their detention.

H.A. and Others v. Greece (no. 19951/16)

28 February 2019

See above, under "Conditions of detention".

Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia (no. 14165/16)

13 June 2019

See above, under "Conditions of detention".

Moustahi v. France

25 June 2020 (Chamber judgment)

See above, under "Conditions of detention".

Right to respect for family life

Mubilanzila Mayeka et Kaniki Mitunga c. Belgique (see also above, under "Conditions of detention" and "Deprivation of liberty")

12 October 2006

This case concerned the nearly two months long detention at a transit centre for adults run by the Aliens Office near Brussels airport of a five-year old Congolese national travelling alone to join her mother who had obtained refugee status in Canada, and her subsequent removal to her country of origin. The applicants (the mother and the child) submitted in particular that the child's detention had constituted disproportionate interference with their right to respect for family life.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of the child and her mother, on account of the child's detention. It observed in particular that one of the consequences of the child's detention was to separate her from her uncle (with whom she had arrived at Brussels airport), with the result that she had become an unaccompanied foreign minor, a category in respect of which there was a legal void at the time. The detention had significantly delayed her reunion with her mother. The Court further noted that, far from assisting her reunion with her mother, the Belgian authorities' actions had hindered it. Having been informed from the outset that the child's mother was in Canada, the Belgian

authorities should have made detailed inquiries of the Canadian authorities in order to clarify the position and bring about an early reunion of mother and daughter. Lastly, the Court observed that, since there was no risk of the child's seeking to evade the supervision of the Belgian authorities, her detention in a closed centre for adults had served no purpose and that other measures more conducive to the higher interest of the child could have been taken. Furthermore, since the child was an unaccompanied foreign minor, Belgium was under an obligation to facilitate the family's reunification. The Court therefore found that there had been disproportionate interference with the applicants' right to respect for their family life. The Court also held in this case that there had been a **violation of Article 8** of the Convention in respect of the child and her mother, on account of the child's deportation to her country of origin.

Moustahi v. France

25 June 2020 (Chamber judgment)

See above, under "Conditions of detention".

Texts and documents

See in particular:

- **Handbook on European law relating to asylum, borders and immigration**, European Union Fundamental Rights Agency / European Court of Human Rights, 2013
- Council of Europe Commissioner for Human Rights **web page** on the thematic work "Migration"
- Special Representative of the Council of Europe Secretary General on migration and refugees **web page**

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This factsheet does not bind the Court and is not exhaustive

Children's rights

See also the factsheets on "International child abductions", "Parental rights", and "Protection of minors", "Accompanied migrant children in detention" and "Unaccompanied migrant minors in detention".

Article 1 (obligation to respect human rights) of the European Convention on Human Rights ("the Convention"):

"The High Contracting Parties shall secure to ***everyone*** within their jurisdiction the rights and freedoms defined in … this Convention".

Right of access to a court (Article 6 of the Convention)

Stagno v. Belgium

7 July 2009

When their father died, the two applicants, who were minors at the time, and several other descendants were paid a sum of money by an insurance company as the beneficiaries of their father's life insurance. Their mother, being the statutory administrator of her children's property, deposited the money in savings accounts that were emptied within less than a year. On coming of age, the applicants each brought an action against their mother and against the insurance company. They later dropped the claim against their mother after entering into an agreement. Before the European Court of Human Rights the applicants complained of a violation of their right of access to a court, alleging that the Belgian courts had deprived them of any effective remedy before a court by rejecting their action as statute-barred, given that the statutory limitation period had not been suspended while they were minors even though they had been unable to bring legal proceedings during that period.

The European Court of Human Rights held that there had been a **violation of Article 6 § 1** (right to a fair trial – access to court) of the European Convention on Human Rights, noting in particular that, by holding that the limitation period also ran against minors, the Belgian courts had put the interests of the insurance companies first. However, it had been practically impossible for the applicants to defend their property rights against the company before reaching their majority, and by the time they did come of age, their claim against the company had become time-barred. The strict application of a statutory limitation period, without taking into account the particular circumstances of the case, had thus prevented the applicants from using a remedy that in principle was available to them.

Right to respect for private and family life (Article 8)

Adoption

Chbihi Loudoudi and Others v. Belgium

16 December 2014

This case concerned the procedure in Belgium for the adoption by the applicants of their

Moroccan niece, who had been entrusted to their care by "kafala"[1]. The applicants complained in particular of the Belgian authorities' refusal to recognise the kafala agreement and approve the adoption of their niece, to the detriment of the child's best interests, and of the uncertain nature of her residence status.
The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention concerning the refusal to grant the adoption, and **no violation of Article 8** (right to respect for private and family life) concerning the child's residence status. It found in particular that the refusal to grant adoption was based on a law which sought to ensure, in accordance with the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, that international adoptions took place in the best interests of the child and with respect for the child's private and family life, and that the Belgian authorities could legitimately consider that such a refusal was in the child's best interests, by ensuring the maintaining of a single parent-child relationship in both Morocco and Belgium (i.e. the legal parent-child relationship with the genetic parents). In addition, reiterating that the Convention did not guarantee a right to a particular residence status, the Court observed that the only real obstacle encountered by the girl had been her inability to take part in a school trip. That difficulty, owing to the absence of a residence permit between May 2010 and February 2011, did not suffice for Belgium to be required to grant her unlimited leave to remain in order to protect her private life.

Zaieţ v. Romania

24 March 2015

This case concerned the annulment of a woman's adoption, at the instigation of her adoptive sister, 31 years after it had been approved and 18 years after the death of their adoptive mother. The applicant alleged in particular that the annulment of her adoption had been an arbitrary and disproportionate intrusion into her family life, submitting that she had lived with her adoptive mother since the age of nine and that their relationship had been based on affection, responsibility and mutual support. She also complained that, after the annulment of her adoption, she lost title to the five hectares of forest she inherited from her adoptive mother.
This was the first occasion on which the Court had to consider the annulment of an adoption order in a context where the adoptive parent was dead and the adopted child had long reached adulthood. In the applicant's case, the Court, finding that the annulment decision was vague and lacking in justification for the taking of such a radical measure, concluded that the interference in her family life had not been supported by relevant and sufficient reasons, in **violation of Article 8** (right to respect for private and family life) of the Convention. The Court noted in particular that, in any event, the annulment of an adoption should not even be envisaged as a measure against an adopted child and underlined that in legal provisions and decisions on adoption matters, the interests of the child had to remain paramount. The Court also held that there had been a **violation of Article 1 of Protocol No. 1** (protection of property) to the Convention, on the account of the disproportionate interference with the applicant's property right over the disputed land.

Bogonosovy v. Russia

5 March 2019

This case concerned a grandfather who wanted to maintain ties with his granddaughter after her adoption by another family.
The Court found that the domestic court's failure to examine the question of the applicant's post-adoption ties with his granddaughter had led to a **breach of** his right to respect for his family life secured by **Article 8** of the Convention. It considered in

[1]. In Islamic law, adoption, which creates family bonds comparable to those created by biological filiation, is prohibited. Instead, Islamic law provides for a form of guardianship called "kafala". In Muslim States, with the exception of Turkey, Indonesia and Tunisia, kafala is defined as a voluntary undertaking to provide for a child and take care of his or her welfare and education.

particular that the domestic courts should have assessed the applicant's request to maintain a post adoption relationship with his granddaughter but had instead interpreted and applied the law in a way that had denied him such an examination. He had thus been excluded completely and automatically from his granddaughter's life.

See also, recently: **T.A. and Others v. the Republic of Moldova (no. 25450/20)**, judgment of 30 November 2021.

Children born as a result of surrogacy treatment

Mennesson and Others v. France and Labassee v. France

26 June 2014

These cases concerned the refusal to grant legal recognition in France to parent-child relationships that had been legally established in the United States between children born as a result of surrogacy treatment and the couples who had had the treatment. The applicants complained in particular of the fact that, to the detriment of the children's best interests, they were unable to obtain recognition in France of parent-child relationships that had been legally established abroad.

In both cases the Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention concerning the applicants' right to respect for their family life. It further held in both cases that there had been a **violation of Article 8** concerning the children's right to respect for their private life. The Court observed that the French authorities, despite being aware that the children had been identified in the United States as the children of Mr and Mrs Mennesson and Mr and Mrs Labassee, had nevertheless denied them that status under French law. It considered that this contradiction undermined the children's identity within French society. The Court further noted that the case-law completely precluded the establishment of a legal relationship between children born as a result of – lawful – surrogacy treatment abroad and their biological father. This overstepped the wide margin of appreciation left to States in the sphere of decisions relating to surrogacy.

See also: **Foulon and Bouvet v. France**, judgment of 21 July 2016; **Laborie v. France**, judgment of 19 January 2017.

D. and Others v. Belgium (no. 29176/13)

8 July 2014 (decision – partly struck out of the list of cases; partly inadmissible)

This case concerned the Belgian authorities' initial refusal to authorise the arrival on its national territory of a child who had been born in Ukraine from a surrogate pregnancy, as resorted to by the applicants, two Belgian nationals. The applicants relied in particular on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the Convention.

In view of developments in the case since the application was lodged, namely the granting of a laissez-passer for the child and his arrival in Belgium, where he has since lived with the applicants, the Court considered this part of the dispute to be resolved and struck out of its list the complaint concerning the Belgian authorities' refusal to issue travel documents for the child. The Court further declared **inadmissible** the remainder of the application. While the authorities' refusal, maintained until the applicants had submitted sufficient evidence to permit confirmation of a family relationship with the child, had resulted in the child effectively being separated from the applicants, and amounted to interference in their right to respect for their family life, nonetheless, Belgium had acted within its broad discretion ("wide margin of appreciation") to decide on such matters. The Court also considered that there was no reason to conclude that the child had been subjected to treatment contrary to Article 3 of the Convention during the period of his separation from the applicants.

Paradiso and Campanelli v. Italy

24 January 2017 (Grand Chamber)

This case concerned the placement in social-service care of a nine-month-old child who had been born in Russia following a gestational surrogacy contract entered into with a Russian woman by an Italian couple (the applicants); it subsequently transpired that they had no biological relationship with the child. The applicants complained, in particular, about the child's removal from them, and about the refusal to acknowledge the parent-child relationship established abroad by registering the child's birth certificate in Italy.

The Grand Chamber found, by eleven votes to six, that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in the applicants' case. Having regard to the absence of any biological tie between the child and the applicants, the short duration of their relationship with the child and the uncertainty of the ties between them from a legal perspective, and in spite of the existence of a parental project and the quality of the emotional bonds, the Grand Chamber held that a family life did not exist between the applicants and the child. It found, however, that the contested measures fell within the scope of the applicants' private life. The Grand Chamber further considered that the contested measures had pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others. On this last point, it regarded as legitimate the Italian authorities' wish to reaffirm the State's exclusive competence to recognise a legal parent-child relationship – and this solely in the case of a biological tie or lawful adoption – with a view to protecting children. The Grand Chamber also accepted that the Italian courts, having concluded in particular that the child would not suffer grave or irreparable harm as a result of the separation, had struck a fair balance between the different interests at stake, while remaining within the room for manoeuvre ("margin of appreciation") available to them.

Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, requested by the French Court of Cassation (Request No. P16-2018-001)

10 April 2019 (Grand Chamber)

This case concerned the possibility of recognition in domestic law of a legal parent-child relationship between a child born abroad through a gestational surrogacy arrangement and the intended mother, designated in the birth certificate legally established abroad as the "legal mother", in a situation where the child was conceived using the eggs of a third-party donor and where the legal parent-child relationship with the intended father has been recognised in domestic law.

The Court found that States were not required to register the details of the birth certificate of a child born through gestational surrogacy abroad in order to establish the legal parent-child relationship with the intended mother, as adoption may also serve as a means of recognising that relationship.

It held in particular that, in a situation where a child was born abroad through a gestational surrogacy arrangement and was conceived using the gametes of the intended father and a third-party donor, and where the legal parent-child relationship with the intended father has been recognised in domestic law,

1. the child's right to respect for private life within the meaning of Article 8 of the Convention requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother, designated in the birth certificate legally established abroad as the "legal mother";

2. the child's right to respect for private life does not require such recognition to take the form of entry in the register of births, marriages and deaths of the details of the birth certificate legally established abroad; another means, such as adoption of the child by the intended mother, may be used.

C and E v. France (nos. 1462/18 and 17348/18)

19 November 2019 (Committee decision on the admissibility)

This case concerned the French authorities' refusal to enter in the French register of births, marriages and deaths the full details of the birth certificates of children born abroad through a gestational surrogacy arrangement and conceived using the gametes of the intended father and a third-party donor, in so far as the birth certificates designated the intended mother as the legal mother.

The Court declared the two applications **inadmissible** as being manifestly ill-founded. It considered in particular that the refusal of the French authorities was not disproportionate, as domestic law afforded a possibility of recognising the parent-child relationship between the applicant children and their intended mother by means of adoption of the other spouse's child. The Court also noted that the average waiting time for a decision was only 4.1 months in the case of full adoption and 4.7 months in the case of simple adoption.

D v. France (n° 11288/18)

16 juillet 2020

This case concerned the refusal to record in the French register of births, marriages and deaths the details of the birth certificate of a child born abroad through a gestational surrogacy arrangement in so far as the certificate designated the intended mother, who was also the child's genetic mother, as the mother. The child, the third applicant in the case, was born in Ukraine in 2012. Her birth certificate, issued in Kyiv, named the first applicant as the mother and the second applicant as the father, without mentioning the woman who had given birth to the child. The two first applicants, husband and wife, and the child complained of a violation of the child's right to respect for her private life, and of discrimination on the grounds of "birth" in her enjoyment of that right.

The Court held that there had been **no violation of Article 8** (right to respect for family life) of the Convention, finding that, in refusing to record the details of the third applicant's Ukrainian birth certificate in the French register of births in so far as it designated the first applicant as the child's mother, France had not overstepped its margin of appreciation in the circumstances of the present case. It also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 8**, accepting that the difference in treatment of which the applicants complained with regard to the means of recognition of the legal relationship between such children and their genetic mother had an objective and reasonable justification. In its judgment, the Court noted in particular that it had previously ruled on the issue of the legal parent-child relationship between a child and its intended father where the latter was the biological father, in its judgments in *Mennesson* and *Labassee* (see above). According to its case-law, the existence of a genetic link did not mean that the child's right to respect for his or her private life required the legal relationship with the intended father to be established specifically by means of the recording of the details of the foreign birth certificate. The Court saw no reason in the circumstances of the present case to reach a different decision regarding recognition of the legal relationship with the intended mother, who was the child's genetic mother. The Court also pointed to its finding in advisory opinion no. P16-2018-001 (see above) that adoption produced similar effects to registration of the foreign birth details when it came to recognising the legal relationship between the child and the intended mother.

Valdís Fjölnisdóttir and Others v. Iceland

18 May 2021

This case concerned the non-recognition of a parental link between the first two applicants and the third applicant, who was born to them via a surrogate mother in the United States. The first and second applicants were the third applicant's intended parents, but neither of them was biologically related to him. They had not been recognised as the child's parents in Iceland, where surrogacy is illegal. The applicants complained, in particular, that the refusal by the authorities to register the first and

second applicants as the third applicant's parents had amounted to an interference with their rights.

The Court held that there had been **no violation of Article 8** (right to respect for family life) of the Convention. It considered, in particular, that despite the lack of a biological link between the applicants, there had been "family life" in the applicants' relationship. However, the Court found that the decision not to recognise the first two applicants as the child's parents had had a sufficient basis in domestic law and, taking note of the efforts on the parts of the authorities to maintain that "family life", ultimately adjudged that Iceland had acted within its discretion in the present case.

S.-H. v. Poland (nos. 56846/15 and 56849/15)

16 November 2021 (decision on the admissibility)

The parents of the applicants - twin brothers who were dual Israeli and United States nationals and lived in Israel– were a same-sex couple, who in 2010 had the children conceived via a surrogacy agreement. The applicants were confirmed as children of their parents by the Superior Court of California. The case concerned their application for Polish citizenship (one of their parents was a Polish national). They complained in particular of the refusal by the Polish authorities to recognise their relationship with their biological father, which they alleged had been because their parents were a same-sex couple.

The Court declared the applications **inadmissible**, finding that there was no factual basis for concluding that there had been an interference with the right to respect for private and family life in the present case. While it acknowledged, in particular, that the applicants would not have Polish and European citizenship as a result of those decisions, it pointed out that they would still enjoy free movement in Europe. For the Court, they had not put forward any claims of hardship they had suffered as a result of the decisions, either before the Court or the domestic authorities. In particular, the parent-child link in this case, although not recognised by the Polish authorities, was recognised in the State where the applicants resided. Legal recognition in the United States had meant that the applicants had not been left in a legal vacuum both as to their citizenship and as to the recognition of the legal parent-child relationship with their biological father.

A.L. v. France (no. 13344/20)

7 April 2022[2]

This case concerned the compatibility with the right to respect for private life of the domestic courts' refusal to legally establish the applicant's paternity *vis-à-vis* his biological son – who had been born in the framework of a gestational surrogacy contract in France – after the surrogate mother had entrusted the child to a third couple. The applicant submitted that the dismissal of his application to establish his paternity in respect of his biological son amounted to a disproportionate interference with his right to respect for his private life, lacking any legal basis.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, on account of the French State's failure to honour its duty of exceptional diligence in the particular circumstances of the case. It emphasised, however, that the finding of a violation should not be interpreted as questioning the Court of Appeal's assessment of the child's best interests or its decision to dismiss the applicant's requests, as upheld by the Court of Cassation. In the present case, the Court noted, in particular, that the Court of Appeal, backed up by the Court of Cassation, had duly prioritised the best interests of the child, which it had been careful to characterise in practical terms having regard to the biological reality of the paternity claimed by the applicant. In balancing the applicant's right to respect for his private life, on the one hand, with his son's right to respect for his private and family life, which required compliance with the principle of prioritising the child's best interests, the Court considered that the grounds set out by the domestic courts to justify the impugned

[2]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

interference had been relevant and sufficient for the purposes of Article 8 § 2 of the Convention. Nevertheless, the Court noted that the proceedings had taken a total of six years and about one month, which was incompatible with the requisite duty of exceptional diligence. The child had been about four months old when the case had gone to court, and six-and-a-half years old when the domestic proceedings had ended. In cases involving a relationship between a person and his or her child, the lapse of a considerable amount of time could lead to the legal issue being determined on the basis of a *fait accompli*.

See also, recently:

A.M. v. Norway (no. 30254/18)
24 March 2022[3]

Children's testimony

R.B. v. Estonia (no. 22597/16)
22 June 2021
This case concerned the failure to conduct an effective criminal investigation into the applicant's allegations of sexual abuse by her father. The applicant was about four and a half years old at the relevant time. Her complaint concerned procedural deficiencies in the criminal proceedings as a whole, including the failure of the investigator to inform her of her procedural rights and duties, and the reaction of the Supreme Court to that failure resulting in the exclusion of her testimony and the acquittal of her father on procedural grounds.
The Court held that there had been significant flaws in the domestic authorities' procedural response to the applicant's allegation of rape and sexual abuse by her father, which had not sufficiently taken into account her particular vulnerability and corresponding needs as a young child so as to afford her effective protection as the alleged victim of sexual crimes. Accordingly, without expressing an opinion on the guilt of the accused, the Court concluded that the manner in which the criminal-law mechanisms as a whole had been implemented in the present case, resulting in the disposal of the case on procedural grounds, had been defective to the point of constituting a **violation of** the respondent State's positive obligations under **Articles 3** (prohibition of inhuman or degrading treatment) **and 8** (right to respect for private and family life) of the Convention.
See also: **G.U. v. Turkey (no. 16143/10)**, judgment of 18 November 2016.

Compulsory childhood vaccination

Vavřička and Others v. Czech Republic
8 April 2021 (Grand Chamber)
This case concerned the Czech legislation on compulsory vaccination[4] and its consequences for the applicants who refused to comply with it. The first applicant had been fined for failure to comply with the vaccination duty in relation to his two children. The other applicants had all been denied admission to nursery school for the same reason. The applicants all alleged, in particular, that the various consequences for them of non-compliance with the statutory duty of vaccination had been incompatible with their right to respect for their private life.
The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention in the present case, finding that the measures complained

[3]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention .
[4]. In the Czech Republic there is a general legal duty to vaccinate children against nine diseases that are well known to medical science. Compliance with the duty cannot be physically enforced. Parents who fail to comply, without good reason, can be fined. Non-vaccinated children are not accepted in nursery schools (an exception is made for those who cannot be vaccinated for health reasons).

of by the applicants, assessed in the context of the national system, had been in a reasonable relationship of proportionality to the legitimate aims pursued by the respondent State (to protect against diseases which could pose a serious risk to health) through the vaccination duty. The Court clarified that, ultimately, the issue to be determined was not whether a different, less prescriptive policy might have been adopted, as had been done in some other European States. Rather, it was whether, in striking the particular balance that they did, the Czech authorities had exceeded their wide margin of appreciation in this area. The Court concluded that the impugned measures could be regarded as being "necessary in a democratic society". The Court noted, in particular, that in the Czech Republic the vaccination duty was strongly supported by the relevant medical authorities. It could be said to represent the national authorities' answer to the pressing social need to protect individual and public health against the diseases in question and to guard against any downward trend in the rate of vaccination among children. The judgment also emphasised that in all decisions concerning children, their best interests must be of paramount importance. With regard to immunisation, the objective had to be that every child was protected against serious diseases, through vaccination or by virtue of herd immunity. The Czech health policy could therefore be said to be consistent with the best interests of the children who were its focus. The Court further noted that the vaccination duty concerned nine diseases against which vaccination was considered effective and safe by the scientific community, as was the tenth vaccination, which was given to children with particular health indications.

Family reunification rights

Sen v. the Netherlands

21 December 2001

The applicants are a couple of Turkish nationals and their daughter, who had been born in Turkey in 1983 and who her mother left in her aunt's custody when she joined her husband in the Netherlands in 1986. The parents complained of an infringement of their right to respect for their family life, on account of the rejection of their application for a residence permit for their daughter, a decision which prevented her from joining them in the Netherlands. They had two other children, who were born in 1990 and 1994 respectively in the Netherlands and have always lived there with their parents.

Being required to determine whether the Dutch authorities had a positive obligation to authorise the third applicant to live with her parents in the Netherlands, having regard, among other things, to her young age when the application was made, the Court noted that she had spent her whole life in Turkey and had strong links with the linguistic and cultural environment of her country in which she still had relatives. However, there was a major obstacle to the rest of the family's return to Turkey. The first two applicants had settled as a couple in the Netherlands, where they had been legally resident for many years, and two of their three children had always lived in the Netherlands and went to school there. Concluding that the Netherlands had failed to strike a fair balance between the applicants' interest and their own interest in controlling immigration, the Court held that there had been a **violation of Article 8** (right to respect for family life) of the Convention.

See also: **Tuquabo-Tekle and Others v. the Netherlands**, judgment of 1 December 2005.

Osman v. Denmark

14 June 2011

At the age of fifteen the applicant, a Somali national who had been living with her parents and siblings in Denmark since the age of seven, was sent against her will to a refugee camp in Kenya by her father to take care of her paternal grandmother. Two years later, when still a minor, she applied to be reunited with her family in Denmark, but her application was turned down by Danish immigration on the grounds that her

residence permit had lapsed as she had been absent from Denmark for more than twelve consecutive months. She was not entitled to a new residence permit as, following a change in the law that had been introduced to deter immigrant parents from sending their adolescent children to their countries of origin to receive a more traditional upbringing, only children below the age of fifteen could apply for family reunification.
The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding in particular that the applicant could be considered a settled migrant who had lawfully spent all or the major part of her childhood and youth in the host country so that very serious reasons would be required to justify the refusal to renew her residence permit. Although the aim pursued by the law on which that refusal was based was legitimate – discouraging immigrant parents from sending their children to their countries of origin to be "re-educated" in a manner their parents considered more consistent with their ethnic origins – the children's right to respect for private and family life could not be ignored. In the circumstances of the case, it could not be said that the applicant's interests had been sufficiently taken into account or balanced fairly against the State's interest in controlling immigration.

Berisha v. Switzerland

30 July 2013
This case concerned the Swiss authorities' refusal to grant residence permits to the applicants' three children, who were born in Kosovo and entered Switzerland illegally, and the authorities' decision to expel the children to Kosovo.
The Court held that there had been **no violation of Article 8** (right to respect of family life) of the Convention, considering in particular that the applicants were living in Switzerland because of their conscious decision to settle there rather than in Kosovo, and that their three children had not lived in Switzerland for long enough to have completely lost their ties with their country of birth, where they grew up and were educated for many years. Moreover the children still had family ties in Kosovo, the older two children, 17 and 19 years old, were of an age that they could be supported at a distance, and there was nothing to prevent the applicants traveling to, or staying with the youngest child, 10 years old, in Kosovo to safeguard her best interests as a child. Also taking into account the at times untruthful conduct of the applicants in the domestic proceedings, the Court concluded that the Swiss authorities had not overstepped their margin of appreciation under Article 8 of the Convention in refusing to grant residence permits to their children.

Mugenzi v. France, Tanda-Muzinga v. France and Senigo Longue and Others v. France

10 July 2014
These cases concerned the difficulties encountered by the applicants – who were either granted refugee status or lawfully residing in France – in obtaining visas for their children so that their families could be reunited. The applicants alleged that the refusal by the consular authorities to issue visas to their children for the purpose of family reunification had infringed their right to respect for their family life.
The Court observed in particular that the procedure for examining applications for family reunification had to contain a number of elements, having regard to the applicants' refugee status on the one hand and the best interests of the children on the other, so that their interests as guaranteed by Article 8 (right to respect for private and family life) of the Convention from the point of view of procedural requirements were safeguarded.
In all three cases, the Court held that there had been a **violation of Article 8** of the Convention. Since the national authorities had not given due consideration to the applicants' specific circumstances, it concluded that the family reunification procedure had not offered the requisite guarantees of flexibility, promptness and effectiveness to ensure compliance with their right to respect for their family life. For that reason, the French State had not struck a fair balance between the applicants' interests on the one hand, and its own interest in controlling immigration on the other.

See also, raising similar questions: **Ly v. France**, decision on the admissibility of 17 June 2014 (the Court declared the application in question inadmissible as manifestly ill-founded, considering that the decision-making process, taken as a whole, had enabled the applicant to be sufficiently involved to ensure his interests were defended).

I.A.A. and Others v. the United Kingdom (application no. 25960/13)

31 March 2016

This case concerned the complaint by five Somali nationals, the applicants, about the UK authorities' refusal to grant them entry into the United Kingdom to be reunited with their mother. The applicants' mother had joined her second husband in the UK in 2004 and the applicants were left in the care of their mother's sister in Somalia. They moved in 2006 to Ethiopia where the applicants had been living ever since.

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that, in refusing the application to join their mother, the national courts had struck a fair balance between the applicants' interest in developing a family life in the UK and the State's interest in controlling immigration. While the applicants' situation was certainly unenviable, they were no longer young children (they are currently 21, 20, 19, 14 and 13) and had grown up in the cultural and linguistic environment of their country of origin before living together as a family unit in Ethiopia for the last nine years. Indeed, they had never been to the UK and had not lived together with their mother for more than 11 years. As concerned the applicants' mother, who had apparently made a conscious decision to leave her children in Somalia in order to join her new husband in the UK, there was no evidence to suggest that there would be any insurmountable obstacles to her relocating either to Ethiopia or to Somalia.

Parental authority, child custody and access rights

N.Ts.v. Georgia (no. 71776/12)

2 February 2016

This case concerned proceedings for the return of three young boys – who had been living with their maternal family since their mother's death – to their father. The first applicant maintained in particular that the national authorities had failed to thoroughly assess the best interests of her nephews and that the proceedings had been procedurally flawed.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the boys had not been adequately represented before the domestic courts, in particular as the functions and powers of the domestic authority designated to represent them had not been clearly defined and the courts had not considered hearing the oldest of the boys in person. Moreover, the courts had made an inadequate assessment of the boys' best interests, which did not take their emotional state of mind into consideration.

V.D. and Others v. Russia (no. 72931/10)

9 April 2019

This case concerned a child, who was cared for by a foster mother, the first applicant in the case, for nine years and was then returned to his biological parents. The foster mother and her remaining children complained about the Russian courts' decisions to return the child to his parents, to terminate the first applicant's guardianship rights and to deny them all access to the child.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention owing to the order by the domestic courts to remove the child from his foster mother and return him to his biological parents and a **violation of Article 8** of the Convention because of the decision to deny the foster family any subsequent contact with the child. It found in particular that the domestic courts had weighed up all the necessary factors when deciding to return the child to his parents, such as whether the measure had been in his best interests. However, the courts had denied the foster family any subsequent contact with the child, who had

formed close ties with the first applicant and her remaining children. In this regard, the Court noted that the courts' decision had been based solely on an application of Russia's legislation on contact rights, which was inflexible and did not take account of varying family situations. The domestic courts had therefore not carried out the required assessment of the individual circumstances of the case.

Right to know one's origins and actions to establish a legal parent-child relationship

Mikulić v. Croatia

7 February 2002

This case concerned a child born out of wedlock who, together with her mother, filed a paternity suit. The applicant complained that Croatian law did not oblige men against whom paternity suits were brought to comply with court orders to undergo DNA tests, and that the failure of the domestic courts to decide her paternity claim had left her uncertain as to her personal identity. She also complained about the length of the proceedings and the lack of an effective remedy to speed the process up.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It observed in particular that, in determining an application to have paternity established, the courts were required to have regard to the basic principle of the child's interests. In the present case, it found that the procedure available did not strike a fair balance between the right of the applicant to have her uncertainty as to her personal identity eliminated without unnecessary delay and that of her supposed father not to undergo DNA tests. Accordingly, the inefficiency of the courts had left the applicant in a state of prolonged uncertainty as to her personal identity. The Court further held that there had been a **violation of Articles 6 § 1** (right to a fair hearing within a reasonable time) and a **violation of Article 13** (right to an effective remedy) of the Convention.

See also, among others: **Gaskin v. the United Kingdom**, judgment of 7 July 1989; **Ebru and Tayfun Engin Çolak v. Turkey**, judgment of 30 May 2006; **Phinikaridou v. Cyprus**, judgment of 20 December 2007; **Kalacheva v. Russia**, judgment of 7 May 2009; **Grönmark v. Finland** and **Backlund v. Finland**, judgments of 6 July 2010; **Pascaud v. France**, judgment of 16 June 2011; **Laakso v. Finland**, judgment of 15 January 2013; and **Röman v. Finland**, judgment of 29 January 2013; **Konstantinidis v. Greece**, judgment of 3 April 2014; **Călin and Others v. Romania**, judgment of 19 July 2016.

Odièvre v. France

13 February 2003 (Grand Chamber)

The applicant was abandoned by her natural mother at birth and left with the Health and Social Security Department. Her mother requested that her identity be kept secret from the applicant, who was placed in State care and later adopted under a full adoption order. The applicant subsequently tried to find out the identity of her natural parents and brothers. Her request was rejected because she had been born under a special procedure which allowed mothers to remain anonymous. The applicant complained that she had been unable to obtain details identifying her natural family and said that her inability to do so was highly damaging to her as it deprived her of the chance of reconstituting her life history. She further submitted that the French rules on confidentiality governing birth amounted to discrimination on the ground of birth.

In its Grand Chamber judgment, the Court noted that birth, and in particular the circumstances in which a child was born, formed part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention. In the instant case, it held that there had been **no violation of Article 8** (right to respect for private life), observing in particular that the applicant had been given access to non-identifying information about her mother and natural family that enabled her to trace some of her

roots, while ensuring the protection of third-party interests. In addition, recent legislation enacted in 2002 enabled confidentiality to be waived and set up a special body to facilitate searches for information about biological origins. The applicant could now use that legislation to request disclosure of her mother's identity, subject to the latter's consent being obtained to ensure that the mother's need for protection and the applicant's legitimate request were fairly reconciled. The French legislation thus sought to strike a balance and to ensure sufficient proportion between the competing interests. The Court further held that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** of the Convention, finding that the applicant had suffered no discrimination with regard to her filiation, as she had parental ties with her adoptive parents and a prospective interest in their property and estate and, furthermore, could not claim that her situation with regard to her natural mother was comparable to that of children who enjoyed established parental ties with their natural mother.

Jäggi v. Switzerland

13 July 2006

The applicant was not allowed to have DNA tests performed on the body of a deceased man whom he believed to be his biological father. He was therefore unable to establish paternity.

The Court held that there had been a **violation Article 8** (right to respect for private life) of the Convention, on account of the fact that it had been impossible for the applicant to obtain a DNA analysis of the mortal remains of his putative biological father. It observed in particular that the DNA test was not particularly intrusive, the family had cited no philosophical or religious objections and, if the applicant had not renewed the lease on the deceased man's tomb, his body would already have been exhumed.

A. M. M. v. Romania (no. 2151/10)

14 February 2012

This case concerned proceedings to establish paternity of a minor who was born in 2001 outside marriage and who has a number of disabilities. He had been registered in his birth certificate as having a father of unknown identity. Before the European Court, the applicant was first represented by his mother and subsequently, since his mother suffered from a serious disability, by his maternal grandmother.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the domestic courts did not strike a fair balance between the child's right to have his interests safeguarded in the proceedings and the right of his putative father not to undergo a paternity test or take part in the proceedings.

Godelli v. Italy

25 September 2012

This case concerned the confidentiality of information concerning a child's birth and the inability of a person abandoned by her mother to find out about her origins. The applicant maintained that she had suffered severe damage as a result of not knowing her personal history, having been unable to trace any of her roots while ensuring the protection of third-party interests.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, considering in particular that a fair balance had not been struck between the interests at stake since the Italian legislation, in cases where the mother had opted not to disclose her identity, did not allow a child who had not been formally recognised at birth and was subsequently adopted to request either non-identifying information about his or her origins or the disclosure of the birth mother's identity with the latter's consent.

Canonne v. France

2 June 2015 (decision on the admissibility)

In this case, the applicant complained about the fact that the domestic courts had inferred his paternity of a young woman from his refusal to submit to the genetic tests ordered by them. He emphasised in particular that under French law individuals who were the respondents in paternity actions were obliged to submit to a DNA test in order to establish that they were not the fathers. He alleged a breach of the principle of the inviolability of the human body which, in his view, prohibited any enforcement of genetic tests in civil cases.

The Court declared **inadmissible** as manifestly ill-founded the applicant's complaints under Article 8 (right to respect for private and family life) of the Convention. It found that the domestic courts had not exceeded the room for manoeuvre ("wide margin of appreciation") available to them when they took into account the applicant's refusal to submit to court-ordered genetic testing and declared him the father of the young woman, and in giving priority to the latter's right to respect for private life over that of the applicant.

Mandet v. France

14 January 2016

This case concerned the quashing of the formal recognition of paternity made by the mother's husband at the request of the child's biological father. The applicants – the mother, her husband and the child – complained about the quashing of the recognition of paternity and about the annulation of the child's legitimation. In particular, they considered these measures to be disproportionate, having regard to the best interests of the child which, they submitted, required that the legal parent-child relationship, established for several years, be maintained, and that his emotional stability be preserved.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It noted in particular that the reasoning in the French courts' decisions showed that the child's best interests had been duly placed at the heart of their considerations. In taking this approach, they had found that, although the child considered that his mother's husband was his father, his interests lay primarily in knowing the truth about his origins. These decisions did not amount to unduly favouring the biological father's interests over those of the child, but in holding that the interests of the child and of the biological father partly overlapped. It was also to be noted that, having conferred parental responsibility to the mother, the French courts' decisions had not prevented the child from continuing to live as part of the Mandet family, in accordance with his wishes.

Lavanchy v. Switzerland

19 October 2021

This case concerned the Swiss courts' refusal to allow an exception to the time-limit laid down by domestic law (one year from the date of reaching the age of majority) for bringing an action to establish a legal parent-child relationship, and the consequent dismissal of the applicant's action seeking to have the relationship with her biological father recorded in the civil-status register. The applicant complained of the fact that the Swiss authorities had not acknowledged the existence of a "valid reason" for not complying with the time-limit, and alleged a breach of her right to respect for her private life on that account.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the delay on the applicant's part in bringing proceedings to establish a legal parent-child relationship, as noted by the domestic courts, could not be regarded as justifiable for the purposes of the Court's case-law. Hence, the Swiss courts had not failed in their obligation to strike a fair balance between the interests at stake. The Court noted, in particular, that the Swiss courts' decisions had been carefully reasoned, taking the Court's case-law into account.

In particular, the courts had identified several points during the applicant's life when she could have consulted the details concerning her parentage in the civil-status register and sought information about the steps to be taken, even after expiry of the time-limit. Those considerations led the courts to conclude that there had been no justification for the applicant's inactivity over a 31-year period.

Pending applications

Gauvin-Fournis v. France (no. 21424/16)

Application communicated to the French Government on 5 June 2018

Silliau v. France (no. 45728/17)

Application communicated to the French Government on 5 June 2018

A. and B. v. France (no. 12482/21)

Application communicated to the French Government on 21 June 2021

Sex education in State schools

A.R. and L.R. v. Switzerland (no. 22338/15)

19 December 2017 (decision on the admissibility)

This case concerned the refusal by a Basle primary school to grant the first applicant's request that her daughter (the second applicant), then aged seven and about to move up to the second year of primary school, be exempted from sex education lessons. Both applicants, who stated that they were not against sex education as such in State schools but were merely calling into question its usefulness at the kindergarten and early primary school stages, alleged that there had been a violation of the first applicant's right to respect for her private and family life. They also argued that the second applicant had been subjected to an unjustified interference with the exercise of her right to respect for her private life.

As regards the applicants' victim status, the Court began by finding that, under Article 34 (right of individual application) of the Convention, the application was manifestly ill-founded in respect of the second applicant, who had never actually attended sex education classes before the end of her second year at primary school. The Court also declared **inadmissible**, as being manifestly ill-founded, the first applicant's complaints under Article 8 (right to respect for private and family life) of the Convention, finding that the Swiss authorities had not overstepped the room for manoeuvre ("margin of appreciation") accorded to them by the Convention. The Court noted in particular that one of the aims of sex education was the prevention of sexual violence and exploitation, which posed a real threat to the physical and mental health of children and against which they had to be protected at all ages. It also stressed that one of the objectives of State education was to prepare children for social realities, and this tended to justify the sexual education of very young children attending kindergarten or primary school. The Court thus found that school sex education, as practised in the canton of Basel-Urban, pursued legitimate aims. As to the proportionality of the refusal to grant exemption from such classes, the Court observed in particular that the national authorities had recognised the paramount importance of the parents' right to provide for the sexual education of their children. Moreover, sex education at a kindergarten and in the first years of primary school was complementary in nature and not systematic; the teachers merely had to "react to the children's questions and actions".

Freedom of thought, conscience and religion (Article 9)

Dogru v. France and Kervanci v. France

4 December 2008

The applicants, both Muslims, were enrolled in the first year of a state secondary school in 1998-1999. On numerous occasions they attended physical education classes wearing

their headscarves and refused to take them off, despite repeated requests to do so by their teacher. The school's discipline committee decided to expel them from school for breaching the duty of assiduity by failing to participate actively in those classes, a decision that was upheld by the courts.
The Court held that there had been **no violation of Article 9** (freedom of religion) of the Convention in both cases, finding in particular that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety was not unreasonable. It accepted that the penalty imposed was the consequence of the applicants' refusal to comply with the rules applicable on the school premises – of which they had been properly informed – and not of their religious convictions, as they alleged.

Aktas v. France, Bayrak v. France, Gamaleddyn v. France, Ghazal v. France, J. Singh v. France and R. Singh v. France

30 June 2009 (decisions on the admissibility)
These applications concerned the expulsion of six pupils from school for wearing conspicuous symbols of religious affiliation. They were enrolled in various state schools for the year 2004-2005. On the first day of school, the girls, who are Muslims, arrived wearing a headscarf or kerchief. The boys were wearing a "keski", an under-turban worn by Sikhs. As they refused to remove the offending headwear, they were denied access to the classroom and, after a period of dialogue with the families, expelled from school for failure to comply with the Education Code. Before the Court, they complained of the ban on headwear imposed by their schools, relying in particular on Article 9 of the Convention.
The Court declared the applications **inadmissible** (manifestly ill-founded), holding in particular that the interference with the pupils' freedom to manifest their religion was prescribed by law and pursued the legitimate aim of protecting the rights and freedoms of others and of public order. It further underlined the State's role as a neutral organiser of the exercise of various religions, faiths and beliefs. As to the punishment of definitive expulsion, it was not disproportionate to the aims pursued as the pupils still had the possibility of continuing their schooling by correspondence courses.

Grzelak v. Poland

15 June 2010
The first two applicants, who were declared agnostics, were the parents of the third applicant. In conformity with the wishes of his parents, the latter did not attend religious instruction during his schooling. His parents systematically requested the school authorities to organise a class in ethics for him. However, no such class was provided throughout his entire schooling at primary and secondary level because there were not enough pupils interested. His school reports and certificates contained a straight line instead of a mark for "religion/ethics".
The Court declared the application **inadmissible** (incompatible *ratione personae*) with respect to the parents and held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 9** (freedom of religion) of the Convention with respect to their child, finding in particular that the absence of a mark for "religion/ethics" on his school certificates throughout the entire period of his schooling had amounted to his unwarranted stigmatisation, in breach of his right not to manifest his religion or convictions.

Perovy v. Russia

20 October 2020
This case concerned the Russian Orthodox rite of blessing in a classroom. The applicants in the case were a married couple (the first and second applicants) and their son (the third applicant) who were not members of the Russian Orthodox Church. They all alleged that the son had been forced to participate in the rite when starting his new school year at the age of seven, while the parents, who had not been informed about the ceremony,

complained that their right to ensure their son's education in conformity with their own religious convictions had not been respected.
The Court held that there had been **no violation of** the third applicant's rights under **Article 9** (freedom of religion) of the Convention, and **no violation of** the first two applicants' rights under **Article 2** (right to education) **of Protocol No. 1** to the Convention. It found, in particular, that the ceremony had been a minor one-off event, limited in scope and duration, without any intention of indoctrination. Indeed, it had, according to the domestic authorities, essentially been an error of assessment by the school teacher and had immediately been rectified through specific decisions and sanctions. The Court also found that the third applicant had neither been forced to participate in the manifestation of the beliefs of another Christian denomination nor discouraged from adherence to his own beliefs. While being a witness to the Orthodox rite of blessing could have aroused some feelings of disagreement in him, that should be seen in the broader context of the open-mindedness and tolerance required in a democratic society of competing religious groups.

Freedom of expression (Article 10)

Cyprus v. Turkey

10 May 2001 (Grand Chamber)
In this case, which related to the situation that has existed in northern Cyprus since the conduct of military operations there by Turkey in July and August 1974 and the continuing division of the territory of Cyprus, Cyprus alleged, among other things, a violation of Article 10 (freedom of expression) of the Convention, as regards the Karpas Greek Cypriots, because of the excessive censorship of school-books.
The Court held that there had been a violation of A**rticle 10** (freedom of expression) of the Convention in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school had been subject to excessive measures of censorship.

Prohibition of discrimination (Article 14)

Affiliation- and inheritance-related rights

Marckx v. Belgium

13 June 1979
An unmarried Belgian mother complained that she and her daughter were denied rights accorded to married mothers and their children: among other things, she had to recognise her child (or bring legal proceedings) to establish affiliation (married mothers could rely on the birth certificate); recognition restricted her ability to bequeath property to her child and did not create a legal bond between the child and mother's family, her grandmother and aunt. Only by marrying and then adopting her own daughter (or going through a legitimation process) would she have ensured that she had the same rights as a legitimate child.
The Court held in particular that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention taken alone, and a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 8**, regarding both applicants, concerning the establishment of the second applicant's maternal affiliation, the lack of a legal bond with her mother's family and her inheritance rights and her mother's freedom to choose how to dispose of her property. A bill to erase differences in treatment between children of married and unmarried parents was going through the Belgian Parliament at the time of the judgment.

Inze v. Austria

28 October 1987

The applicant was not legally entitled to inherit his mother's farm when she died intestate because he was born out of wedlock. Although he had worked on the farm until he was 23, his younger half-brother inherited the entire farm. By a subsequent judicial settlement, the applicant ultimately obtained a piece of land which had been promised to him by his mother during her lifetime.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 1 of Protocol No. 1** (right to the peaceful enjoyment of one's possessions) to the Convention. Having recalled that the Convention is a living instrument, to be interpreted in the light of present-day conditions, and that the question of equality between children born in and children born out of wedlock as regards their civil rights is today given importance in the member States of the Council of Europe, it found in particular that very weighty reasons would accordingly have to be advanced before a difference of treatment on the ground of birth out of wedlock could be regarded as compatible with the Convention.

Mazurek v. France

1 February 2000

The applicant, born of an adulterous relationship, had his entitlement to inherit reduced by half because a legitimated child also had a claim to their mother's estate, according to the law in force at that time (1990). He complained in particular of an infringement of his right to the peaceful enjoyment of his possessions.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 1 of Protocol No. 1** (right to the peaceful enjoyment of one's possessions) to the Convention. With regard to the situation in the other member States of the Council of Europe, it noted in particular, contrary to the French Government's assertions, a clear trend towards the abolition of discrimination in relation to adulterine children. The Court could not disregard such developments in its interpretation – which was necessarily evolutive – of the relevant provisions of the Convention. The Court further found in the present case that there was no good reason for discrimination based on adulterine birth. In any event, the adulterine child could not be reproached with events which were not his fault. Yet because the applicant was the child of an adulterous union he had been penalised as regards the division of the estate. The Court therefore concluded that there had been no reasonable relationship of proportionality between the means employed and the aim pursued.

See also: **Merger and Cros v. France**, judgment of 22 December 2004.

Camp and Bourimi v. the Netherlands

3 October 2000

The first applicant and her baby son (the second applicant) had to move out of their family home after the first applicant's partner died intestate, before marrying her and recognising the child (as had been his stated intention). Under Dutch law at the time the deceased's parents and siblings inherited his estate. They then moved into his house. The child was later declared legitimate, but as the decision was not retroactive, he was not made his father's heir.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for family life) of the Convention with respect to the second applicant. It observed that the child, who had not obtained legally-recognised family ties with his father until he had been declared legitimate two years after his birth, had been unable to inherit from his father unlike children who did have such ties either because they were born in wedlock or had been recognised by their father. This had undoubtedly constituted a difference in treatment between persons in similar situations, based on birth. According to the Court's case-law, very weighty reasons need to be put forward before a difference in treatment on the ground of birth out of wedlock can be regarded as compatible with the Convention. The

Court observed in this respect that there had been no conscious decision on the part of the deceased not to recognise the child the first applicant was carrying. On the contrary, he had intended to marry her and the child had been declared legitimate precisely because his untimely death had precluded that marriage. The Court could therefore not accept the Dutch Government's arguments as to how the deceased might have prevented his son's present predicament and considered the child's exclusion from his father's inheritance disproportionate.

Pla and Puncernau v. Andorra

13 July 2004

The first applicant, an adopted child, was disinherited and his mother, the second applicant, consequently lost her right to the life tenancy of the family estate after the Andorran courts interpreted a clause in a will – stipulating that the heir must be born of a "legitimate and canonical marriage" – as referring only to biological children.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It noted that the first applicant's parents had a "legitimate and canonical marriage" and there was nothing in the will in question to suggest that adopted children were excluded. The domestic courts' decision had amounted to "judicial deprivation of an adopted child's inheritance rights" which was "blatantly inconsistent with the prohibition of discrimination" (paragraph 59 of the judgment).

Brauer v. Germany

28 May 2009

The applicant was unable to inherit from her father who had recognised her under a law affecting children born outside marriage before 1 July 1949. The equal inheritance rights available under the law of the former German Democratic Republic (where she had lived for much of her life) did not apply because her father had lived in the Federal Republic of Germany when Germany was unified. The applicant complained that, following her father's death, her exclusion from any entitlement to his estate had amounted to discriminatory treatment and had been wholly disproportionate.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It could not find any ground on which such discrimination based on birth outside marriage could be justified today, particularly as the applicant's exclusion from any statutory entitlement to inherit penalised her to an even greater extent than the applicants in other similar cases brought before it.

Fabris v. France

7 February 2013 (Grand Chamber)

The applicant was born in 1943 of a liaison between his father and a married woman who was already the mother of two children born of her marriage. At the age of 40, he was judicially declared the latter's "illegitimate" child. Following his mother's death in 1994, he sought an abatement of the *inter vivos* division, claiming a reserved portion of the estate equal to that of the donees, namely, his mother's legitimate children. In a judgment of September 2004, the *tribunal de grande instance* declared the action brought by the applicant admissible and upheld his claim on the merits. Following an appeal by the legitimate children, the court of appeal set aside the lower court's judgment. The applicant unsuccessfully appealed on points of law. Before the Court, the applicant complained that he had been unable to benefit from a law introduced in 2001 granting children "born of adultery" identical inheritance rights to those of legitimate children, passed following delivery of the Court's judgment in *Mazurek v. France* of 1 February 2000 (see above).

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 1** (protection of property) **of Protocol No. 1** to the Convention. It found in particular that the legitimate aim of protecting the inheritance rights of the applicant's half-brother and half-sister did not

outweigh the applicant's claim to a share of his mother's estate and that the difference of treatment in his regard was discriminatory, as it had no objective and reasonable justification[5].

See also: **Quilichini v. France**, judgment of 14 March 2019.

Mitzinger v. Germany

9 February 2017

The applicant in this case complained that she could not assert her inheritance rights after her father's death in 2009, as she had been born out of wedlock and before a cut-off point provided for by legislation in force at the time. Notably, children born outside marriage before 1 July 1949 were excluded from any statutory entitlement to inherit and from the right to financial compensation.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It found that the aims pursued by the applicant's difference in treatment, namely the preservation of legal certainty and the protection of the deceased and his family, had been legitimate. However, the Court was not satisfied that excluding children born out of wedlock before a certain cut-off point provided for by legislation had been a proportionate means to achieving the aims sought to be achieved. Decisive for that conclusion was the fact that the applicant's father had recognised her. Furthermore, she had regularly visited him and his wife. The latter's awareness of the applicant's existence, as well as of the fact that the legislation allowed children born inside marriage and outside marriage after the cut-off date to inherit, had therefore to have had a bearing on her expectations to her husband's estate. In any case, the Court noted, European case-law and national legislative reforms had shown a clear tendency towards eliminating all discrimination regarding the inheritance rights of children born outside marriage.

Citizenship

Genovese v. Malta

11 October 2011

The applicant was born out of wedlock of a British mother and a Maltese father. After the latter's paternity had been established judicially, the applicant's mother filed a request for her son to be granted Maltese citizenship. Her application was rejected on the basis that Maltese citizenship could not be granted to an illegitimate child whose mother was not Maltese.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private life) of the Convention. It noted in particular that the 1975 European Convention on the Legal Status of Children Born out of Wedlock was in force in more than 20 European countries and reiterated that very weighty reasons would have had to be advanced to justify an arbitrary difference in treatment on the ground of birth. The applicant was in an analogous situation to other children with a father of Maltese nationality and a mother of foreign nationality. The only distinguishing factor, which had rendered him ineligible to acquire citizenship, was the fact that he had been born out of wedlock. The Court was not convinced by the Maltese Government's argument that children born in wedlock had a link with their parents resulting from their parents' marriage, which did not exist in cases of children born out of wedlock. It was precisely a distinction in treatment based on such a link which Article 14 of the Convention prohibited, unless it was otherwise objectively justified. Furthermore, the Court could not accept the argument that, while the mother was always certain, a father was not. In the applicant's case, his father was

[5]. See also, with regard to the same case, the Grand Chamber judgment of 28 June 2013 on the question of just satisfaction. In this judgment, the Court took formal note of the friendly settlement reached between the French Government and the applicant and decided to strike the remainder of the case out of its list of cases, pursuant to Article 39 of the Convention.

known and was registered in his birth certificate, yet the distinction arising from the Citizenship Act had persisted. Accordingly, no reasonable or objective grounds had been given to justify that difference in treatment.

Education

Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (Belgian Linguistic Case)

23 July 1968

The applicants, parents of more than 800 Francophone children, living in certain (mostly Dutch-speaking) parts of Belgium, complained that their children were denied access to an education in French.

The Court found that, denying certain children access to the French-language schools with a special status in the six communes on the outskirts of Brussels because their parents lived outside those communes was in **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to education) of Protocol No. 1 to the Convention. However, the Court also held that the Convention did not guarantee a child the right to state or state-subsidised education in the language of her/his parents.

D.H. and Others v. the Czech Republic

13 November 2007 (Grand Chamber)

This case concerned 18 Roma children, all Czech nationals, who were placed in schools for children with special needs, including those with a mental or social handicap, from 1996 to 1999. The applicants claimed that a two-tier educational system was in place in which the segregation of Roma children into such schools – which followed a simplified curriculum – was quasi-automatic.

The Court noted that, at the relevant time, the majority of children in special schools in the Czech Republic were of Roma origin. Roma children of average/above average intellect were often placed in those schools on the basis of psychological tests which were not adapted to people of their ethnic origin. The Court concluded that the law at that time had a disproportionately prejudicial effect on Roma children, in **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to education) **of Protocol No. 1** to the Convention.

Oršuš and Others v. Croatia

16 March 2010 (Grand Chamber)

This case concerned fifteen Croatians national of Roma origin who complained that they had been victims of racial discrimination during their school years in that they had been segregated into Roma-only classes and consequently suffered educational, psychological and emotional damage.

Even though the present case differed from *D.H. and Others v. the Czech Republic* (see above) in that it had not been a general policy in both schools to automatically place Roma pupils in separate classes, it was common ground that a number of European States encountered serious difficulties in providing adequate schooling for Roma children. In the instant case, the Court observed that only Roma children had been placed in the special classes in the schools concerned. The Croatian Government attributed the separation to the pupils' lack of proficiency in Croatian; however, the tests determining their placement in such classes did not focus specifically on language skills, the educational programme subsequently followed did not target language problems and the children's progress was not clearly monitored. The placement of the applicants in Roma-only classes had therefore been unjustified, in **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to education) **of Protocol No. 1** to the Convention.

See also: **Sampanis and Others v. Greece**, judgment of 5 June 2008; **Horvàth and Vadàzi v. Hungary**, decision on the admissibility of 9 November 2010; **Sampani and**

Others v. Greece, judgment of 11 December 2012; **Horváth et Kiss c. Hongrie**, judgment of 29 January 2013; **Lavida and Others v. Greece**, judgment of 28 May 2013; and the factsheet on **"Roma and Travellers"**.

Ádám and Others v. Romania

13 October 2020

The applicants, ethnic Hungarians, undertook their education in their mother tongue. In order to receive their baccalaureate (school-leaving) qualification they had to sit exams to test their Romanian and their Hungarian, having to take two more exams than ethnic Romanians. They complained about discrimination against them as members of the Hungarian minority in the taking of final school exams — they had to take more exams than ethnic Romanians (two Hungarian tests) over the same number of days, and the Romanian exams had been difficult for them as non-native speakers.

The Court held that there had been **no violation of Article 1** (general prohibition on discrimination) of **Protocol No. 12** to the Convention, finding that neither the content of the curriculum nor the scheduling of the exams had caused a violation of the applicants' rights. It noted in particular that the importance for members of a national minority to study the official language of the State and the corresponding need to assess their command of it in the baccalaureate was not called into question in the case. Nor was it its role to decide on what subjects should be tested or in what order, which came within States' discretion ("margin of appreciation"). Furthermore, the extra tests the applicants had had to take had been a result of their own choice to study in their mother tongue.

X and Others v. Albania

31 May 2022[6]

The applicants, Albanian nationals of Roma and Egyptian ethnic origin forming different households, complained of discrimination and segregation in their children's education owing to the over-representation of Egyptian and Roma pupils in the "Naim Frashëri" elementary school in Korça which their children attended. They submitted that they had complained to the authorities concerning that situation and that the Commissioner for the Protection from Discrimination had subsequently ordered that the Ministry of Education and Sport take "immediate measures to improve the situation and change the ratio" between Roma/Egyptian and other pupils attending the school". The applicants alleged that the situation has not been resolved.

The Court held that there had been a **violation of Article 1** (general prohibition of discrimination) **of Protocol No. 12** to the Convention in the present case, finding that the State had failed to implement desegregating measures. It recalled in particular that it had already found a violation of the prohibition of discrimination in a similar context in *Lavida and Others v. Greece* (see above). It concluded that likewise, in the instance case, the delays and the non-implementation of appropriate desegregating measures could not be considered as having had an objective and reasonable justification. Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further noted that Albania had to take measures to end the discrimination of Roma and Egyptian pupils of the "Naim Frashëri" school as ordered by the Commissioner's decision.

Surname

León Madrid v. Spain

26 October 2021

This case concerned the applicant's request to reverse the order of the surnames under which her minor daughter (born in 2005) was registered. At the relevant time Spanish law provided that in the event of disagreement between the parents, the child would bear the father's surname followed by that of the mother. The applicant argued that this regulation was discriminatory.

[6]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private life) of the Convention, finding that the reasons given by the Spanish Government had not been sufficiently objective and reasonable in order to justify the difference in treatment imposed on the applicant. In particular, the automatic nature of the application of the law at the relevant time – which had prevented the domestic courts from taking account of the particular circumstances of the case at hand – could not, in the Court's view, be validly justified under the Convention. While the rule that the paternal surname should come first, in cases where the parents disagreed, could prove necessary in practice and was not necessarily incompatible with the Convention, the inability to obtain a derogation had been excessively stringent and discriminatory against women. In addition, while placing the paternal surname first could serve the purpose of legal certainty, the same purpose could be served by having the maternal surname in that position.

Protection of property (Article 1 of Protocol No. 1 to the Convention)

S.L. and J.L. v. Croatia (no. 13712/11)

7 May 2015

This case concerned a deal to swap a seaside villa for a less valuable flat. The Social Welfare Centre had to give its consent to the deal as the owners of the villa – the two applicants – were minors. The Social Welfare Centre agreed to the proposed swap without rigorously examining the particular circumstances of the case or the family. The lawyer acting on behalf of the children's parents also happened to be the son-in-law of the original owner of the flat. Before the Court, the applicants complained that the Croatian State, through the Social Welfare Centre, had failed to properly protect their interests as the owners of a villa which was of significantly greater value than the flat they had been given in exchange.

The central question in this case was whether the State took the best interests of the children into account in accepting the property swap. As minors their interests were supposed to be safeguarded by the State, in particular through the Social Welfare Centre and it was incumbent on the civil courts to examine the allegations concerning the swap agreement which raised the issue of compliance with the constitutional obligation of the State to protect children. The Court held that in the applicants' case there had been a **violation of Article 1** (protection of property) **of Protocol 1** to the Convention, finding that the domestic authorities had failed to take the necessary measures to safeguard the proprietary interests of the children in the real estate swap agreement or to give them a reasonable opportunity to effectively challenge the agreement.

Right to education (Article 2 of Protocol No. 1 to the Convention)

Timishev v. Russia

13 December 2005

The applicant's children, aged seven and nine, were excluded from a school they had attended for two years because their father, a Chechen, was not registered as a resident of the city (Nalchik, in the Kabardino-Balkaria Republic of Russia) where they lived and no longer had a migrant's card, which he had been obliged to surrender in exchange for compensation for property he had lost in Chechnya.

The Court observed that the applicant's children had been refused admission to the school which they had attended for the previous two years. The Russian Government had not contested the submission that the true reason for the refusal had been that the applicant had surrendered his migrant's card and had thereby forfeited his registration

as a resident in the town of Nalchik. The Government had confirmed however that Russian law did not allow children's right to education to be made conditional on the registration of their parents' residence. The applicant's children were therefore denied the right to education provided for by domestic law. As Russian law did not allow children's access to education to be made conditional on the registration of their parent's place of residence, the Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention.

Folgerø and Others v. Norway

29 June 2007 (Grand Chamber)

In 1997 the Norwegian primary school curriculum was changed, with two separate subjects – Christianity and philosophy of life – being replaced by a single subject covering Christianity, religion and philosophy, known as KRL. Members of the Norwegian Humanist Association, the applicants attempted unsuccessfully to have their children entirely exempted from attending KRL. Before the Court, they complained in particular that the authorities' refusal to grant them full exemption prevented them from ensuring that their children received an education in conformity with their religious and philosophical convictions.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention. It found in particular that the curriculum of KRL gave preponderant weight to Christianity by stating that the object of primary and lower secondary education was to give pupils a Christian and moral upbringing. The option of having children exempted from certain parts of the curriculum was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life, and the potential for conflict was likely to deter them from making such requests. At the same time, the Court pointed out that the intention behind the introduction of the new subject that by teaching Christianity, other religions and philosophies together, it would be possible to ensure an open and inclusive school environment, was in principle consistent with the principles of pluralism and objectivity embodied in Article 2 of Protocol No. 1.

Hasan and Eylem Zengin v. Turkey

9 October 2007

Pointing out that his family followed the Alevist branch of Islam (an unorthodox minority branch of Islam), the applicant in 2001 requested for his daughter to be exempted from attending classes in religious culture and ethics at the State school in Istanbul where she was a pupil. His requests were dismissed, lastly on appeal before the Supreme Administrative Court. The applicants complained, in particular, of the way in which religious culture and ethics were taught at the State school, namely from a perspective which praised the Sunni interpretation of the Islamic faith and tradition and without providing detailed information about other religions.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention. Having examined the Turkish Ministry of Education's guidelines for lessons in religious culture and ethics and school textbooks, it found in particular that the syllabus gave greater priority to knowledge of Islam than to that of other religions and philosophies and provided specific instruction in the major principles of the Muslim faith, including its cultural rites. While it was possible for Christian or Jewish children to be exempted from religious culture and ethics lessons, the lessons were compulsory for Muslim children, including those following the Alevist branch.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further concluded that the violation found originated in a problem related to implementation of the syllabus for religious instruction in Turkey and the absence of appropriate methods for ensuring respect for parents' convictions. In consequence, it considered that bringing the Turkish educational system and domestic legislation into conformity with Article 2 of Protocol No. 1 to the Convention would represent an appropriate form of compensation.

Ali v. the United Kingdom

11 January 2011

The applicant was excluded from school during a police investigation into a fire at his school, because he had been in the vicinity at the relevant time. He was offered alternative schooling and, after the criminal proceedings against him were discontinued, his parents were invited to a meeting with the school to discuss his reintegration. They failed to attend and also delayed deciding on whether they wanted him to return to the school. His place was given to another child.

The Court noted that the right to education under the Convention comprised access to an educational institution as well as the right to obtain, in conformity with the rules in each State, official recognition of the studies completed. Any restriction imposed on it had to be foreseeable for those concerned and pursue a legitimate aim. At the same time, the right to education did not necessarily entail the right of access to a particular educational institution and it did not in principle exclude disciplinary measures such as suspension or expulsion in order to comply with internal rules. In the instant case, the Court found that the exclusion of the applicant had not amounted to a denial of the right to education. In particular, it had been the result of an ongoing criminal investigation and as such had pursued a legitimate aim. It had also been done in accordance with the 1998 Act and had thus been foreseeable. In addition, the applicant had only been excluded temporarily, until the termination of the criminal investigation into the fire. His parents had been invited to a meeting with a view to facilitating his reintegration, yet they had not attended. Had they done so, their son's reintegration would have been likely. Further, the applicant had been offered alternative education during the exclusion period, but did not take up the offer. Accordingly, the Court was satisfied that his exclusion had been proportionate to the legitimate aim pursued and had not interfered with his right to education. There had, therefore, been **no violation of Article 2** (right to education) **of Protocol No. 1** to the Convention.

Catan and Others v. the Republic of Moldova and Russia

19 October 2012 (Grand Chamber)

This case concerned the complaint by children and parents from the Moldovan community in Transdniestria about the effects of a language policy adopted in 1992 and 1994 by the separatist regime forbidding the use of the Latin alphabet in schools and the subsequent measures taken to enforce the policy. Those measures included the forcible eviction of pupils and teachers from Moldovan/Romanian-language schools as well as forcing the schools to close down and reopen in different premises.

The Court held that there had been **no violation of Article 2** (right to education) of **Protocol No. 1** to the Convention in respect of ***the Republic of Moldova*** and a **violation of Article 2 of Protocol No. 1** in respect of the ***Russian Federation***. It found in particular that the separatist regime could not survive without Russia's continued military, economic and political support and that the closure of the schools therefore fell within Russia's jurisdiction under the Convention. The Republic of Moldova, on the other hand, had not only refrained from supporting the regime but had made considerable efforts to support the applicants themselves by paying for the rent and refurbishment of the new school premises as well as for all equipment, teachers' salaries and transport costs.

Mansur Yalçın and Others v. Turkey

16 September 2014

In this case, the applicants, who are adherents of the Alevi faith, an unorthodox minority branch of Islam, complained that the content of the compulsory classes in religion and ethics in schools was based on the Sunni understanding of Islam.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention with respect to three of the applicants, whose children were at secondary school at the relevant time. It observed in particular that in the field

of religious instruction, the Turkish education system was still inadequately equipped to ensure respect for parents' convictions.
Under **Article 46** (binding force and execution of judgments) of the Convention, observing that the violation of Article 2 of Protocol No. 1 found had arisen out of a structural problem already identified in the case of *Hasan and Eylem Zengin* (see above), the Court held that Turkey was to implement appropriate measures to remedy the situation without delay, in particular by introducing a system whereby pupils could be exempted from religion and ethics classes without their parents having to disclose their own religious or philosophical convictions.

Memlika v. Greece

6 October 2015

This case concerned the exclusion of children aged 7 and 11 from school after they were wrongly diagnosed with leprosy. The applicants – the two children in question and their parents – alleged in particular that the exclusion of the children from school had infringed their right to education.
The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention. It accepted that the children's exclusion from school had pursued the legitimate aim of preventing any risk of contamination. Nevertheless, it considered that the delay in setting up the panel responsible for deciding on the children's return to school had not been proportionate to the legitimate aim pursued. As the children had been prevented from attending classes for over three months, the Court therefore found that their exclusion had breached their right to education.

C.P. v. the United Kingdom (no. 300/11)

6 September 2016 (decision on the admissibility)

The applicant, a minor, complained that his temporary exclusion from school from 7 February 2007 to 20 April 2007 had breached his right to education.
The Court declared the application **inadmissible** pursuant to Article 35 (admissibility criteria) of the Convention, finding that, in the circumstances of the case, the applicant could not be said to have suffered a significant disadvantage in the sense of important adverse consequences.

Dupin v. France

18 December 2018 (decision on the admissibility)

The applicant, the mother of an autistic child, complained in particular that the domestic authorities had refused to allow her child to attend a mainstream school. She also argued that the State had failed to fulfil its positive obligation to take the necessary measures for disabled children, and that the lack of education in itself constituted discrimination. Lastly, she complained that the specific resources earmarked by the State for autistic children were insufficient.
The Court held that the complaint that there had been a violation of the right to education of the applicant's child was **inadmissible** as manifestly ill-founded, finding that the refusal to admit the child to a mainstream school did not constitute a failure by the State to fulfil its obligations under Article 2 (right to education) of Protocol No. 1 or a systematic negation of his right to education on account of his disability. It observed in particular that the national authorities had regarded the child's condition as an obstacle to his education in a mainstream setting. After weighing in the balance the level of his disability and the benefit he could derive from access to inclusive education, they had opted for an education that was tailored to his needs, in a specialised setting. The Court also noted that this strategy had been satisfactory for the child's father, who had custody of the child. Moreover, since 2013, the child had received effective educational support within an institution for special health and educational needs, and this form of schooling was conducive to his personal development. The Court further considered that the complaint that the French authorities had failed to take the necessary measures to cater for disabled children was also manifestly ill-founded, for lack of evidence. The Court lastly observed that the complaint about the alleged insufficiency of the

specific resources earmarked by the State for autistic children was inadmissible for non-exhaustion of domestic remedies.

Iovcev and Others v. the Republic of Moldova and Russia

17 September 2019 (Committee judgment)

This case concerned complaints about pressure that had been brought to bear in 2013-14 by the authorities of the self-proclaimed "Moldavian Republic of Transdniestria" (the "MRT"), on four Romanian/Moldovan-speaking schools in that Region which used the Latin alphabet. Among the applicants, five pupils and three parents of pupils complained in particular that measures had been taken to harass and intimidate them because of their choice to pursue their or their children's education at the schools concerned.

The Court held that **Russia** had **breached** a number of Convention rights including, in respect of the five pupils and three parents of pupils, the right to education protected by **Article 2 of Protocol No. 1** to the Convention. In particular it found that Russia had exercised effective control over the "MRT" during the period in question and that, in view of its continuing military, economic and political support for the "MRT", without which the latter could not have survived, the responsibility of Russia was engaged under the Convention on account of the interference with the applicants' rights. The Court found, by contrast, that the Republic of Moldova had not failed, in respect of the complaints raised by the applicants, to fulfil its positive obligations.

Papageorgiou and Others v. Greece

31 October 2019

This case concerned compulsory religious education in Greek schools. The applicant parents complained that if they had wanted to have their daughters exempted from religious education, they would have had to declare that they were not Orthodox Christians. Furthermore, they complained that the school principal would have had to verify whether their declarations were true and that such declarations were then kept in the school archives.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** (right to education) to the Convention, **interpreted in the light of Article 9** (freedom of thought, conscience, and religion) of the Convention. It stressed in particular that the authorities did not have the right to oblige individuals to reveal their beliefs. However, the system in Greece for exempting children from religious education classes required parents to submit a solemn declaration saying that their children were not Orthodox Christians. That requirement placed an undue burden on parents to disclose information from which it could be inferred that they and their children held, or did not hold, a specific religious belief. Moreover, such a system could even deter parents from making an exemption request, especially in a case such as that of the applicants, who lived on small islands where the great majority of the population owed allegiance to a particular religion and the risk of stigmatisation was much higher.

Texts and documents

See, in particular:

- **Council of Europe Internet page** concerning "Children's rights"
- **Handbook on European law relating to the rights of the child**, European Union Agency for Fundamental Rights and Council of Europe, February 2022

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This Factsheet does not bind the Court and is not exhaustive

Accompanied migrant minors in detention

See also the factsheets on "Unaccompanied migrant minors in detention" and "Migrants in detention".

"[T]he child's extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of illegal immigrant (…). ... [C]hildren have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status. The [European] Court [of Human Rights] would, moreover, observe that the Convention on the Rights of the Child encourages States to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents (…)." (judgment Popov v. France of 19 January 2012, § 91).

"A measure of confinement must … be proportionate to the aim pursued by the authorities, namely the enforcement of a removal decision ... It can be seen from the Court's case-law that, where families are concerned, the authorities must, in assessing proportionality, take account of the child's best interests. In this connection … there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (…).[T]he protection of the child's best interests involves both keeping the family together, as far as possible, and considering alternatives so that the detention of minors is only a measure of last resort ..." (judgment Popov v. France of 19 January 2012, §§ 140-141).

Right to life

M.H. and Croatia (no° 15670/18)

18 November 2021

The applicants were a family of 14 Afghan citizens (a man, his two wives, and their 11 children). The case concerned the death of the first and second applicants' six-year-old daughter, who was hit by a train after allegedly having been denied the opportunity to seek asylum by the Croatian authorities and ordered to return to Serbia via the tracks. It also concerned the applicants' detention while seeking international protection.

The Court held, in particular, that there had been: a **violation of Article 2** (right to life) of the Convention, on account of the ineffective investigation into the child's death; a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, in respect of the child applicants, who had been kept in an immigration centre with prison-type elements for more than two months in material conditions adequate for the adult applicants; and a **violation of Article 5 § 1** (right to liberty and security) of the Convention, in respect of all the applicants, on account of the failure to demonstrate required assessment, vigilance and expedition in proceedings in order to limit the asylum seekers' family detention as far as possible. The Court also held that there had been a **violation of Article 4** (prohibition of collective expulsions of aliens) **of Protocol No. 4** to the Convention, on account of the summary return of six of the children and their mother by the Croatian police outside official border crossing and without prior notification of the Serbian authorities.

Conditions of detention

Muskhadzhiyeva and Others v. Belgium (see also below, under "Deprivation of liberty")

19 January 2010

In October 2006, having fled from Grozny (Chechnya), the applicants – a mother and her four children (respectively aged seven months, three and a half years, five and seven years at the material time), Russian nationals of Chechen origin – arrived in Belgium, where they sought asylum. As they had spent some time in Poland, the Polish authorities agreed to take charge of them, by virtue of the "Dublin II" Regulation[1]. The Belgian authorities accordingly issued a decision refusing them permission to stay in Belgium and ordering them to leave the country. In January 2007 they were placed in a closed transit centre run by the Aliens Office near Brussels airport, where aliens (single adults or families) were held pending their removal from the country.

In view of the young age of the children, the duration of their detention and their state of health as attested by medical certificates during their detention, the European Court of Human Rights found that the conditions in which the children had been held in the closed transit centre had attained the minimum level of severity required to constitute a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. The Court recalled in particular that the extreme vulnerability of a child was a paramount consideration and took precedence over the status as an illegal alien. It was true that in the present case the four children had not been separated from their mother, but that did not suffice to exempt the authorities from their obligation to protect the children. They had been held for over a month in a closed centre which was not designed to house children, as confirmed by several reports cited by the Court. The Court also referred to the concern expressed by independent doctors about the children's state of health. The Court held, however, that there had been **no violation of Article 3** of the Convention in respect of the first applicant, noting in particular that she had not been separated from her children and that their constant presence must have somewhat appeased the distress and frustration she must have felt at being unable to protect them against the conditions of their detention, so that it did not reach the level of severity required to constitute inhuman treatment.

Kanagaratnam v. Belgium (see also below, under "Deprivation of liberty")

13 December 2011

This case concerned the detention for almost four months in a closed transit centre, pending their removal, of a mother and her three children (respectively aged 13, 11 and eight years at the material time), Sri Lankan nationals of Tamil origin asylum seekers who had arrived in Belgium in January 2009.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the children. It noted in particular that the circumstances of the instant case were comparable with those of the case of *Muskhadzhiyeva and Others v. Belgium* (see above). The Court also reiterated that the particular vulnerability of the children, who were already traumatised even before their arrival in Belgium as a result of circumstances relating to the civil war in their home country and their flight, had also been recognised by the Belgian authorities since they had finally granted the family refugee status. That vulnerability had increased on their arrival in Belgium, following their arrest at the border and placement in a closed centre pending their removal. Therefore, despite the fact that the children had been accompanied by their mother, the Court considered that by placing them in a closed centre, the Belgian authorities had exposed them to feelings of anxiety and inferiority and had, in full knowledge of the facts, risked compromising their development. Consequently, the situation experienced by the children had amounted to inhuman and

[1]. The "Dublin system" aims at determining which EU Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national. See also the factsheet on "'Dublin' cases".

degrading treatment. The Court found, however, that there had been **no violation of Article 3** of the Convention in respect of the children's mother. While acknowledging that the dilution of her parental role, her reduced power to control her children's lives and her powerlessness to end her children's suffering had certainly exposed her to extreme uncertainty and helplessness, it did not have sufficient grounds for departing from the approach adopted in the case of *Muskhadzhiyeva and Others*.

Popov v. France (see also below, under "Deprivation of liberty" and "Right to respect for family life")

19 January 2012

The applicants, a married couple from Kazakhstan accompanied by their two children, applied for asylum in France, but their application was rejected, as were their applications for residence permits. In August 2007, the applicants and their children, then aged five months and three years, were arrested at their home and taken into police custody and the following day they were transferred to Charles-de-Gaulle airport to be flown back to Kazakhstan. The flight was cancelled, however, and the applicants and their children were then taken to the Rouen-Oissel administrative detention centre, which was authorised to accommodate families.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention had occurred with respect to the detention conditions of the children. It observed in particular that, while families were separated from other detainees at the Rouen-Oissel centre, the only beds available were iron-frame beds for adults, which were dangerous for children. Nor were there any play areas or activities for children, and the automatic doors to the rooms were dangerous for them. The Court further noted that the Council of Europe Commissioner for Human Rights and the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT) had also pointed out that the stress, insecurity, and hostile atmosphere in these centres was bad for young children, in contradiction with international child protection principles according to which the authorities must do everything in their power to avoid detaining children for lengthy periods. Two weeks' detention, while not in itself excessive, could seem like a very long time for children living in an environment ill-suited to their age. The conditions in which the applicants' children had been obliged to live with their parents in a situation of particular vulnerability heightened by their detention were bound to cause them distress and have serious psychological repercussions. The Court found, however, that there had been **no violation of Article 3** of the Convention in so far as detention conditions of the parents were concerned, noting in particular that the fact that they had not been separated from their children during their detention must have alleviated the feeling of helplessness, distress and frustration their stay at the administrative detention centre must have caused them.

Mahmundi and Others v. Greece

31 July 2012

This case concerned the detention in the Pagani detention centre on the island of Lesbos of a married couple from Afghanistan, accompanied by their children aged two and six. The woman was eight months pregnant and gave birth in Lesbos Hospital while in detention. Her sister was accompanied by her 14-year-old twins. In August 2009, after being rescued by the maritime police from a boat that was starting to sink off the island of Lesbos, they were taken into detention pending deportation.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicants' conditions of detention had amounted to inhuman and degrading treatment. It noted in particular that, following its visit to Pagani in September 2009, the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT) had found that the centre was filthy beyond description, and deplored the fact that there had been no improvement in the situation despite the "abominable" conditions of detention it had criticised in its 2008 report. The Court also stressed, in particular, the absence of any specific supervision of the applicants despite their particular status as minors and a

pregnant woman. In this case the Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention, noting in particular that it had been materially impossible for the applicants to take any action before the courts to complain of their conditions of detention in Pagani.

A.B. and Others v. France (n° 11593/12) (see also below, under "Deprivation of liberty" and "Right to respect for family life")

12 July 2016

This case concerned the administrative detention of a child, then aged four, for eighteen days, in the context of a deportation procedure against his parents, Armenian nationals. The applicants alleged in particular that the placement in administrative detention of their son in the Toulouse-Cornebarrieu administrative detention centre had amounted to treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the applicant's child, finding that, given his age and the duration and conditions of his detention in the administrative detention centre, the French authorities had subjected him to treatment which had exceeded the threshold of seriousness required by Article 3. The Court noted in particular that, where the parents were placed in administrative detention, the children were *de facto* deprived of liberty. It acknowledged that this deprivation of liberty, which resulted from the parents' legitimate decision not to entrust them to another person, was not in principle contrary to domestic law. The Court held, however, that the presence in administrative detention of a child who was accompanying his or her parents was only compatible with the European Convention on Human Rights if the domestic authorities established that they had taken this measure of last resort only after having verified, in the specific circumstances, that no other less restrictive measure could be applied. Lastly, the Court observed that the authorities had not taken all the necessary steps to enforce the removal measure as quickly as possible and thus limit the time spend in detention. In the absence of a particular risk of absconding, the administrative detention of eighteen days' duration seemed disproportionate to the aim pursued.

See also the judgments delivered by the Court on the same day in the cases of **A.M. and Others v. France (no. 24587/12)**, **R.C. and V.C. v. France (no. 76491/14)**, **R.K. and Others v. France (no. 68264/14)** and **R.M. and Others v. France (no. 33201/11)**.

S.F. and Others v. Bulgaria (no. 8138/16)

7 December 2017

This case concerned a complaint brought by an Iraqi family about the conditions in which they had been kept in immigration detention for a few days when trying to cross Bulgaria on their way to Western Europe in 2015. The applicants complained in particular about the conditions in which the three minors – then aged 16, 11 and one and a half years – had been kept in the detention facility in Vidin. Submitting a video recording, they alleged in particular that the cell in which they had been held had been extremely run-down. They also maintained that the authorities had failed to provide them with food and drink for the first 24 hours of their custody and that the baby bottle and milk of the youngest child had been taken away upon their arrival at the facility and only given to the mother 19 hours later.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the three children. It noted in particular that the amount of time spent by the applicants in detention – a period of either thirty-two hours or forty-one hours (the exact length of time was disputed by the parties) – was shorter than the periods referred to in the above-mentioned cases. However, the conditions were considerably worse than those in all those cases (including limited access to toilet facilities, failure to provide food and drink and delayed access to the toddler's baby bottle and milk). For the Court, by keeping the three minor applicants

in such conditions, even for a brief period of time, the Bulgarian authorities subjected them to inhuman and degrading treatment. While acknowledging that in recent years the States Parties that sit on the European Union's external borders have had difficulties in coping with the massive influx of migrants, the Court found, however, that it could not be said that at the relevant time Bulgaria was facing an emergency of such proportions that it was practically impossible for its authorities to ensure minimally decent conditions in the short-term holding facilities in which they decided to place minor migrants immediately after their interception and arrest.

M.D. and A.D. v. France (no. 57035/18) (see also below, under "Deprivation of liberty")

22 July 2021

This case concerned the administrative detention of a mother and her four-month-old daughter, both Malian nationals, in the Mesnil-Amelot no. 2 administrative detention centre pending their transfer to Italy, the country responsible for examining their application for asylum.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of both applicants. Having regard, in particular, to the very young age of the child, the reception conditions at the administrative detention centre and the length of the detention (11 days), it found that the competent authorities had subjected the child and her mother to treatment exceeding the level of severity required for Article 3 to apply.

N.B. and Others v. France (no. 49775/20)

31 March 2022[2]

This case concerned the placement in administrative detention for fourteen days of a Georgian couple and their then eight-year-old child, who had entered France unlawfully and whose asylum requests had been rejected. The applicants submitted that their placement in administrative detention had amounted to inhuman or degrading treatment. They also complained that the French authorities had not released them further to the Court's decision to allow their request for interim measures aimed at terminating their administrative detention, pursuant to Rule 39 (interim measures) of the Rules of Court.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the child. It considered, in particular, that the administrative detention of an eight-year-old child under the conditions prevailing at the material time in the administrative detention centre where they had been placed, which had continued for fourteen days, had been excessive in the light of the requirements of Article 3 of the Convention. Given the child's young age, the conditions of detention in the centre and the length of the period of detention, the competent authorities had subjected him to treatment exceeding the severity threshold of Article 3. As regards the parents, on the other hand, the Court stated that it had been unable to conclude, on the basis of the evidence on file, that they had been in a situation that reached the severity threshold to fall foul of Article 3 of the Convention. Moreover, having noted that the interim measure adopted by the Court in November 2020 inviting the Government to terminate the applicants' administrative detention during the proceedings before it had not been enforced, the Court found that in the absence of any justification for such non-enforcement, the French authorities had failed to honour their obligations under Article 34 (right of individual application) of the Convention.

H.M. and Others v. Hungary (no. 38967/17)

2 June 2022[3]

This case concerned the detention of an Iraqi family (a couple and four of their children who were born between 2001 and 2013) in a transit zone at the border between

[2]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.
[3]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

Hungary and Serbia after fleeing Iraq. The applicants complained about the conditions and the unlawfulness of their confinement and the way they had been treated in the transit zone.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in the present case, on account, in particular, of the conditions the mother and children had faced during their four-month-long stay in the transit zone. It also held that there had been a **violation of Article 5 §§ 1** (right to liberty and security) **and 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, because there had been no legal basis for the family's detention, and they had not had any way of having their situation examined speedily by a court.

See also, among others:

G.B. and Others v. Turkey (no. 4633/15)
17 October 2019

M.H. and Croatia (no° 15670/18) (see also above, under "Right to life")
18 November 2021

N.A. and Others v. Hungary (no. 37325/17)
1 February 2022 (Committee) (decision on the admissibility)

Pending applications

A.S. and Others v. Hungary (no. 34883/17)
Application communicated to the Hungarian Government on 10 July 2017
The application concerns the confinement, in conditions which were allegedly inhuman, of an Afghan family (a mother who was eight months pregnant at the material time, her husband and their two underage children) to the Röszke transit zone at the border of Hungary and Serbia during one month, pending the examination of their asylum request.
The Court gave notice of the application to the Hungarian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy) of the Convention.

Deprivation of liberty and challenging the lawfulness of detention

Muskhadzhiyeva and Others v. Belgium (see also above, under "Conditions of detention")
19 January 2010
This case concerned the detention for more than a month of three underage children and their mother in a closed transit centre. They complained in particular that their detention had been unlawful and the remedy against it before the Court of Cassation ineffective, as they had been removed from the country before the court had reached a decision.
The Court noted in particular that the applicants had been in a situation where it was in principle possible under the Convention to place them in detention (the Convention authorises the "lawful arrest and detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition"). That did not mean, however, that their detention was necessarily lawful. In the present case, in so far as the four children had been kept in a closed centre designed for adults and ill-suited to their extreme vulnerability, even though they were accompanied by their mother, the Court found that there had been a **violation of Article 5 § 1** (right to liberty and security) in their respect. The Court saw however no reason, on the other hand, to find the mother's detention in breach of the Convention. She had been lawfully detained with a view to her expulsion from Belgium. The Court therefore held that there had been **no violation of Article 5 § 1** of the Convention in her respect. The Court further held that none of the applicants had been the victim of a **violation of Article 5 § 4** (right to have lawfulness

of detention decided speedily by a court) of the Convention. It was true that the Belgian Court of Cassation had delivered its decision concerning the applicants' request for release after they had been sent back to Poland. Prior to that, however, two courts having *de facto* and *de jure* jurisdiction had examined the request without delay while they were still in Belgium. The Court pointed out that it was sufficient in principle for an appeal to be examined by a single court, on condition that the procedure followed had a judicial character and gave the individual concerned guarantees appropriate to the kind of deprivation of liberty in question.

Kanagaratnam v. Belgium (see also above, under "Conditions of detention")

13 December 2011

This case concerned the detention of a mother and her three underage children for almost four months in a closed centre for illegal aliens pending their removal. They complained in particular that their continued detention had not been in accordance with the law and had been arbitrary.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the three children and their mother, finding that their detention had been unlawful. Concerning the children in particular, the Court considered that by placing them in a closed centre designed for adult illegal aliens, in conditions which were ill-suited to their extreme vulnerability as minors, the Belgian authorities had not sufficiently guaranteed the children's right to their liberty. The fact that the children had been accompanied by their mother was not a reason to depart from that conclusion.

Popov v. France (see also above, under "Conditions of detention", and below, under "Right to respect for family life")

19 January 2012

This case concerned the administrative detention of a couple of asylum-seekers and their two underage children for two weeks pending their removal. They complained in particular that their detention had been unlawful.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the children. It found in particular that, although the children had been placed with their parents in a wing reserved for families, their particular situation had not been taken into account by the French authorities, who had not sought to establish whether any alternative solution, other than administrative detention, could have been envisaged. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention concerning the children. In this respect, it noted in particular that, while the parents had had the possibility to have the lawfulness of their detention examined by the French courts, the children "accompanying" their parents had found themselves in a legal void, unable to avail themselves of such a remedy. In the present case no removal order had been issued against the children that they might have challenged in court. Nor had their administrative detention been ordered, so the courts had not been able to examine the lawfulness of their presence in the administrative detention centre. That being so, they had not enjoyed the protection required by the Convention.

See also: judgments in the cases of **A.B. and Others v. France (no. 11593/12)**, **R.K. and Others v. France** (no. 68264/14) and **R.M. and Others v. France (no. 33201/11)** of 12 July 2016.

A.M. and Others v. France (no. 24587/12) (see also above, under "Conditions of detention", and below, under "Right to respect for family life")

12 July 2016

This case concerned the administrative detention of two underage children who were accompanying their mother in the context of a deportation procedure.

In the present case, the Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the child. It noted in

particular that the option of resorting to a less coercive measure had been dismissed by the prefect on account of the mother's refusal to contact the border police with a view to organising her departure, the absence of identity papers and the uncertain nature of her accommodation. The French authorities had thus effectively sought to establish whether the placement of this family in administrative detention was a measure of last resort for which no alternative was available. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention concerning the child.

See also the judgment delivered by the Court on the same day in the case of **R.C. and V.C. v. France (no. 76491/14)**.

See also, recently: **G.B. and Others v. Turkey (n° 4633/15)**, judgment of 17 October 2019; **Bilalova and Others v. Poland**, judgment of 26 March 2020.

R.R. and Others v. Hungary (no. 36037/17)

2 March 2021

This case concerned the confinement of an asylum-seeking family, including three minor children, in the Röszke transit zone on the border with Serbia in April-August 2017. The applicants complained, in particular, of the fact of and the conditions of their detention in the transit zone, of the lack of a legal remedy to complain of the conditions of detention, and of the lack of judicial review of their detention.

The Court found that the applicants' stay in the transit zone had amounted to a *de facto* deprivation of liberty. It considered that without any formal decision of the authorities and solely by virtue of an overly broad interpretation of a general provision of the law, the applicants' detention could not be considered to have been lawful. Accordingly, it concluded that in the present case there had been no strictly defined statutory basis for the applicants' detention and that there had thus been a **violation of Article 5 § 1** (right to liberty and security) of the Convention. In the absence of any formal decision of the authorities and any proceedings by which the lawfulness of the applicant's detention could have been decided speedily by a court, the Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. Lastly, in view, in particular, of the applicant children's young age, the applicant mother's pregnancy and health situation and the length of the applicants' stay in the conditions in the transit zone, the Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

See also: **M.B.K and Others v. Hungary (no. 73860/17)**, judgment (Committee) of 24 February 2022.

M.D. and A.D. v. France (no. 57035/18) (see also above, under "Conditions of detention")

22 July 2021

This case concerned the administrative detention of a mother and her four-month-old daughter, both Malian nationals, in the Mesnil-Amelot no. 2 administrative detention centre pending their transfer to Italy, the country responsible for examining their application for asylum.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the second applicant, finding that the evidence before it was sufficient to conclude that the domestic authorities had not carried out a proper examination, as required by the legal rules now applicable in France, to satisfy themselves that the initial administrative detention of the mother, accompanied by her infant daughter, and its subsequent extension were measures of last resort which could not be replaced by a less restrictive alternative. The Court also held that there had been a **violation of Article 5 § 4** (right to a speedy review of the lawfulness of detention) of the Convention in respect of the second applicant, finding that she had not had the benefit of a judicial review encompassing all the conditions required for administrative detention to be lawful for the purposes of paragraph 1 of Article 5.

H.M. and Others v. Hungary (no. 38967/17) (see above, under "Conditions of detention")
2 June 2022[4]

See also:

M.H. and Croatia (no° 15670/18) (see also above, under "Right to life")
18 November 2021

Pending application

A.S. and Others v. Hungary (no. 34883/17)
Application communicated to the Hungarian Government on 10 July 2017
See above, under "Conditions of detention".

Right to respect for family life

Popov v. France (See also above, under "Conditions of detention" and "Deprivation of liberty")
19 January 2012
This case concerned the administrative detention of a couple of asylum-seekers and their two children for two weeks pending their removal. The applicants argued in particular that their placement in detention had not been a necessary measure in relation to the aim pursued and that the conditions and duration of their detention had constituted a disproportionate interference with their right to a private and family life.
The Court held that there had been a **violation of article 8** (right to respect for private and family life) of the Convention in respect of the children and their parents. It firstly observed that the interference with the applicants' family life because of their two-week detention at the centre had been in accordance with the French Code governing the entry and residence of foreigners and the right of asylum, and pursued the legitimate aim of combating illegal immigration and preventing crime. Then, referring to the broad consensus, particularly in international law, that the children's interests were paramount in all decisions concerning them, the Court noted that France was one of the only three European countries that systematically had accompanied minors placed in detention. In the present case, as there had been no particular risk of the applicants absconding, their detention had not been justified by any pressing social need, especially considering that their placement in a hotel in August 2007 had posed no problem. Yet the French authorities did not appear to have sought any solution other than detention, or to have done everything in their power to have the removal order enforced as promptly as possible. Lastly, after recalling that, in the case of *Muskhadzhiyeva and Others v. Belgium* (see above, under "Conditions of detention" and "Right to liberty and security"), it had rejected a complaint similar to the applicants', the Court considered, however, considering the above factors and the recent case-law developments concerning "the child's best interests" in the context of the detention of child migrants[5], that the child's best interests called not only for families to be kept together but also for the detention of families with young children to be limited. In the applicants' circumstances, the Court found that two weeks' detention in a closed facility was disproportionate to the aim pursued.
See also: judgments in the cases of **A.B. and Others v. France (no. 11593/12)** and **R.K. and Others v. France (no. 68264/14)** of 12 July 2016; judgment in the case of **Bistieva and Others v. Poland** of 10 April 2018.

A.M. and Others v. France (no. 24587/12) (see also above, under "Conditions of detention" and "Deprivation of liberty")
12 July 2016
This case concerned the administrative detention of two underage children who were accompanying their mother in the context of a deportation procedure.

[4]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.
[5] See Rahimi v. Greece, judgment of 5 April 2011.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in respect of the children and their mother, finding that they had not sustained a disproportionate interference with their right to respect for their family life. It noted in particular that the detention measure pursued the legitimate aim of combating illegal immigration and controlling the entry and residence of foreigners in France. It served, *inter alia*, to protect national security, law and order and the country's economy and to prevent crime. In the present case, the Court considered that the detention, for a total duration of eight days, did not appear disproportionate to the aim pursued.

See also the judgment delivered by the Court on the same day in the case of **R.C. and V.C. v. France (no. 76491/14)**.

Texts and documents

See in particular:

- **Handbook on European law relating to asylum, borders and immigration**, European Union Fundamental Rights Agency / European Court of Human Rights, 2013
- Council of Europe Commissioner for Human Rights **web page** on the thematic work "Migration"
- Special Representative of the Council of Europe Secretary General on migration and refugees **web page**

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Section IV – ICJ Training materials (Fair Project)

The ICJ (International Commission of Jurists) has published a set of training materials on access to justice for migrant children that were developed as part of the FAIR (Fostering Access to Immigrant children's Rights) project. These training modules should help lawyers when representing migrant children to increase their knowledge of the rights of the migrant children, to increase their understanding of the use of international redress mechanisms for violations of human rights of migrant children and give some advice on how to effectively communicate with child clients.

For more information see ICJ website: https://www.icj.org/training-materials-on-access-to-justice-for-migrant-children/

The materials include the following training modules (click on the title to open the full text):

0. Guiding principles and definitions;

I. Access to fair procedures including the right to be heard and to participate in proceedings;

II. Access to justice in detention;

III. Access to justice for economic, social and cultural rights;

IV. Access to justice in the protection of their right to private and family life;

V. Redress through international human rights bodies and mechanisms;

VI. Practical handbook for lawyers when representing a child.

The modules are available in English, Spanish, Greek, Bulgarian, German and Italian.

Section V – ICJ Training materials (Fair plus Project)

The ICJ has published a set of training materials on access to justice for migrants that should serve as a support and background information for judges and lawyers when taking decisions on or defending the rights of migrants and refugees. The materials cover fair asylum procedures and effective remedy, access to justice in detention, access to justice for economic, social and cultural rights, access to justice in the protection of migrants' right to family life and access to justice for migrant children. The FAIR PLUS project (Fostering Access to Immigrant's Rights – Practical training for Lawyers and jUdgeS) was implemented by the ICJ-EI and national partners (Forum for Human Rights in the Czech Republic, Greek Council for Refugees, Immigrant Council of Ireland and Scuola Superiore de Sant'Anna in Italy) in 2018-2021.

You can download the materials here (click on the title to open the full text):

- Module 0-Access to Justice
- Module 1-Fair Asylum Procedures and Effective Remedy
- Module 2-Access to Justice for Migrants in Detention
- Module 3-Access to justice for Economic, Social and Cultural Rights
- Module 4-Access to Justice in the Protection of Migrant's Rights to Family Life
- Module 5-Access to Justice for Migrant Children

FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

MIGRATION: KEY FUNDAMENTAL RIGHTS CONCERNS

1.10.2021 → 31.12.2021

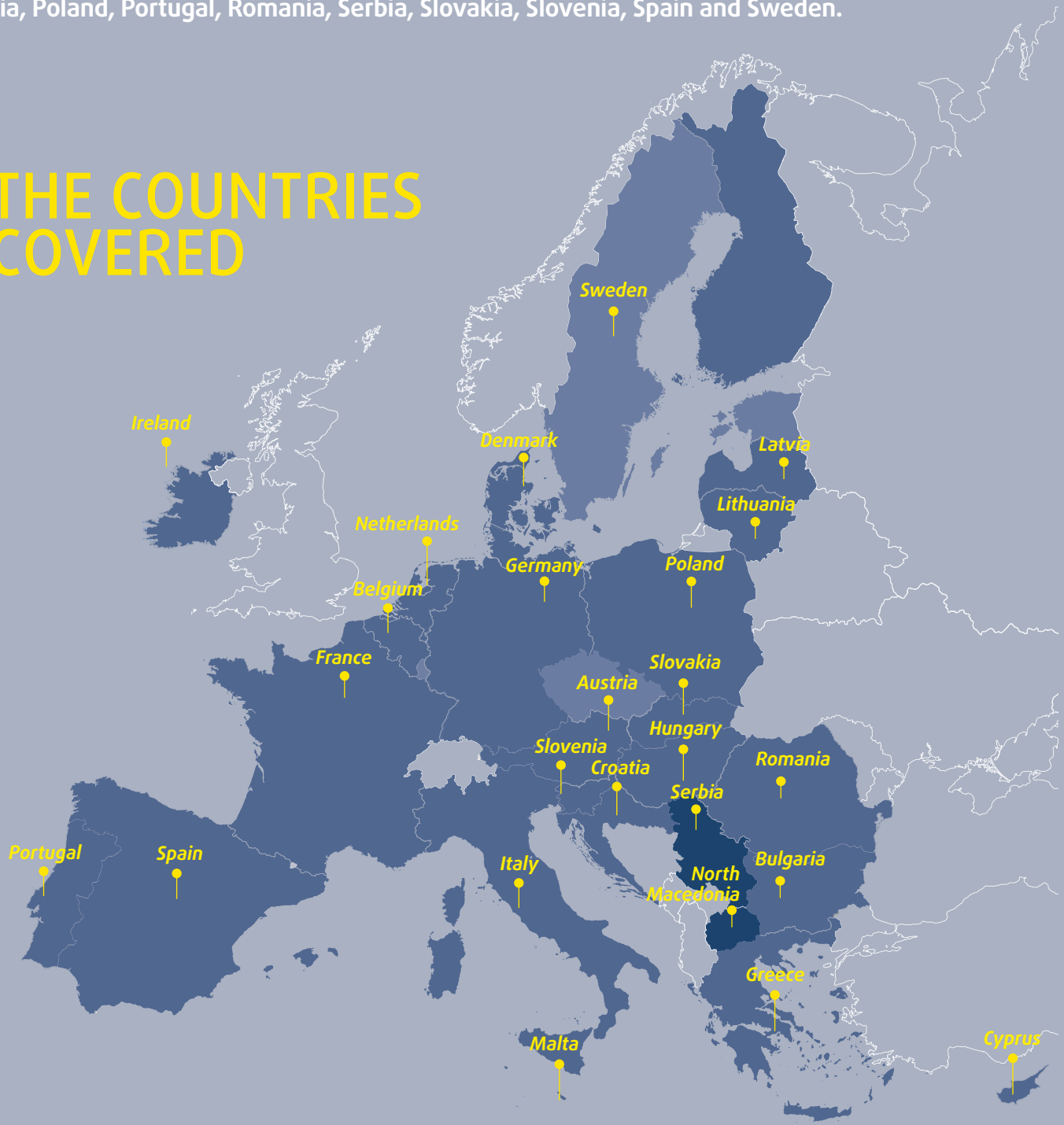
QUARTERLY BULLETIN

Migration | Children | Hate crime | EU Charter of Fundamental Rights

The European Union Agency for Fundamental Rights has been regularly collecting data on asylum and migration since September 2015. This report focuses on the fundamental rights situation of people arriving in Member States and EU candidate countries particularly affected by migration. It addresses fundamental rights concerns between 1 October and 31 December 2021.

The countries covered are Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, North Macedonia, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain and Sweden.

THE COUNTRIES COVERED



Key fundamental rights concerns

Pushbacks and collective expulsions continue to be reported by international organisations, civil society organisations and the media in several EU countries, including **Croatia**, **Cyprus**, **France**, **Greece**, **Hungary**, **Latvia**, **Lithuania**, **Malta**, **North Macedonia**, **Poland**, **Romania**, **Serbia**, **Slovenia** and **Spain**. For more information, see **Risk of *refoulement* and police violence at borders.**

In **Greece**, at least 31 people lost their lives in three different shipwrecks over the course of 4 days and more went missing, according to **the Office of the United Nations High Commissioner for Refugees (UNHCR).** Reports of arbitrary detention and ill-treatment persisted. The lack of access for both recognised refugees and rejected asylum applicants to accommodation, food and basic services remained an issue of concern. For more information, see **Risk of *refoulement* and police violence at borders** and **Reception conditions**.

In **Italy**, the **National Guarantor for the rights of persons detained or deprived of liberty** reported on the inadequate conditions at several facilities used by police authorities to temporarily detain migrants. For more information, see **Reception conditions** and **Detention conditions**.

In **Malta**, allegations persisted concerning delays in search and rescue (SAR) operations, ignored requests from civil society vessels for coordinated rescue operations, and the chartering of tourist boats to detain migrants in Maltese waters. For more information, see **Search and rescue** and **Risk of *refoulement* and police violence at borders**.

In **Cyprus**, overcrowding of camps and very poor reception conditions remained concerns. In addition, the Cypriot authorities requested the European Commission to activate Article 78(3) of the Treaty on the Functioning of the European Union (TFEU) and propose provisional measures to allow Cyprus to deal with a sudden inflow of third-country nationals, including the suspension of new asylum applications until the situation becomes manageable. For more information, see **Search and rescue, Access to asylum procedures** and **Reception conditions**.

In **Hungary**, the scope of application of **the temporary procedural rules on asylum** was again extended, to 31 December 2022. According to these rules, a declaration of intent to apply for asylum can be made only at the Hungarian diplomatic missions in Belgrade and Kiev. Many migrants apprehended in the territory of Hungary were advised of this by the border police. The practice of detaining migrants who enter the country irregularly continued. For more information, see **Access to asylum procedures**.

In ***M.H. and Others* v. *Croatia***, the European Court of Human Rights (ECtHR) found violations of the right to life, the prohibition of inhuman and degrading treatment, the right to security and liberty, the prohibition of collective expulsions and the right to an individual application. The court referred to the periodic data collection carried out by the European Union Agency for Fundamental Rights (FRA) on the migration situation in the EU and its quarterly bulletins on migration as supporting evidence.

The media reported that a woman drowned in the Korana River at the border with Bosnia and Herzegovina and a 10-year-old girl drowned in the River Dragonja at the Croatian–Slovenian border. After a **media investigation** captured footage of pushbacks to Bosnia and Herzegovina, the Ministry of the Interior **confirmed** the involvement of Croatian police officers and **suspended** those filmed pending disciplinary proceedings. Non-governmental organisations (NGOs) continued to report on police violence at borders. For more information, see **Risk of *refoulement* and police violence at borders**.

Note on sources

The evidence presented in this report is based on information available in the public domain (with hyperlinks to the references embedded in the relevant text) or on information provided orally or by email by institutions and other organisations, as indicated in the annex. The EU Agency for Fundamental Rights is not in a position to confirm allegations.

In **Austria**, the number of cases of migrant smuggling detected remained high. In 2021, at least 337 smugglers were arrested. There were reports of up to 25 people crammed for hours into small vans to cross the border, and at least two dead refugees were discovered in a minibus at the Hungarian border. For more information, see **Migrant smuggling**.

In **Slovenia**, the NGO Border Violence Monitoring Network **collected testimonies** from people who had expressed their intention to apply for asylum in Slovenia but were pushed back to Croatia without being given the opportunity to do so. According to these testimonies, they often faced violence in Croatia and further pushbacks, mostly to Bosnia and Herzegovina. For more information, see **Risk of *refoulement* and police violence at borders**.

The **UN Subcommittee on Prevention of Torture** expressed concerns about the detention of children in **Bulgaria** and highlighted the need to ensure humane conditions for all detained migrants. For more information, see **Detention of children**.

In **Romania**, UNHCR and NGOs reported multiple cases of alleged collective expulsions at the border with Serbia and allegations of ill-treatment by the authorities. For more information, see **Risk of *refoulement* and police violence at borders**.

According to **UNHCR**, around 8 000 asylum seekers crossed into **Latvia**, **Lithuania** and **Poland** last year. According to the Lithuanian Border Guard Service, 8 099 migrants were prevented from entering Lithuania between 3 August and 31 December 2021. In Latvia, following the introduction of the **state of emergency** in four territories bordering Belarus on 10 August 2021, **4 475 people had been prevented** from crossing the Latvian–Belarusian border by 9 January 2022. According to the Polish Border Guard, 28 104 people were prevented from entering Poland between October and December. According to **UNHCR**, thousands of migrants were stranded along the border in Belarus as the weather turned cold, and many have died. In Latvia and Poland, NGOs are still not allowed access to border zones and the media are allowed only under restricted conditions. For more information, see **Risk of *refoulement* and police violence at borders**.

In **Portugal**, the Lisbon Court of Appeal confirmed a first-instance judgment that found three inspectors of the Immigration and Borders Service guilty of qualified and serious offences to physical integrity that resulted in the death of a Ukrainian detainee at Lisbon airport's temporary detention centre in March 2020. For more information, see **Law and policy changes**.

In **Spain**, **deaths and disappearances** of migrants at sea continued to rise, with over 4 000 victims in 2021. Allegations of collective expulsions to Morocco have also been made by NGOs. The United Nations Children's Fund (UNICEF) raised serious concerns about the inadequate reception conditions in the Canary Islands, Ceuta and Melilla. For more information, see **Search and rescue**, **Risk of *refoulement* and police violence at borders** and **Reception conditions**.

In **France**, attempts by migrants to reach the United Kingdom by crossing the English Channel (La Manche) persisted. In November, 27 people died in a **shipwreck**. Several **NGOs** reported practices involving racial profiling, police violence and pushbacks at the French–Italian and French–Spanish borders. **Human Rights Watch** and the **Public Defender of Rights** denounced the degrading human rights situation in Calais. For more information, see **Search and rescue**, **Risk of *refoulement* and police violence at borders** and **Reception conditions**.

In **Belgium,** the **Federal Agency for the Reception of Asylum Seekers** announced that the reception facilities in the country had exhausted their capacity, leaving many asylum seekers without a place in a reception facility or the opportunity

to lodge an application for international protection. For more information, see **Reception conditions**.

In **Germany**, the **Federal Police** registered 11 228 irregular migrants from Belarus crossing the German–Polish border in 2021, but the numbers were decreasing towards the end of the year.

In **Sweden**, many Afghan asylum seekers remain in limbo after a 'moratorium' between 23 July and 29 November 2021 on the processing of their asylum applications and return decisions, after the Taliban takeover in August 2021. The suspension of such decisions was based on the absence of reliable country-of-origin information. For more information, see **Law and policy changes**.

In **the Netherlands**, overcrowding and poor reception conditions were reported in reception centres and emergency shelters for Afghan evacuees. For more information, see **Reception conditions.**

Denmark continued to consider parts of Syria safe for return. Between 1 January 2019 and October 2021, the protection status of **376 Syrians** was revoked, but to date they have not been returned. For more information, see **Fundamental rights concerns related to return**.

In **Serbia**, asylum recognition rates remained very low throughout 2021 and allegations of pushbacks from and to neighbouring countries continued. For more information, see **Access to asylum procedures** and **Risk of *refoulement* and police violence at borders.**

Situation at the border

Search and rescue

In **Greece**, at least 31 people lost their lives in three different shipwrecks over the course of 4 days and more went missing, according to **UNHCR.** More than 160 people were rescued by the Greek authorities. Weeks after the shipwrecks, four more bodies, including that of a 3-year-old boy, were found, as **media** reported. According to the same source, as Greece has tightened patrols around the eastern Aegean islands, smugglers are increasingly routing vessels from Turkey towards Italy. This route is much longer and more dangerous.

In **Italy**, the Ordinary Court of Naples issued a judgment against the captain of a private vessel, the *Asso 28* of the Augusta Offshore Company, for returning to Libya more than 100 people rescued at sea in 2018. According to the **Association for Legal Studies on Immigration** (Associazione per gli studi giuridici sull'immigrazione, (ASGI)), this decision could affect policies on cooperation with the Libyan authorities on migration.

In **Malta**, the NGO Alarm Phone reported having notified the authorities of several cases of distress at sea in the Maltese SAR zone, without receiving a response. See **Risk of *refoulement* and police violence at borders**.

In **Cyprus**, 61 people of Syrian origin spotted on a vessel off the south-western coast were escorted by the authorities to Paphos harbour, where they remained for at least 3 days in poor conditions, as UNHCR and **media** reported.

In **Portugal,** 37 people, including four children, were rescued from a small boat in international waters, according to the **Portuguese News Agency**.

In **Spain**, according to the NGO **Caminando Fronteras**, 83 boats attempting to reach Spanish shores in 2021 were reported missing, with 4 404 people on board. In comparison with 2020, deaths increased by more than 100 %, making 2021 the deadliest year so far.

In **France**, the **Ministry of the Interior** and the **Maritime Prefecture of the Channel and the North Sea** reported that migrants continued their attempts to reach the United Kingdom by crossing the Channel in small boats. In a joint statement with representatives of the German, Belgian and Dutch governments, the **French Minister for the Interior** deplored the sinking of a boat that was trying to reach the British coast, causing the deaths of 27 people, including a 16-year-old and a 7-year-old child, in November. The **press** reported that an investigation had been opened into this tragedy. The **Public Defender of Rights** and the **National Consultative Commission on Human Rights** reiterated the urgent need for a fundamental-rights-compliant reception policy. In a joint statement, several **NGOs**, including Médecins du Monde, Amnesty International France and La Cimade, expressed regret that the French and British authorities prioritise security and implement repressive measures that cause migrants to take risks and make widespread use of traffickers.

Risk of *refoulement* and police violence at borders

The Border Violence Monitoring Network **released** information on its **submission to the UN Special Rapporteur on freedom of religion or belief**, referring to testimonies of pushbacks by the police in **Bulgaria**, **Croatia**, **Greece**, **Hungary**, **North Macedonia**, **Romania** and **Slovenia**. Islamophobia continues to underpin violent and illegal border enforcement.

The Italian **ASGI** reported that 11 901 people had been pushed back at the EU's external and internal borders since the beginning of 2021.

IRREGULAR BORDER CROSSINGS IN EUROPE

200,000 ↑
MIGRANTS

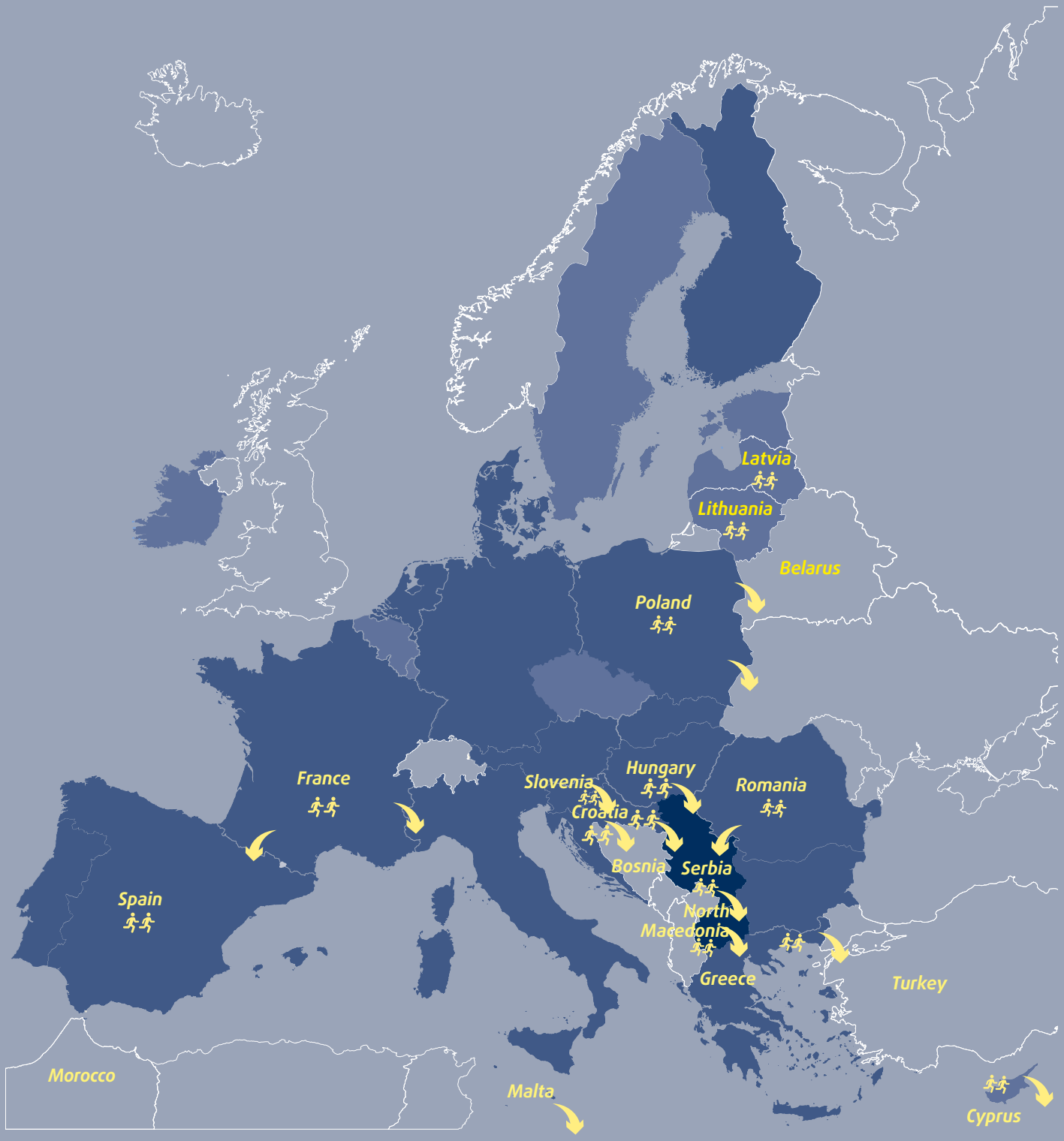
According to preliminary figures collected by **the European Border and Coast Guard Agency (Frontex)**, the total number of irregular border crossings in 2021 was just short of 200 000, the highest number since 2017.

FRA ACTIVITY

FRA regularly collects data on NGO vessels involved in SAR efforts in the Mediterranean. This includes information on any legal proceedings against them and any difficulties disembarking migrants in safe ports. The International Organization for Migration estimates that from January to 10 December 2021 about 1 654 people died or went missing while crossing the Mediterranean Sea to reach Europe to escape war or persecution or to pursue a better life. This is an average of more than four people per day. Deadly incidents have also occurred recently in the English Channel.

For more information, see FRA, ***December 2021 Update – Search and rescue (SAR) operations in the Mediterranean and fundamental rights, 2021.***

REPORTED ALLEGATIONS OF *REFOULEMENT*



NB: Unlawful refusals of entry at airports are not included.
Source: FRA, 2021.

Legal corner

The principle of *non-refoulement* is the core element of refugee protection and is enshrined in international and EU law. Article 33(1) of the 1951 Refugee Convention and the authentic interpretation of Article 3 of the European Convention on Human Rights prohibit returning an individual to a country where they are at a risk of persecution, torture, or inhuman or other degrading treatment or punishment. EU primary law reflects the prohibition of *refoulement* in Article 78(1) of the TFEU and in Articles 18 and 19(2) of the EU Charter of Fundamental Rights.

The prohibition of collective expulsions, under Article 19(1) of the EU Charter of Fundamental Rights and Article 4 of Protocol No 4 to the European Convention on Human Rights, means, according to the **ECtHR**, that any measure compelling aliens, as a group, to leave a country is prohibited, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.

This report uses the non-legal term 'pushback' to refer to a situation where a person is apprehended after an irregular border crossing and summarily returned to a neighbouring country without an assessment of their individual circumstances.

See also FRA and Council of Europe, **Handbook on European law relating to asylum, borders and immigration – Edition 2020**, 2020.

In **Greece**, reports on pushbacks and ill-treatment persisted. **Media** reported on the case of an interpreter working for Frontex who claimed that Greek border guards mistook him for an asylum seeker, assaulted him and sent him to Turkey against his will and without any due procedure. The **Greek Ombudsperson** launched an investigation into this incident following a complaint received through the Frontex complaints mechanism. The NGO **Refugee Support Aegean** claimed that a Syrian national was pushed back to Turkey with other people while a procedure for interim measures was pending before the ECtHR. This Syrian national also claims that men in uniform confiscated their mobile phones, stripped them of their clothes, ill-treated them and held them incommunicado at two detention sites.

In **Malta**, NGO reports of pushbacks at sea and failure to respond to alerts of distress at sea persisted; such incidents affected a total of more than 1 600 people during the reporting period. For example, on 12 October 2021, the NGO Alarm Phone **reported** that the Libyan Coast Guard had intercepted and forced back a rubber boat carrying 70 people, including a baby born on the boat, more than 5 hours after the organisation had reported the boat to be in distress in the Maltese SAR zone to the Maltese authorities. On 24 October 2021, the merchant vessel *Hafina Malacca* **reported** a possible pushback from the Maltese SAR zone of a boat with 60 people on board, including many children. According to Alarm Phone, the authorities were informed 11 hours before that the boat was deflating and taking on water.

On 24 November 2021, Alarm Phone **reported** that the Libyan Coast Guard had opened fire on a boat in distress in the Maltese SAR zone, forcing the 85 people on board to return to Libya. On 25 November 2021, the same NGO **reported** that the Tunisian Navy **claimed** to have launched a rescue operation 24 hours after it had been alerted about a boat in distress with 430 people on board, including three dead, in the Maltese SAR zone. The NGO claimed that it had also notified the authorities about other cases of boats in distress in the Maltese SAR zone without receiving a response, for example on 3 October about a boat with **49 people**, on 3 November about a sinking boat with **350 people** and another boat with **200 people**, on 6 November about a boat with **14 people**, on 9 November about a boat with **48 people**, on 21 November about four boats with more than **200 people**, on 22 December about two boats with **70 people** and on 23 December about a boat with **25 people**.

According to the online media outlet **Newsbook**, on 11 October 2021, the Maltese Finance Minister hailed the decrease in migrant arrivals as a result of the government's talks with Libya, which culminated in a bilateral agreement signed in 2021; he further referred to the all-time high in the number of returns between January and September 2021.

Following her visit to Malta in October, the **Council of Europe Commissioner for Human Rights** stressed that the human rights of those in distress at sea should never be put at risk and reminded the authorities to ensure that their actions do not lead, either directly or indirectly, to returns to Libya, which is not a safe place for disembarkation. In response, according to the ***Malta Independent***, a government spokesperson strongly refuted the claim that Malta had returned migrants to Libya.

In **Cyprus**, pushbacks at land and at sea remain a key fundamental rights concern, as UNHCR reported to FRA. A series of **media reports** on pushbacks at sea led to **parliamentary debates** questioning the legality of such practices. Reacting to these reports, the Cypriot Commissioner for the Rights of the Child **intervened** with the competent ministers regarding pushback practices and violation of children's rights.

In **Hungary**, the **police** stated that during the reporting period they had prevented a total of 12 133 people from entering the country. This included people who were attempting to enter Hungary irregularly (most frequently through the border fences) and were prevented from doing so by the police.

In **Croatia**, deaths at the borders with Bosnia and Herzegovina and with Slovenia, involving a woman drowning in the Korana River and a 10-year-old girl drowning in the River Dragonja, **were reported**.

The authorities **accepted footage** of Croatian police officers beating people and pushing them back to Bosnia and Herzegovina as proof of pushbacks. In one of the videos, a man wearing a balaclava is seen beating several people and pushing them into the Korana River, which marks the Croatian–Bosnian border. Forensic analysis of the footage showed that the uniform worn by these men matches the uniform of the Croatian Intervention Police. According to media **reports**, the three officers were suspended, awaiting further disciplinary proceedings.

The Ombudswoman of the Republic of Croatia called for a thorough investigation of the events and initiated an examination procedure. Members of the European Parliament **requested** that the European Commission initiate infringement procedures against Croatia for violating EU law in the field of the right to international protection and the principle of *non-refoulement* at the EU's external borders.

The Croatian Independent Mechanism for Monitoring the Conduct of Police Officers of the Ministry of the Interior in the Field of Illegal Migration and International Protection published its first **report.**

In **October**, the NGO **Border Violence Monitoring Network** collected 36 testimonies of pushbacks impacting 986 people on the move across the Balkans; in **November** it collected 34 such testimonies, with the pushbacks impacting 1 289 people. The Border Violence Monitoring Network provides detailed accounts by victims and experts on its **searchable database**.

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe **published** the report on its visit to Croatia in December 2020, confirming allegations of physical ill-treatment and other forms of severe ill-treatment of migrants by Croatian police at the border with Bosnia as credible. For the first time since the committee started visiting Croatia in 1998, the report also noted manifest difficulties of cooperation.

In **Austria**, the **Federal Minister for the Interior** firmly denied allegations of 'partial methodical use of illegal pushbacks' at the Austrian southern border in November 2021. As previously reported, the Regional Administrative Court of Styria had **found** (**unofficial English translation**) on 1 July 2021 indications that pushbacks were applied to some extent in Austria. No misconduct on the part of police officers could be ascertained by an internal evaluation, according to the **Federal Minister for the Interior**. The Regional Police Directorate of Styria appealed against the decision of the Regional Administrative Court of Styria to the Administrative Court. The appeal proceeding is currently pending.

In **Slovenia**, the **Border Violence Monitoring Network** reported on testimonies of people who had experienced violence on the part of the authorities and could not access an interpreter before being returned to Croatia. In response to the death of a 10-year-old girl at the Croatian–Slovenian border, the **Slovenian Human Rights Ombudsman** stressed that society must not allow the normalisation of the collective expulsions of persons who use irregular channels to seek international protection and called on the EU to ensure effective access to international protection for all those in need.

In **Romania**, the Border Police reported that almost 75 000 people had been prevented from entering through the border with Serbia in 2021, while **UNHCR Serbia** reported more than 1 000 alleged cases of collective expulsion from Romania to Serbia between November and December 2021. The NGO JRS Romania further informed FRA about 34 incidents of allegations by migrants of ill-treatment under the authorities' custody and pushbacks in 2021. These were communicated for further investigation to the General Inspectorate of Border Police.

In **Poland**, at least 17 people have lost their lives on the Polish–Belarusian border since September 2021, often as a result of hypothermia or exhaustion, according to **media reports**. **Médecins Sans Frontières** withdrew its teams after being repeatedly blocked by the Polish authorities from accessing the border region to assist people living in forests in sub-zero temperatures. According to the **Polish Border Guard**, 28 104 people were prevented from entering Poland between October and December. The number of attempted entries into Poland decreased, as the Polish Border Guard reported to FRA, but the humanitarian crisis persisted, as people spent several days or weeks in the forest without access to basic humanitarian services, food or water. **Human Rights Watch** and the coalition of NGOs and activists **Grupa Granica** reported that Polish officials had pushed back those who had crossed the border. Similar allegations were made by **Amnesty International**. The state of emergency, in force until 30 November 2021, blocked journalists and aid workers from entering the area, according to the **European Council on Refugees and Exiles**. On 30 November, an **amendment** to the Border Protection Act replaced the state of emergency measures, allowing the authorities to prohibit the stay of persons in areas close to the border. The Minister for the Interior applied the new measures to the border zone with Belarus for 3 months. According to the NGO **Helsinki Foundation for Human Rights**, this was a de facto extension of the state of emergency, circumventing constitutional provisions.

In **Lithuania**, media reported that Frontex's Fundamental Rights Office had collected evidence of collective expulsions by Lithuanian border guards. On 21 December, the UN Committee against Torture expressed **concern** about reported incidents of collective expulsion of asylum seekers, including children, without review of the individual situations. The Seimas Ombudsmen's Office **reported** pushbacks to Belarus without checks as to whether or not persons concerned would face torture, inhuman or degrading treatment, or a risk to life or health. The State Border Guard Service reported having prevented the entry of 8 099 migrants between 3 August and 31 December 2021. NGOs' access to the border remains **restricted**, unless they get a special permit issued for exceptional cases; otherwise, media reported, they are **fined** for entering the border zone, as were the NGOs Siena and Médecins Sans Frontières.

In **Latvia**, since the introduction of the **state of emergency** in four territories bordering Belarus on 10 August 2021, **4 475 people** had been prevented from crossing the Latvian–Belarusian border by 9 January 2022. The law introduced a provision allowing border guards to use all means, including physical force, to prevent people from crossing the border in an irregular manner. During the same period, 453 people were detained for irregular border crossing, while 101 people were allowed into the country on humanitarian grounds. In spite of the 2011 memorandum of understanding between UNHCR and the State Border Guard (not publicly available), and the partnership agreement between the human rights NGO Latvian Centre for Human Rights and UNHCR, access to border-crossing points by the NGO remains restricted. Media representatives accompanied by border guards have occasionally been allowed to visit border areas; nevertheless, the visits are closely monitored and reporters have no opportunities to meet migrants or observe people deterred from crossing the border.

In **Spain**, the NGO Jesuit Service for Migrants reported on alleged collective expulsions of people who had swum to Melilla from the Moroccan coast. The **press** reported the case of a Yemeni national who had tried to swim to Melilla but had been intercepted by the police and drowned after alleged ill-treatment by the authorities.

In **France**, the NGOs Amnesty International France, the National Association for Border Assistance to Foreigners and La Cimade **released a statement** on the practices by the authorities at the French–Italian and French–Spanish borders, claiming that they included racial profiling, police violence and pushbacks, and citing the deaths of three Algerian nationals as a result of their efforts to avoid police checks. Furthermore, **ASGI** stated that people from Afghanistan,

Iran and Pakistan had reported pushbacks from France at the northern Italian–French border (at Oulx), as well as arbitrary detention and physical and verbal mistreatment. The association also claimed that in some cases French police had pushed migrants back to Italy, including people who had not yet been registered in any EU country, thus denying them the right to seek asylum at the border.

In **Serbia**, **UNHCR** received reports about 10 199 pushbacks from neighbouring countries (**Bosnia and Herzegovina**, **Croatia**, **Hungary** and **Romania**) between October and December 2021. In November, Syrians made up 51 % of all the people pushed back and Afghans 17 %, according to **UNHCR**. Pushbacks increased significantly during the reporting period, the NGO Humanitarian Center for Integration and Tolerance reported. The organisation collected information on 297 incidents affecting 11 186 people; in the previous reporting period, the number of people who were reportedly pushed back was 6 364. Most people were reportedly pushed back by Hungary (9 022 people), followed by Romania (2 016 people) and Croatia (132 people). During the same period, 62 pushbacks from Serbia to North Macedonia were reported by UNHCR.

In **North Macedonia**, the Ombudsperson and the Macedonian Young Lawyers Association confirmed that the practice of pushbacks on the border with Greece continued. They claimed that during the reporting period 3 667 people were returned to Greece without any formal legal procedure.

Challenges at land borders

In **Hungary**, the police reported that around 30–40 people attempted to enter the country by using forged travel documents in each month of 2021. Criminal proceedings were initiated during the reporting period against a total of 125 people who were suspected of having committed the crime of forging public documents to enter Hungary, mainly from Serbia.

In **Romania**, the **Border Police** reported that the Joint Operation Flexible Operational Activities Land 2021 to prevent and combat irregular migration, involving Frontex and representatives of other EU border authorities, had expanded its area of responsibility in October, to cover the entire border with Serbia.

In **Germany**, the **Federal Police** registered 11 228 irregular entries from Belarus at the German–Polish border in 2021.

Migrant smuggling

In **Austria**, the number of cases of migrant smuggling detected remained high. For example, the **Federal Ministry of the Interior** reported the arrest of 15 suspected human smugglers having allegedly smuggled more than 700 people for a total fee of more than EUR 2.5 million, between EUR 4 000 and EUR 5 000 per person. On another occasion, 25 vehicles containing approximately 200-300 smuggled migrants were detected coming from the Serbian/Hungarian border to Austria. In 2021, at least 337 smugglers had been arrested in Austria by the end of November. The **Federal Ministry of the Interior** increased its efforts to combat irregular migration through targeted checks of lorries and vans, and the use of drones, helicopters and thermal-imaging technology. The ministry reported that often up to 25 people are crammed for hours into small vans to cross the border. According to **media** reports, two migrants were discovered dead in a minibus at the Hungarian border.

In **Lithuania** on 30 December, the media reported that the Border Guard Service had initiated pre-trial investigations into **people smuggling** following reports from the NGOs Siena and Médecins Sans Frontières, which had provided humanitarian aid to people stranded in the forest at the border.

In **Ireland**, the **Criminal Justice (Smuggling of Persons) Act 2021** came into force in December. The legislation reflects the UN Protocol against the Smuggling of Migrants by Land, Sea and Air. The **Irish Human Rights and Equality Commission** published its submissions to the Council of Europe Group of Experts on Action against Trafficking in Human Beings, noting 'inertia' in some areas, including the lack of sufficient legal assistance for victims of human trafficking, the absence of viable compensation avenues for undocumented victims and victims of trafficking for sexual exploitation, issues around recovery and reflection, temporary residence permits and their interplay with international protection, and a lack of specific measures to identify child trafficking.

Law and policy changes

In **Lithuania**, the ECtHR ordered interim measures not to return non-EU nationals to Belarus in **one case** involving four people from Pakistan and **another** involving a Syrian national needing medical assistance.

In ***M.H. and Others* v. *Croatia***, the ECtHR found violations of the right to life, the prohibition of inhuman and degrading treatment, the right to security and liberty, the prohibition of collective expulsions and the right to an individual application. The case concerned the death of a 6-year-old girl from Afghanistan who was hit by a train. She and her family were pushed back from Croatia to Serbia during the night and the police instructed them to follow the railway tracks. The court referred to FRA's periodic data collection on the migration situation in the EU and its quarterly bulletins on migration as supporting evidence.

In **Austria**, the Federal Minister for Foreign Affairs presented the 6th **national action plan to combat trafficking in human beings for 2021 to 2023**, consisting of 109 measures ranging from prevention and awareness raising to improving law enforcement measures.

In **Lithuania**, the parliament **adopted** amendments to the **Law on the Legal Status of Aliens** on 23 December, **allowing** the detention of newly arrived migrants for up to 1 year. NGOs and the Lithuanian Catholic Church broadly **criticised** these amendments.

In **Slovenia**, asylum applicants' movement was restricted in some cases, in line with the **March amendments to the International Protection Act**, according to the Ministry of the Interior. The Administrative Court revoked such orders in two cases involving families with children, establishing that the measure amounted to deprivation of liberty and that the asylum authorities had failed to assess proportionality and consider the best interests of the child (Administrative Court (Upravno sodišče), Judgment No I U 1885/2021, 29 December 2021, and Judgment No I U 1887/2021, 30 December 2021).

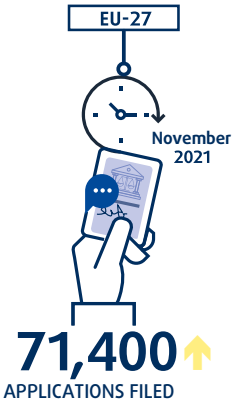
The Slovenian Ombudsman **lodged** a constitutional complaint on behalf of a Moroccan national who was returned to Croatia on the basis of a bilateral readmission **agreement**; the complaint was dismissed for procedural reasons.

In **Portugal**, **Law 73/2021 of 12 November** restructured the Portuguese border control system. The control of Portuguese borders will be the responsibility of the police, while administrative procedures concerning entry and stay will be carried out by the new Agency for Migration and Asylum (Agência Portuguesa para as Migrações e Asilo). A consultative body composed of state officials and representatives of NGOs will be part of the new agency.

In **Belgium**, the **Secretary of State for Asylum and Migration** met with the French Ministry of the Interior to strengthen cooperation on the management of migration, including through engaging Frontex to detect attempts to leave for the United Kingdom by boat.

In **Denmark**, the **Parliament** passed a **law** introducing the possibility to grant a temporary residence permit to evacuated Afghans and their families for 2 years without the possibility of extension. Several organisations, such as the **Danish Institute for Human Rights**, the **Danish Red Cross** and the **Danish Refugee Council** criticised the law. By 31 October 2021, 218 of the evacuated Afghans had **applied for asylum** in Denmark. On 30 November, the first Afghans received a **residence permit** under the new law.

In **North Macedonia**, the **Ministry of the Interior** tabled amendments to provisions on state of emergency under the Law on Foreigners in November. In October, the **government** adopted the national strategy and action plan for combating trafficking in human beings and illegal migration for 2021–2025.



Asylum procedure

Figures and trends

According to the **European Union Agency for Asylum**, 71 400 asylum applications were filed in November 2021, which is the second highest number in 5 years, narrowly below the level recorded in September 2021. While Afghans remained the largest group and Syrians have applied the most since 2016, the increase in November was also linked to several other nationalities.

In **Romania**, according to the General Inspectorate for Immigration, the highest number of new asylum requests recorded in the past 30 years was in 2021 (9 025 during January–November 2021). Afghanistan, Bangladesh and Syria were the main countries of origin. A significant increase was recorded in applications from children (29 % of the total number of applications).

In **France**, the director general of the **French Office for the Protection of Refugees and Stateless Persons** stated that about 100 000 asylum applications were filed in 2021, a significantly lower level than before the pandemic.

In **Lithuania**, between 1 January 2021 and 3 January 2022, the Migration Department **issued** 84 positive asylum decisions and 2 699 negative decisions to newly arrived asylum applicants who had come to the country via Belarus in 2021.

In **Latvia**, 583 asylum applications were made in 2021, according to the Office of Citizenship and Migration Affairs. This was the largest number since the introduction of the asylum procedure in Latvia in 1998.

In **Serbia**, the asylum recognition rates remained very low throughout 2021, with a total of 14 people granted asylum, as UNHCR reported to FRA. The total number of asylum applications submitted in 2021 was 174, of which 73 cases were closed due to absconding.

Access to asylum procedures

In **Malta**, migrants **protested** in Valletta against discriminatory and inhumane treatment. Media **reported** on a lack of resources and expertise for processing asylum applications, resulting in lengthy delays (up to 4 years), and a negative bias towards applicants from the beginning within the **International Protection Agency**.

In a **letter to the European Commission**, **Cyprus** requested the activation of Article 78(3) of the TFEU to introduce provisional measures allowing Cyprus to deal with a sudden inflow of third-country nationals, including the suspension of new asylum applications until the situation becomes manageable.

In **Hungary**, **Act CXX of 2021** entered into force on 2 December 2021, extending the scope of application of the temporary procedural rules again until 31 December 2022. According to the existing asylum regime, a declaration of intent to submit a claim of asylum can be submitted only outside the country at one of the Hungarian diplomatic missions in Belgrade and Kiev. According to the police, during the reporting period 26 542 people were apprehended in Hungary and escorted back to the border. The police claim that they do not register and fingerprint those escorted back to the border, nor do they record them as new arrivals or asylum applicants in any official statistics, given that they cannot stay in the country and cannot submit claims for asylum in Hungary. The Constitutional Court issued its **decision** concerning the implementation of the **judgment of the Court of Justice of the European Union (CJEU)** of December 2020. The Constitutional Court ruled that, while the mass settlement of a foreign population in the territory of Hungary without democratic authorisation

may violate the right to self-identity or self-determination of the Hungarian population, there was no possibility to review the judgments of the CJEU or alter the supremacy of EU law. Finally, the **CJEU** issued a ruling in November finding that Hungary had failed to fulfil its obligations under EU law by criminalising the actions of any person who provides assistance in respect of the making or lodging of an application for asylum in its territory. In **Croatia**, a volunteer for the NGO Are You Syrious? **was charged** with providing support for seeking asylum to the family of the 6-year-old Afghan girl who died during the pushback from Croatia. He was fined HRK 60 000 and ordered to pay HRK 1 300 in court costs.

In **Austria**, Caritas Vienna noted a significant increase in applications after the judgment **C-18/20** by the CJEU, which ruled that EU law precludes a subsequent application for international protection from being rejected as inadmissible solely because it is based on circumstances that already existed at the time of the proceedings on the first application.

In **Slovakia**, the **Ministry of the Interior** initiated an amendment to Law 480/2002 on Asylum and in parallel launched a public consultation process. The draft amendment increases the possibilities for granting humanitarian protection to applicants. It also extends the time limit for border procedures from 7 days to 28 days. **UNHCR** shared its observations with the government.

In **Lithuania**, access to the asylum procedure is possible only, first, at border-crossing points with Belarus; second, at the Lithuanian embassy in Belarus, where only **five people** have so far managed to apply for asylum; and, third, at the Migration Department, accessible in practice only by people already in Lithuania. In the absence of other viable options to apply for asylum, non-EU nationals have claimed asylum during court hearings on detention and in some cases Lithuanian courts have declared them to be asylum applicants during the hearings, in line with **CJEU** judicial practice.

The UN Committee against Torture expressed **concern** about the quality of the asylum procedure and urged the Lithuanian authorities to ensure that asylum requests receive appropriate consideration at all stages of proceedings.

Nobel laureate Nadia Murad **asked** the Lithuanian authorities during her visit to the country not to restrict the opportunities for Yazidis to apply for asylum, as Iraq was unsafe for them and they were victims of genocide.

In **Latvia**, according to the Latvian Centre for Human Rights, some families, particularly from Iraq, who were allowed into Latvia on humanitarian grounds and were placed in the Daugavpils Detention Facility for Foreigners were not allowed to submit asylum applications by state border guards. Some of the asylum seekers have in the meantime voluntarily returned to Iraq. The **UNHCR published observations** on the Order of the Cabinet of Ministers of the Republic of Latvia on the Declaration of Emergency Situation (No 518). UNHCR concluded that 'a State which is presented with an asylum request at its borders is required to provide admission at least on a temporary basis to examine the asylum claim, as the right to seek asylum and the *non-refoulement* principle would otherwise be rendered meaningless'.

In **Portugal**, the government announced that a group of 43 people had arrived from Greece on the basis of a **bilateral agreement** on the relocation of applicants for and beneficiaries of international protection. In October, the total number of people relocated under this agreement was 100, the maximum limit for arrivals during the agreement's pilot phase.

In **Spain**, the NGO Jesuit Service for Migrants reported that the border with Morocco continues to be closed (since March 2020), preventing access to the Spanish asylum office at Beni Enzar at the border between Spain (Melilla) and Morocco. Furthermore, **Amnesty International** published a report documenting obstacles to accessing asylum procedures in the Canary Islands throughout 2020

and 2021, namely a lack of information and legal assistance, backlogs and the absence of a vulnerability assessment, among other issues.

In **Belgium**, the **Office of the Commissioner General for Refugees and Stateless Persons** prolonged its decision to suspend international protection requests involving Afghan nationals until January 2022. The **Secretary of State for Asylum and Migration** confirmed that the list of safe non-EU countries, unchanged from previous years, included Albania, Bosnia and Herzegovina, Georgia, India, Kosovo, Montenegro, North Macedonia and Serbia.

In **Ireland**, the **Minister for Justice** announced a further temporary extension of immigration and international protection permits to 31 May 2022.

Resettlement

In **Italy**, some asylum applicants arrived through official humanitarian corridors. In November, **93 applicants** arrived from Libya on a UNHCR charter flight, according to the Ministry of the Interior. During the same month, **63 applicants** arrived from refugee camps in Ethiopia thanks to a 2019 protocol signed by the Ministry of the Interior, the Ministry of Foreign Affairs, the Comunità di Sant'Egidio and the Italian Episcopal Conference. Also in November, a further **44 Syrian applicants** arrived in Italy thanks to the protocol signed by the Ministry of the Interior, the Ministry of Foreign Affairs, and several associations and organisations, including the Waldensian Diaconate and the Italian Episcopal Conference.

Legal pathways for Afghans to the EU

In **Portugal**, **273 Afghan nationals** arrived, raising the total number of arrivals from Afghanistan to 764. The **Portuguese media** reported that the government planned to spend EUR 6.4 million to support the reception and integration of Afghan nationals.

In **the Netherlands**, **the government stated** that it intended to bring approximately 2 100 more people from Afghanistan, including Dutch nationals; Afghans with Dutch residence permits; and Afghans who had worked for international military or police missions, for the Dutch embassy or for the Dutch Ministry of Defence. Approximately 2 200 Afghans have already been evacuated since August 2021 and have gone through accelerated asylum procedures. Of those, 2 000 have already received a residence permit, according to the **Dutch Immigration and Naturalisation Service**.

In **Ireland**, the **Afghan admission programme** will enable up to 500 Afghan nationals living legally in Ireland to apply to have close family members (up to four) who are living in Afghanistan or who have recently fled to territories bordering Afghanistan to apply for temporary residence in Ireland.

Law and policy changes

In **Portugal**, the Supreme Administrative Court **ruled inadmissible** an appeal against a second-instance judgment that confirmed the refusal of an asylum application made by a Gambian national who had arrived in Portugal from Germany, due to the grounds for appeal.

The Supreme Administrative Court **admitted an appeal** against a second-instance judgment that ruled in favour of an Angolan woman whose asylum application was refused because in her first hearing with the Immigration and Borders Service she did not have a lawyer present, nor had she been informed of the

Legal corner

The European Council on Refugees and Exiles published a compilation of information on evacuations, pathways to protection and access to asylum in Europe for Afghans since August 2021 entitled, ***Afghans Seeking Protection in Europe***.

possibility of having an *ex officio* lawyer appointed to her case. A final decision is pending.

In **Sweden**, **a new legal provision** came into effect requiring the Swedish Migration Agency to provide asylum applicants with information on the asylum process and an introduction to Swedish society orally as well as in writing.

A 'moratorium' between 23 July and 29 November 2021 on the processing of asylum applications and return decisions concerning Afghans left many Afghans in legal limbo after the Taliban takeover in August 2021. The **Swedish Migration Agency** argued that the lack of country-of-origin information made it impossible to accurately determine the protection needs of individuals from Afghanistan and to take return decisions. After the Taliban takeover in August 2021, many Afghans submitted new asylum claims based on the changed security situation in Afghanistan. However, due to the moratorium, none of them were admitted back into the asylum procedure, which made them ineligible to receive support from the reception system, such as housing and welfare.

Reception

Reception capacity

Sufficient reception capacity was available in **Bulgaria**, **Croatia**, **Denmark**, **Greece**, **Hungary**, **North Macedonia**, **Poland**, **Slovakia** and **Sweden**.

In the reporting period or part thereof, reception facilities in **Belgium**, **Cyprus**, **France**, (some parts of) **Germany**, **Lithuania**, **Malta**, **the Netherlands**, **Romania**, **Serbia** and **Spain** were (almost) full or overcrowded.

In **Italy**, the **Ministry of the Interior** announced an increase of 3 000 in places in the Italian reception system for asylum applicants, protection status holders and unaccompanied migrant children (*sistema di accoglienza e integrazione* (SAI)). The **Ministry of the Interior** further announced that an additional 3 000 places would be available in the SAI system for Afghan applicants and their families.

In **Malta**, rapporteurs representing the Parliamentary Assembly of the Council of Europe visiting the country **expressed** concern about the treatment of migrants and refugees and the conditions at reception and detention centres. They urged the Maltese authorities to implement the **recommendations** made by the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 2020.

The government has not yet established a procedure to determine the status of stateless persons in line with its obligations under the 1954 Convention Relating to the Status of Stateless Persons, according to **Aditus Foundation**. As a result, stateless persons in Malta remain unidentified and vulnerable to violations of their fundamental rights, including the rights to education, employment, freedom from discrimination, housing, personal liberty, and family and private life.

In Berlin, **Germany**, the Arrival Centre of the Regional Authorities for Refugees reported that, in December, there were a large number of asylum applicants from Egypt, Iraq and Yemen in its reception facilities, having arrived through the Polish–Belarusian border. The number of asylum applicants from Georgia, Moldova and Vietnam also remains high in Berlin. Since June 2021, 2 000 asylum applicants have arrived every month in Berlin, and reception capacities have reached their limits.

In **France**, **Law 2021-1900 on finance for 2022** provides for the creation of 3 400 new reception places for asylum seekers during that year. However, the NGO **La Cimade** claimed that, despite this, the national reception system could still accommodate only half of the asylum seekers in the country.

In **Latvia**, by the end of 2022 **a fenced and guarded accommodation centre for asylum seekers** will host up to 250 people, according to the Ministry of the Interior.

In **North Macedonia**, the Tabanovce and Vinojug reception centres are still operating without any defined legal status. According to the Ombudsperson, this affects the level of coordination between the authorities present in the camps and increases the risk of inappropriate treatment and violation of the rights of refugees and migrants.

Reception conditions

In **Greece**, the Administrative Court of Syros ruled that prohibiting the exit of an Afghan asylum seeker from a reception facility on Samos was unlawful, the NGO **Greek Council for Refugees** reported.

Bright spots

According to **UNHCR**, the **Agency for the Welfare of Asylum Seekers** launched a pilot voluntary leaders programme to empower residents of open centres and ensure better communication between centres' management and the resident community, with volunteer residents acting as a bridge.

According to the **International Organization for Migration** in Malta, a significant number of migrants have been transferred from closed to open centres.

The lack of access for both recognised refugees and rejected asylum applicants to accommodation, food and basic services remained an issue of concern. In her reply to a **joint letter** from NGOs, the **European Commissioner for Home Affairs** mentioned that the Commission had raised the issue of the discontinuation of material reception conditions with the Greek authorities, emphasising that everyone, irrespective of their status, should benefit from the provisions of EU law. The Commission has called upon the Greek authorities to ensure that all people, particularly the vulnerable, receive basic means of subsistence.

Also in **Greece**, Médecins Sans Frontières reported that refugees, asylum seekers and undocumented migrants face difficulties, due to language barriers and administrative issues, in getting vaccinated against COVID-19, even though by law everyone must have access to vaccination. This prevents them from accessing public hospitals; according to new rules, access is dependent on proof of COVID-19 vaccination or a negative test.

In **Italy**, **ASGI** reported that access to healthcare, shelter and basic needs had deteriorated in Ventimiglia (on the southern Italian–French border), resulting in growing demand for basic services.

In **Cyprus**, the Pournara camp accommodated approximately 2 800 people in November, which is more than 200 % of its capacity, as UNHCR reported. The lack of affordable housing outside the camp discourages some asylum seekers from leaving Pournara, while others return to the camp after facing homelessness and destitution, as the NGO Generation for Change CY reported. The insufficient number of doctors and gaps in the provision of healthcare are also an issue of concern, according to UNHCR. Cypriot parliamentarians from the Human Rights Committee who visited the camp described the living conditions as shocking, the **media** reported. Overcrowding, lack of toilets and tents in the mud were some of the issues noted, according to the same source. The **Interior Ministry stated**, among other comments, that the deterioration of reception conditions was due to the increased number of asylum applicants, which had put pressure on the system, and that efforts were being concentrated on examining manifestly unfounded applications in accelerated procedures.

Following a series of COVID-19 cases in the Pournara camp, 600 people who had been in close contact with the infected people were transferred to a camp in the remote area of Limnes, as **media** reported. There was no electricity and heating in Limnes, and many people had to sleep on the floor without mattresses in overpopulated conditions, UNHCR reported to FRA. UNHCR also reported that access to medical care was not always guaranteed, even for people with COVID-19 symptoms.

In **Croatia**, pending renovation of the Kutina reception centre for vulnerable groups, all asylum seekers are being placed in the Porin reception centre in Zagreb, according to the Croatian Red Cross. Only the Croatian Red Cross and Médecins du Monde have been able to gain access to the Porin reception centre since mid-March 2020, despite several requests by other organisations, according to the NGO Are You Syrious?. This negatively affects the integration prospects of accommodated applicants, including children, who have lost access to language and homework support.

In **Austria**, the NGO **Asylkoordination Österreich** criticised the 'fundamental misconstruction of the basic care system', arguing that when the number of accommodated asylum applicants falls provincial reception centres are no longer funded and are closed down. For new arrivals, only centres at federal level remain available in such cases, offering significantly worse reception conditions.

In **Slovenia**, the Government Office for the Support and Integration of Migrants reported difficulties in accommodating asylum seekers due to the increasing number of arrivals and measures put in place to curb COVID-19 infections. In December, the Human Rights Ombudsman, implementing the tasks of the

National Preventive Mechanism (for the prevention of torture and other cruel, inhuman or degrading treatment or punishment), visited the reception areas for people wishing to apply for asylum in Ljubljana and Logatec, where vulnerable groups stay in a building and 30 containers. The Ombudsman considered in his preliminary findings that the facilities in Logatec were in poor condition and the containers were inadequate in the long term. More specialised services for vulnerable people are needed, according to the NGO Slovene Philanthropy; furthermore, winter conditions require the provision of adequate clothing and footwear.

In **Lithuania**, the Seimas Ombudsmen's Office **reported** on the conditions at temporary accommodation facilities, concluding that restricting migrants' freedom, for an average of 40 days, without adequate material reception conditions, hygiene, weather-appropriate clothing and footwear, or access to privacy, amounted to inhuman or degrading treatment. According to the **Lithuanian Red Cross**, from the end of October onwards, all newly arrived non-EU nationals were transferred from temporary facilities to permanent accommodation. **Concerns** remained, however, about overcrowding, sanitation, and lack of access to healthcare and social services. No specific facilities are available for vulnerable people, according to the same report by the Lithuanian Red Cross. The UN Committee against Torture urged Lithuania to refrain from detaining families and children, and to ensure appropriate accommodation conditions. The Committee was further **concerned** about allegations of ill-treatment and torture and the lack of preventive mechanisms in accommodation facilities. Almost all newly arrived non-EU nationals (4 000, including more than 1 000 children, since July 2021) from Belarus are still in de facto **detention**. There is no functioning system for identifying vulnerable individuals at the border, according to **Frontex** and the **Seimas Ombudsmen's Office**.

In **Spain**, **Amnesty International** published a report on the human rights situation in the Canary Islands, denouncing the overcrowding of reception centres, undignified reception conditions that have been prolonged over time, arbitrary detention, and a lack of adequate protection for the most vulnerable people, such as unaccompanied children and women victims of trafficking.

In **France**, the **Public Defender of Rights** issued a press release on the situation in Calais. Referring to her previous **reports** about massive fundamental rights violations there, she reiterated that the right to life, the right not to be subjected to inhuman or degrading treatment, the right to seek asylum, the right to enjoy dignified living conditions and access to healthcare and accommodation, and the rights of children must be guaranteed in all circumstances and regardless of the nationality or administrative situation of the people concerned. The Public Defender of Rights demanded an immediate end to the systematic dismantling of the informal camps in Calais and stressed the need for the establishment of sustainable accommodation solutions. **Human Rights Watch** published a report on the degrading treatment of migrant children and adults in northern France by the police, including repeated mass evictions, other forms of police harassment of migrants and volunteers, and official impediments to humanitarian assistance. According to the **press**, six migrants of Iranian nationality are taking legal action against the municipality of Grande-Synthe for the confiscation or destruction of their personal belongings during two evictions in October. Also in France, several NGOs, including **Médecins du Monde**, denounced the lack of public measures taken at the French–Italian border to provide accommodation and healthcare for migrants.

The majority of 400 Afghans evacuated to **North Macedonia** in August and September have applied for humanitarian protection status and been accepted by resettlement programmes offering visas to **Canada** or **the United States**. According to the NGO Legis, their freedom of movement is limited for security reasons.

In **Belgium**, two strikes by workers employed by the Federal Agency for the Reception of Asylum Seekers took place (on**18 October** and **27 October**) to protest against the overcrowding of the reception network and the deterioration of their working conditions. The agency stated in December that it **was unable** to provide a reception place for all asylum seekers and would give priority to vulnerable individuals such as women and children. In response, the **Secretary of State for Asylum and Migration** announced that the European Union Agency for Asylum would provide 150 residential containers to expand Belgium's reception capacity. The NGOs **CIRÉ** and **Vluchtelingenwerk Vlaanderen** and the **Federal Institute for the Protection and Promotion of Human Rights** expressed concern about the reception crisis and called for the provision of a reception place for all who have the right to such a place.

In **the Netherlands**, the reception centre for asylum applicants in Ter Apel was often overcrowded during the reporting period, with hundreds of people spending the night in tents, as **media** reported. A hygiene check conducted by the Municipal Health Services gave rise to a warning about increased health risks due to the lack of quarantine or isolation areas, according to **media** reports. The conditions in the Heumensoord emergency shelter for Afghan evacuees were found to be unsuitable by the **Netherlands Institute for Human Rights and the Ombudsperson**. The living conditions of 5 000 asylum applicants at 21 emergency locations were inadequate, according to the **Dutch Council for Refugees**. Three municipalities are expected to create 2 000 accommodation places, according to **the Dutch authorities**.

Also in **the Netherlands**, the Central Agency for the Reception of Asylum Seekers has developed a policy to support LGBTI asylum seekers in reception centres, according to a recent **report**. Specialised officers are present at various reception centres to support this group and help the other reception employees. At the same time, the report highlights, more attention needs to be paid to another vulnerable group, applicants who have converted to Christianity or left their religion.

Law and policy changes

In **Cyprus**, employers will now be **allowed** to hire asylum seekers immediately by submitting a declaration of temporary employment to the Labour Office. This measure is expected to cut down on bureaucracy and delays, serving to reduce unemployment among asylum seekers, UNHCR reported.

A court in **the Netherlands** **permitted** asylum applicants who had entered the EU via **Cyprus** to be admitted to the Dutch asylum procedure, as returning to Cyprus entailed the risk of being subjected to inhumane or degrading treatment due to the poor reception conditions.

In **Slovakia**, the **draft law amending the Asylum Law and amending and supplementing certain related acts** stipulates that the Ministry of the Interior must provide asylum seekers with psychological and social counselling and with sociocultural orientation training. It further reduces the period during which asylum seekers are not allowed to enter the labour market from 9 months to 6 months from the moment of lodging the asylum application.

In **Austria**, **UNHCR** and the **media** reported that the Austrian Constitutional Court had ruled that a district decree, issued in spring 2020 and limiting freedom of movement for asylum-seeking residents of the Traiskirchen reception centre in view of the COVID-19 pandemic, lacked a legal basis and proportionality.

Bright spots

In **Ireland**, the **Department of Justice** announced a scheme introducing a pathway to regularisation for undocumented migrants and international protection applicants who have been in the asylum process for more than 2 years. The **Irish Refugee Council** stated that it is understood that applicants should also be permitted to stay in the international protection process, so the protection application does not need to be withdrawn. In addition, the **Immigrant Council of Ireland** welcomed the scheme but drew attention to the high costs involved for applicants (EUR 500 for an adult and EUR 700 for a family). Furthermore, the **Department of Transport** announced that international protection applicants can now apply for a driving licence and learner permit using their temporary residence certificate as proof of normal residence.

Child protection

Figures and trends

In **Greece**, as of 31 December 2021, according to the **National Center for Social Solidarity**, 2 225 unaccompanied children were estimated to be in the country, including 47 separated children. Of these unaccompanied children, 1 955 were in appropriate and long-term accommodation (shelters and semi-independent-living apartments), and 270 were in temporary or emergency accommodation (relocation facilities, emergency accommodation facilities, reception and identification centres, and open temporary accommodation facilities). The total number of available long-term accommodation places for unaccompanied children in all of Greece is 2 478.

According to the **Ministry of the Interior**, 9 699 unaccompanied children arrived in **Italy** in 2021.

In **Portugal**, the government reported the arrival of **33 unaccompanied children** from Greece in the context of the EU voluntary relocation programme and four Syrian refugees from Egypt under the national programme for UNHCR resettlement. Portugal has accepted a total of 199 unaccompanied children from Greece through the EU voluntary relocation programme.

Reception conditions

In **Cyprus**, approximately 300 unaccompanied children were accommodated in Pournara during the reporting period, staying on average for 5 months without freedom of movement or access to education or recreation, UNHCR reported. The shortage of welfare officers and the largely insufficient number of guardians created considerable delays in procedures, extending the stay of unaccompanied children in the camp to several months, well beyond the average stay of adults.

In **Hungary**, UNHCR reported, children over the age of 14 are treated as adults with respect to the asylum procedure and, as such, social workers, instead of guardians, are assigned to them.

In **Croatia**, unaccompanied children continue to experience difficulties in accessing education, as well as local communities' resistance to their integration, and can only stay briefly in social welfare institutions, according to the Ministry of Labour, Pension System, Family and Social Policy. Further difficulties concern a lack of interpreters, a lack of interdepartmental cooperation and insufficient cooperation of special guardians with accommodation facilities for unaccompanied children.

In **Austria**, the Children's and Youth Ombudspersons' Offices stated in a **press release** that age-appropriate care is not guaranteed for unaccompanied children, and that children remain in initial reception centres for months. The Children's and Youth Ombudspersons' Offices – as well as numerous other organisations such as the Child Welfare Commission, UNHCR and asylum coordinators – demanded the rapid reallocation of children and adolescents to the Austrian provinces. The NGO Asylum Coordination Austria reported that as of the beginning of December 2021 around 760 unaccompanied children were accommodated in basic care centres of the provinces. The NGO repeated its criticism that the accommodation for unaccompanied children is inadequate in the federal basic care centres and that as long as they stay there children are not assigned a guardian.

In **Bulgaria**, the **State Agency for Child Protection** found conditions for children in the reception centres in Harmanli, Banya and Sofia (in the Voenna rampa, Vrazhdebna and Ovcha kupel neighbourhoods) appropriate. The **Ombudsperson**, however, highlighted that unaccompanied children who had received

international protection continued to live in Harmanli, because necessary steps had not been taken to accommodate them in more appropriate settings.

In **Spain**, the Office of the Public Prosecutor for Minors reported that the Canary Islands, Ceuta and Melilla remain the areas of greatest concern in terms of child protection, that the distribution of children throughout the territory is inefficient, and that a system of solidarity and shared responsibility involving other EU Member States is lacking. UNICEF also reported that several hundred children remain stranded in Ceuta in inadequate reception conditions, especially in the facilities that were opened following the massive arrival of migrants in May.

In **North Macedonia**, according to the Macedonian Young Lawyers Association and the Ombudsperson, the practice of placing children in immigration detention continues. The main reason for the detention is to ensure their presence as witnesses in criminal procedures against smugglers of migrants.

In **France**, the **Senate** reported that the current policy on unaccompanied children, regarding both their entry into and their exit from the child protection system, suffers from a shortage of legal and financial means as well as a lack of coherence at territorial level.

In **Germany**, the Federal Association for Unaccompanied Refugee Minors reported increasing numbers of unaccompanied children and adolescents. The Berlin Senate Department for Education, Youth and Family reported that the reception capacities for unaccompanied children and adolescents have been exhausted since September 2021. Further facilities have therefore been taken into service. The Federal Working Group of Psychosocial Support Centres for Refugees and Victims of Torture, **Deutschlandfunk** and **XENION**, a centre providing psychosocial assistance to refugees, also reported limited access to psychotherapy for refugees, unaccompanied children and adolescents.

In **the Netherlands**, the Ombudsperson and the Ombudsperson for Children **recommended** extending the supervision and reception of unaccompanied children until they are 21 years of age.

Safeguards and specific support measures

In **Greece**, the law on guardianship for unaccompanied children has still not been implemented. Since August 2021, most unaccompanied children do not have guardians, as the Greek Council for Refugees reported to FRA.

In **Italy**, the **Ministry of the Interior and the NGO Save the Children** renewed a protocol (signed originally in 2019) that allows the NGO to supply free assistance, protection and legal counselling to unaccompanied and accompanied children arriving in Italy until 31 December 2022. The NGO will also provide cultural mediators and psychological support, and carry out early identification of vulnerable children, from their very arrival in Italy.

In Malta, migrants protested in October, **calling** for better protection of the rights of children born to migrants or asylum seekers in Malta. This included their right to immediate registration at birth and the right to acquire a nationality as required by Article 7 of the **United Nations Convention on the Rights of the Child**.

In **Croatia**, unaccompanied children continue to abscond during the asylum procedure, according to the Croatian Red Cross and the Croatian Law Centre. The Jesuit Refugee Service reported an increasing number of families who are separated at the border when mothers and children are allowed to apply for asylum while fathers are pushed back to Bosnia and Herzegovina; as no legal procedures are in place for family reunification, this creates great stress and uncertainty, negatively affecting the children.

FRA ACTIVITY

FRA published a report on the problems faced by unaccompanied migrant children who are not in the care of child protection systems in the EU. Presented as a case study, it tells the story of children and young adults from Pakistan living in Greece who travelled alone to the EU without their parents or other adults.

See FRA, ***Unaccompanied Children outside the Child Protection System – Case study: Pakistani children in Greece***, 2021.

Bright spots

In **Spain**, the government passed an amendment (**Royal Decree 903/2021**) modifying the **Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration** that will benefit the rights of unaccompanied children and their integration.
This reform should ensure that all unaccompanied children arriving in Spain are duly documented, and that their residence authorisations are processed in a maximum of 90 days after their entry into the national protection system. Notably, in the case of children aged 16 and over, their residence permits will always be accompanied by a work permit, putting an end to the plight of thousands of undocumented children who were not allowed to work.

In **Austria**, the parliament passed a **motion** on the protection of unaccompanied children, calling upon the federal government to further improve the protection and legal status of child refugees and to pay special attention to the best interests of the child in the asylum procedure by offering a comprehensive training programme for everyone involved in the asylum procedure. The Constitutional Court published its **Annual Report 2020**. According to the report, a total of 2 873 cases were brought before the Constitutional Court in the reporting year, every second case concerning asylum and aliens law. The court repeatedly reiterated the particular vulnerability of children in cases of returns and that the best interests of the child must always be considered in any decision affecting a child.

In **Romania**, a **draft law** extending the mandate of legal guardians assisting unaccompanied child asylum applicants or beneficiaries of international protection is pending in the parliament. The extended mandate aims to fully cover the asylum procedure and integration process, as well as tasks related to the repatriation of unaccompanied children.

In **Denmark**, a study by the Danish Research Institute for Suicide Prevention showed that suicide attempts among asylum seekers are eight times higher than among the general population in Denmark, as the **media** report. The rate for unaccompanied foreign children is almost six times higher than among Danish children of the same age.

In **Belgium**, the **Office of the Commissioner General for Refugees and Stateless Persons** clarified that, due to the COVID-19 pandemic, interviews with children seeking international protection were held no longer in dedicated child-friendly spaces, but instead in large rooms with Plexiglas separation screens.

In **Germany**, the Federal Association for Unaccompanied Refugee Minors reported an increase in the number of unaccompanied children and adolescents who experienced violence and sexual abuse on their way to Germany.

Immigration detention

Figures and trends

In **Hungary**, the National Directorate-General for Aliens Policing confirmed that the practice of detaining migrants awaiting return or who have unlawfully entered the country continues. Migrants are currently being accommodated mainly in the Nyírbátor closed detention centre and in a detention facility at Budapest airport.

In **Slovenia**, the number of detainees at the Centre for Foreigners rose from 196 in October to 215 in November and 329 in December (including 270 in return procedures), according to the police. The police did not apply any alternatives to detention in the reference period.

In **Belgium**, the **Secretary of State for Asylum and Migration** announced the opening of a new closed detention centre in Steenokkerzeel for short stays, as extra capacity is required by the new return policy.

In **North Macedonia**, the practice of detention of migrants for the purpose of securing their testimony as witnesses in criminal proceedings against smugglers continues. According to the Ombudsperson and Macedonian Young Lawyers Association, migrants, including children, are detained in the Transit Centre for Foreigners in Gazi Baba and in the Transit Centre Vinojug. Alternatives to detention are not available.

Detention conditions

In **Italy**, the **press** reported that a 26-year-old Tunisian citizen detained in the detention and return centre (*centri di permanenza per il rimpatrio, (*CPR)) in Rome died of a cardiac arrest at the psychiatric ward of the San Camillo hospital, where he had allegedly been subject to physical restraint measures for 63 hours. Some of the victim's cellmates and family in Tunisia reported to the press and local activists that the victim had suffered **abuse and mistreatment while detained in the CPR**, and had therefore voluntarily decided to undergo psychiatric treatment at the hospital. The **press** also reported that a Moroccan citizen committed suicide in the CPR of Gradisca during the COVID-19 isolation period. Furthermore, according to the **National Guarantor for the rights of persons detained or deprived of liberty**, conditions in several facilities used for temporarily detaining migrants are inappropriate; for example, they lack bedding, mattresses, dining chairs and tables, visual surveillance is continuous, they lack outdoor areas or there is no privacy. The Ministry of the Interior replied to the guarantor's report and issued a **circular letter** to all prefectures with suggestions for improving detention conditions for migrants.

In **Malta**, 32 asylum seekers who were detained for several weeks on board tourist boats in April 2020, after being rescued in the Maltese SAR zone, filed a complaint before a civil court against the government for an alleged breach of their fundamental rights, according to the online news site **Newsbook**. The applicants claimed they had not been told why they were being held on the vessels; they were unable to contact their family or friends, had no access to information or legal advice and could not request asylum or ask for judicial review; the conditions were insanitary, with only two or three bathrooms and showers for over 150 people; and there were no beds to sleep on.

The Council of Europe Commissioner for Human Rights **noted** during her visit in October the very poor conditions in Block A of the Safi Detention Centre and urged authorities to take immediate action to ensure dignified conditions for all those held there. The Maltese government **responded** that ongoing refurbishment works would address the deficiencies in the next few months. The commissioner also **observed** that uncertainties remain about the legal grounds

and the safeguards related to detention. She called on the authorities to invest in alternatives to detention and ensure that no children or vulnerable people are detained.

The magistrates court **released** three asylum seekers who had been held illegally in detention for 66–85 days on public health grounds.

In **Cyprus**, the Menoyia Detention Centre operated at full capacity, as the Ministry of Justice reported to FRA. As a result, immigration detainees continue to be held in police holding cells, which are unsuitable for long-term stays, as the Cyprus Refugee Council reported. In addition, UNHCR reported that some asylum seekers are serving sentences in prison for using forged passports.

In **Bulgaria**, the **Ombudsperson** noted a deterioration of the living conditions in the pre-removal facility at Busmantsi, highlighting the lack of cleanliness and difficulties in accessing healthcare due to the lack of qualified personnel. The conditions in Elhovo and Lyubimets were found to be adequate, with the main issues being the lack of interpreters and problems with the provision of dental care.

In **Slovenia**, the Ombudsman found that people who had expressed their intention to apply for asylum were held in the reception areas of the asylum home in Ljubljana and its branch in Logatec for up to 23 days; in the Ljubljana facility, people held in isolation spaces intended for people with COVID-19 or other communicable diseases were not issued with the necessary quarantine guidance.

In **Romania**, the **Ombudsperson** published a report following a monitoring visit to the Otopeni Detention Centre in August. The report recommended that authorities train staff to deal with crisis situations, provide interpretation services and full-time medical assistance, and ensure access to recreational activities.

In **Poland**, the **Commissioner for Human Rights** found conditions in the detention centre in Wędrzyn inadequate. The centre is in an active military training area. The commissioner criticised its prison-like environment, highlighted the stress caused to detainees by the sounds of gunshots and explosions, and mentioned that such conditions can lead to aggravation of trauma. In addition, the sanitary facilities in the centre are in poor condition and do not ensure privacy, the Helsinki Foundation for Human Rights reported to FRA. The conditions are also poor in the detention centre in Ketrzyn, according to the same source. Due to lack of space, migrant families are accommodated in containers, which do not guarantee adequate living conditions, especially during winter.

In **Portugal**, the Ombudsperson's Office noted that the challenges identified in the last **report of the National Mechanism of Prevention**, referring to 2020, persisted in 2021, namely lack of lockable individual bedrooms, lack of access to mobile phones and personal belongings, lack of Wi-Fi, and lack of leisure activities such as television, books and board games.

In **Spain**, the NGO Jesuit Service for Migrants reported that migrants are not allowed visitors in the detention centres (*centros de internamiento de extranjeros*, (CIEs)) of Barcelona and have difficulties in accessing healthcare and high-quality information related to asylum.

In **France**, the NGO **La Cimade** underlined that the national policy of detaining migrants continues despite the increasing number of COVID-19 outbreaks in detention centres. **NGOs** welcomed the decision of the **Court of Cassation** that the practice of incarcerating migrants for refusing to undergo a PCR test for COVID-19 is illegal.

Detention of children

After its first visit to **Bulgaria**, the **UN Subcommittee on Prevention of Torture** expressed concerns about the detention of children. The subcommittee highlighted the need to ensure humane conditions for detained migrants, especially children, and that detention should only be used when strictly necessary. The NGO **Centre for Legal Aid – Voice in Bulgaria** claims that foreign nationals who have lost the right of residence are routinely detained and the use of alternatives to detention remains limited.

Law and policy changes

In **Latvia**, **Cabinet of Ministers Regulations No 728** determines the procedure for detaining foreigners, such as those crossing the border irregularly and those subject to removal orders, for up to 48 hours in temporary premises of the State Border Guard. Border checks are currently performed at 29 border-crossing points with Belarus and Russia, and none are equipped with temporary holding premises as envisaged by the new regulations.

In **Portugal**, the Lisbon Court of Appeal confirmed a first-instance judgment that found three inspectors of the Immigration and Borders Service guilty of qualified and serious offences against physical integrity that resulted in the death of Ihor Homeniuk, a Ukrainian citizen, at Lisbon airport's temporary detention centre, in March 2020. As **reported by Portuguese media**, the Court of Appeal confirmed the sentences of 9 years in prison for two inspectors and increased the sentence of the third inspector from 7 years to 9 years.

Return

Figures and trends

In **Italy**, the **National Guarantor for the rights of persons detained or deprived of liberty** released data on returns of non-EU citizens carried out in 2021: 2 231 migrants detained in CPRs were returned from January to November, the majority (54.9 %) from Tunisia.

In **Malta**, according to the **Home Affairs Minister**, between January and October 2021 a total of 361 people were returned to their country of origin, including 36 who returned voluntarily.

In **Cyprus**, the number of returns has doubled in the past 2 years, as the police spokesperson **mentioned to the media**.

In **Slovenia**, according to **police data**, 3 768 people were returned on the basis of international agreements in 2021, mainly to Croatia.

In **Hungary**, according to the police 587 people were returned to their countries of origin during the reporting period.

Fundamental rights concerns related to return

Austria offers 'return assistance plus', which according to the **Federal Office for Immigration and Asylum** gives EUR 1 000 to people obliged to leave Austria and those who applied for asylum before 1 November 2021 and would like to return voluntarily. Information on this programme is available on a dedicated **website** in Arabic, Farsi, French, Hindi, Russian and Urdu. Nationals of Western Balkan countries, visa-exempt countries and EEA countries, as well as criminal offenders, are excluded.

In **Spain**, the NGO Jesuit Service for Migrants pointed to irregularities concerning the execution of return decisions in CIEs. These included lack of prior notification, failure to provide mandatory documentation to returnees at the time of return (medical reports, certificate of residence in the CIE) and failure to take into account serious medical conditions not treatable in the country of origin.

In **France**, the NGOs **La Cimade and Médecins du Monde** criticised an emerging administrative practice by some prefectures of providing unaccompanied children with accommodation on condition that they accept assistance to return to their country of origin.

In **Belgium**, the **Secretary of State for Asylum and Migration** announced the opening of the first return office in Brussels. Return offices are part of the government's strategy to follow up and control return. They will organise meetings with potential returnees to provide individual advice and discuss their future and a possible voluntary return.

In **Germany**, the Federal Working Group of Psychosocial Support Centres for Refugees and Victims of Torture argues that proving the existence of health issues, especially mental health issues, as compelling obstacles to returns takes too long and can be expensive, while medical certificates may not always be recognised by the Federal Office for Migration and Refugees and by courts.

In **Sweden**, the Refugee Law Centre claims that return decisions are issued to unaccompanied children without first ensuring the orderly reception of the child in the receiving country, although return decisions are not enforced before the child turns 18.

FRA ACTIVITY

Since 2014, FRA has been publishing an annual update of the forced return monitoring systems EU Member States have set up under Article 8(6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (the return directive). This overview describes different indicators for an effective forced return monitoring system. It includes the organisation responsible for monitoring forced return, the number of operations monitored in 2020, the phases of monitored return operations, the number of staff trained and working as monitors, and whether the monitoring body issued public reports about its monitoring.

See FRA, ***Forced Return Monitoring Systems – 2021 update***, 2021.

Also in **Sweden**, the migration agency issued a revised **judicial position** in November 2021 lifting the initial suspension of forced returns and issuance of negative decisions for Afghans after the takeover by the Taliban in August 2021.

In **the Netherlands**, the Administrative Jurisdiction Division of the Council of State **ruled** that a rejected asylum applicant who was detained and raped after being deported to Russia must be compensated.

Denmark continued to consider parts of Syria safe for return, according to the **European Council on Refugees and Exiles**. While it has not yet started to return people to Syria, up to October 2021 the protection status for **376 Syrians** was revoked. The Danish government considered that there had been a decline in armed conflict in Damascus and its surrounding suburbs, **media** reported. Amnesty International **criticised** this practice and documented 24 cases of men, women and children who were subjected to rape or other forms of sexual violence, arbitrary detention and/or torture or other ill-treatment upon return.

In **Lithuania**, between 1 October and 8 December, 345 non-EU nationals returned voluntarily and 45 were removed, according to the Migration Department. The authorities **tripled** the amount offered to those agreeing to return voluntarily, to EUR 1 000. The Lithuanian Red Cross and the **Seimas Ombudsmen's Office** claim that hostile reception conditions, restrictions of rights and provision of only minimal basic services put constant pressure on non-EU nationals, leading some to return voluntarily because of this treatment.

FRA ACTIVITY

FRA published a report outlining to what extent legal aid is available to those held in pre-removal detention in the 27 EU Member States, and in North Macedonia and Serbia, during procedures related to their return. These involve decisions on return, on detention pending removal, on the removal itself and on bans on entry. The report also examines when people are entitled to free legal aid and how this aid is funded, as well as who provides representation and various factors that limit the scope of legal aid.

See FRA, ***Legal Aid for Returnees Deprived of Liberty***, 2021.

Hate speech and violent crime

In **Malta**, the **African Media Association Malta** reported the death of a 22-year-old migrant after she was allegedly refused hospital treatment. Her relatives testified to her repeated experience of negligence at the Mater Dei emergency room, and the police opened an investigation to determine the exact cause of her death. On 27 December, **MaltaToday** reported that a Somali man who was reported missing had died in a hospital after suffering serious injuries at work. His identity had not been established until nurses identified him from a photo issued by the police. When the police issued the missing person report, social media were flooded with racist jokes and abusive comments celebrating the man's disappearance, according to **Lovin Malta,** which were **condemned** by the Minister for Inclusion and the Equality Minister.

In **Cyprus**, the Commissioner for Children's Rights criticised the statements of the government's spokesperson on the high proportion of migrant children in schools, as **media** reported. The commissioner argued that the statement generated a climate of insecurity, xenophobia and intolerance.

In **Croatia**, the NGO Centre for Peace Studies, part of the **International Network Against Cyber Hate**, reported content displaying anti-refugee hatred, mostly incitement to violence, on TikTok, YouTube and Facebook, which was generally subsequently removed. The Centre for Peace Studies reported the use of derogatory and abusive slurs and threats received by email in connection to its visibility in the case of ***M.H. and Others* v. *Croatia***.

In **Bulgaria**, local residents of Harmanli protested against the reception centre after an incident involving asylum seekers, as **media** reported. The residents demanded an earlier curfew, an increased police presence and strict control of COVID-19 measures.

In **Lithuania**, the Lithuanian Red Cross and other **NGOs** consider that the media portray an overall **negative image** of newly arrived migrants.

In **Portugal**, following a fact-finding visit by the UN Working Group of Experts on People of African Descent, the **Portuguese News Agency** reported that the UN group members were 'surprised and shocked' by reports on police violence against people of African descent in Portugal. In a news conference, the **working group** shared its preliminary findings that migrants and refugees of African descent face more administrative and financial barriers than other people to their integration in a country that, in general, welcomes migrants, refugees and asylum seekers.

Also in **Portugal**, according to **media**, the public prosecutor filed criminal charges against seven military officers of the Republican National Guard related to the torture and humiliation of migrants.

In **France**, the NGO **Médecins du Monde** and the **press** reported a sword attack in a migrant camp in Paris in December. The perpetrator was arrested after injuring two migrants and destroying several tents.

In **Ireland**, the national police force, **An Garda Síochána**, published hate crime statistics from its online hate crime reporting system, which was launched in July 2021. By 30 September 2021, it had received 24 actionable hate-related reports: 11 reports related to **hate crimes** and 13 to hate incidents.

Annex – Stakeholders contacted for information (December 2021)

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED BY EMAIL
AUSTRIA	→ Federal Ministry of the Interior, Department V/9/a (Bundesministerium für Inneres, Abteilung V/9/a Grundversorgung und Bundesbetreuung) → Federal Ministry of the Interior, Department V/8 (Bundesministerium für Inneres, Abteilung V/8 Asyl und Fremdenwesen) → Federal Ministry of the Interior, Criminal Intelligence Service, Competence Centre for Missing Children (Bundesministerium für Inneres, Bundeskriminalamt, Kompetenzzentrum für Abgängige Personen) → Federal Ministry of the Interior, Directorate for State Security and Intelligence (Bundesministerium für Inneres, Direktion Staatsschutz und Nachrichtendienst) → Austrian Ombudsperson Board (Volksanwaltschaft) → Caritas Vienna (Caritas Wien) → Asylum Coordination Austria (Asylkoordination Österreich) → Austrian Red Cross (Österreichisches Rotes Kreuz)
BELGIUM	→ Federal Agency for the Reception of Asylum Seekers (Federaal agentschap voor de opvang van asielzoekers/Agence fédérale pour l'accueil des demandeurs d'asile) → Guardianship Service → Myria – Federal Migration Centre (Federaal Migratiecentrum/Centre fédéral Migration) → Jesuit Refugee Service Belgium
BULGARIA	→ State Agency for Refugees (Държавна агенция за бежанците) → Ministry of the Interior, Directorate-General Border Police (Министерство на вътрешните работи, Главна дирекция „Гранична полиция") → Ombudsperson of the Republic of Bulgaria, National Preventive Mechanism and Fundamental Human Rights and Freedoms Directorate (Омбудсман на Република България, Дирекция „Национален превантивен механизъм и основни права и свободи на човека") → State Agency for Child Protection (Държавна агенция за закрила на детето) → Ministry of the Interior, Directorate-General National Police (Министерство на вътрешните работи, Главна дирекция „Национална полиция") → UNHCR Bulgaria (based on weekly updates, other reports and information presented during the regular meetings of the Working Group on Integration of Beneficiaries of International Protection in Bulgaria (Работна група по интеграция на лица с предоставена международна закрила в България) coordinated by UNHCR) → Centre for Legal Aid – Voice in Bulgaria (Център за правна помощ – Глас в България)
CROATIA	→ Centre for Peace Studies (Centar za mirovne studije) → Centre for Culture of Dialogue (Centar za kulturu dijaloga) → Croatian Law Centre (Hrvatski pravni centar) → Jesuit Refugee Service (Isusovačka služba za izbjeglice) → Médecins du Monde (Liječnici svijeta) → Ombudsperson for Children (Pravobraniteljica za djecu) → Welcome! Initiative (Inicijativa Dobrodošli) → Are You Syrious? → State Attorney's Office (Državno odvjetništvo Republike Hrvatske) → Ministry of Labour, Pension System, Family and Social Policy (Ministarstvo rada, mirovinskog sustava, obitelji i socijalne politike) → Office of the Ombudswoman (Ured pučke pravobraniteljice)

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED BY EMAIL
CYPRUS	→ Asylum Service (Υπηρεσία Ασύλου) → UNHCR Representation in Cyprus (Αντιπροσωπεία της Ύπατης Αρμοστείας του ΟΗΕ για τους πρόσφυγες στην Κύπρο) → Menoyia Detention Centre (Χώρος Κράτησης Μεταναστών Μενόγειας), Ministry of Justice and Public Order (Υπουργείο Δικαιοσύνης και Δημόσιας Τάξης) → Cyprus Refugee Council (Κυπριακό Συμβούλιο για τους Πρόσφυγες) → KISA (Κίνηση γία Ισότητα, Στήριξη και Αντιρατσισμό) → Caritas Cyprus → Systema Cyprus → Generation for Change CY
DENMARK	→ Danish Immigration Service (Udlændingestyrelsen) → Amnesty International Denmark → SOS Racism (SOS Racisme) → Danish Red Cross (Dansk Røde Kors) → UNHCR Regional Representation for Northern Europe → Danish Refugee Council (Dansk Flygtningehjælp) → Danish Parliamentary Ombudsman (Folketingets Ombudsmand) → Danish Return Agency (Hjemrejsestyrelsen)
FRANCE	→ Ministry of the Interior (Ministère de l'Intérieur) → Maritime Prefecture of the Channel and the North Sea (Préfecture Maritime de la Manche et de la Mer du Nord) → Public Defender of Rights (Le Défenseur des droits) → General Authority (Bureau générale) → Department for the Protection of the Rights of the Child (Collège 'Défense et promotion des droits de l'enfant' du Défenseur des droits) → National Consultative Commission on Human Rights (Commission nationale consultative des droits de l'homme) → Médecins du Monde – France → National Association of Border Assistance for Foreigners (Association nationale d'assistance aux frontières pour les étrangers) → Immigrant Information and Support Group (Groupe d'information et de soutien des immigrés) → La Cimade → Service centre for migrants in Calais (Plateforme de service aux migrants à Calais)
GERMANY	→ UNHCR → Arrival Centre of the Regional Authorities for Refugees in Berlin (Landesamt für Flüchtlingsangelegenheiten Berlin) → Jesuit Refugee Service (Jesuitenflüchtlingsdienst) → Federal Working Group of Psychosocial Support Centres for Refugees and Victims of Torture (Bundesweite Arbeitsgemeinschaft der psychosozialen Zentren für Flüchtlinge und Folteropfer, (BAFF)) → Federal Association for Unaccompanied Refugee Minors (Bundesfachverband für unbegleitete minderjährige Flüchtlinge, BumF) → Berlin Senate Department for Integration, Employment and Social Affairs (Berliner Senatsverwaltung für Integration, Arbeit und Soziales) → Berlin Senate Department for Education, Youth and Family (Berliner Senatsverwaltung für Bildung, Jugend und Familie) → Representative of the Council of the Evangelical Church in Germany (Bevollmächtigter des Rates der EKD bei der Bundesrepublik Deutschland und der Europäischen Union) → The Parity Association (Der Paritätische Gesamtverband)

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED BY EMAIL
GREECE	→ Hellenic Police Headquarters (Αρχηγείο Ελληνικής Αστυνομίας) → Greek Ombudsperson (Συνήγορος του Πολίτη) → Greek Council for Refugees (Ελληνικό Συμβούλιο για τους Πρόσφυγες) → Hellenic League for Human Rights (Ελληνική Ένωση για τα Δικαιώματα του Ανθρώπου) → Human Rights 360 (Ανθρώπινα Δικαιώματα 360) → Ministry of Migration and Asylum (Υπουργείο Μετανάστευσης και Ασύλου) → Doctors without Borders (Γιατροί χωρίς Σύνορα) → Racist Violence Recording Network (Δίκτυο Καταγραφής Περιστατικών Ρατσιστικής Βίας)
HUNGARY	→ Ministry of the Interior (Belügyminisztérium) → Ministry of Human Resources (Emberi Erőforrások Minisztériuma) → National Directorate-General for Aliens Policing (Országos Idegenrendészeti Főigazgatóság) → National Police Headquarters (Országos Rendőr-főkapitányság) → UNHCR Hungary → Migrant Solidarity Group of Hungary (MigSzol) → Cordelia Foundation (Cordelia Alapítvány) → Hungarian Association for Migrants (Menedék Migránsokat Segítő Egyesület)
IRELAND	→ Immigrant Council of Ireland → Irish Refugee Council → Dr Nusha Yonkova, Principal Officer, Irish Human Rights and Equality Commission (leads the commission's work in its role as National Rapporteur on the Trafficking of Human Beings) → Facility manager, initial reception centre for unaccompanied minors → Dr Lucy Michael, Commissioner, Irish Human Rights and Equality Commission → UNHCR Ireland
ITALY	→ Ministry of the Interior (Ministero dell'Interno) → Ministry of Labour and Social Policies (Ministero del Lavoro e delle Politiche Sociali) → Department for Public Security – Directorate-General for Immigration and Border Police (Dipartimento della Pubblica Sicurezza – Direzione Centrale dell'Immigrazione e della Polizia delle Frontiere) of the Ministry of the Interior → National Commission for the Right of Asylum (Commissione Nazionale per il Diritto d'Asilo) of the Ministry of the Interior → National Guarantor for the rights of persons detained or deprived of liberty (Garante nazionale per i diritti delle persone detenute o private della libertà personale) → Authority for the Protection of Childhood and Adolescence (Autorità Garante per l'Infanzia e l'Adolescenza) → National Office against Racial Discrimination (Ufficio Nazionale Antidiscriminazioni Razziali) → Association for Legal Studies on Immigration (ASGI) → Italian Refugees Council (Consiglio Italiano per i Rifugiati) → Melting Pot Europa
LATVIA	→ UNHCR Stockholm Office → Office of Citizenship and Migration Affairs → Head of the Ropaži child custody court → Head of the Daugavpils child custody court → Latvian Centre for Human Rights

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED BY EMAIL
LITHUANIA	→ Lithuanian Red Cross → International Organization for Migration Vilnius → Migration Department under the Ministry of the Interior → UNHCR Vilnius Office → Children's Rights Ombudsman Institution of the Republic of Lithuania → Prosecutor General → Seimas Ombudsmen's Office → State Border Guard Service → Lithuanian Criminal Police Bureau Police Department under the Ministry of the Interior of the Republic of Lithuania
MALTA	→ African Media Association → International Organization for Migration → Kopin → Ministry for Home Affairs and National Security → Ministry for Equality, Research and Innovation → Victim Support Agency → UNHCR
NETHERLANDS	→ Dutch Council For Refugees (Vluchtelingenwerk Nederland) → Amnesty International Netherlands → Netherlands Institute for Human Rights (College voor de Rechten van de Mens) → Defence for Children the Netherlands → Ministry for Justice and Security (Ministerie van Justitie en Veiligheid) → Stichting LOS → UNICEF the Netherlands → Nidos
NORTH MACEDONIA	→ Ombudsperson (Народен Правобранител) → UNHCR North Macedonia → International Organization for Migration North Macedonia → Macedonian Young Lawyers Association (Македонско здружение на млади правници) → Association for Action Against Violence and Trafficking in Human Beings – Open Gate (Здружението за акција против насилство и трговија со луѓе-Отворена порта) → Legis (Легис) → Helsinki Committee of Human Rights of the Republic of Macedonia (Хелсиншки комитет за човекови права на Република Македонија)
POLAND	→ Ombudsman for Children (Rzecznik Praw Dziecka) → UNHCR Representation in Poland → Ombudsman (Rzecznik Praw Obywatelskich) → Border Guard, Border Guard Headquarters (Straż Graniczna) → Police (Policja), Plenipotentiary for Human Rights of the Police Headquarters (Pełnomocnik Komendanta Głównego Policji ds. Ochrony Praw Człowieka) → Head of the Office for Foreigners (Szef Urzędu do Spraw Cudzoziemców) → Caritas, Diocese in Ełk (Diecezja Ełcka), Care and Educational Institution in Ełk (Specjalny Ośrodek Szkolno-Wychowawczy w Ełku) → Helsinki Foundation for Human Rights (Helsińska Fundacja Praw Człowieka) → Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej)

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED BY EMAIL
PORTUGAL	→ Immigration and Borders Service (Serviço de Estrangeiros e Fronteiras) → Portuguese Refugee Council (Conselho Português para os Refugiados) → High Commission for Migration (Alto Comissariado para as Migrações) → Ombudsperson's Office (Provedoria da Justiça) → Social Security Institute – Ministry of Labour and Social Security (Instituto da Segurança Social – Ministério do Trabalho, Solidariedade e Segurança Social) → International Organization for Migration Mission in Portugal (Organização Internacional para as Migrações em Portugal) → Refugee Children Reception Centre (Casa de Acolhimento para Crianças Refugiadas) → Commission for Equality and Against Racial Discrimination (Comissão para a Igualdade e contra a Discriminação Racial) → National SIRENE Bureau (Gabinete Nacional SIRENE)
ROMANIA	→ General Inspectorate of Border Police → General Inspectorate for Immigration → General Directorate for Social Assistance and Child Protection → UNHCR → Jesuit Refugee Service Romania → LOGS Initiatives → Romanian National Council for Refugees → Ombudsperson → National Council for Combating Discrimination
SERBIA	→ Asylum Office → Humanitarian Center for Integration and Tolerance → Group for Children and Youth – Indigo → Ministry of the Interior – Police Directorate → UNHCR Serbia → Shelter for Foreigners
SLOVAKIA	→ Migration Office of the Ministry of the Interior of the Slovak Republic → Office of the Border and Foreign Police → Central Office of Labour, Social Affairs and Family → Public Defender of Rights (Ombudsperson) → Slovak Humanitarian Council → Human Rights League → International Organization for Migration Slovakia → European Migration Network in Slovakia → UNHCR
SLOVENIA	→ Human Rights Ombudsman (Varuh človekovih pravic) → Ministry of the Interior, Migration Directorate (Ministrstvo za notranje zadeve, Direktorat za migracije) → Office of the Government of the Republic of Slovenia for the Support and Integration of Migrants (Urad Vlade Republike Slovenije za oskrbo in integracijo migrantov) → Police (Policija) → Caritas Slovenia (Slovenska karitas) → Legal Centre for the Protection of Human Rights and Environment (Pravni center za varstvo človekovih pravic in okolja) → Slovene Philanthropy (Slovenska filantropija)

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED BY EMAIL
SPAIN	→ Spanish Ombudsman (Defensor del Pueblo) → UNICEF Spain (UNICEF España) → UNHCR Spain (ACNUR España) → Prosecutor for the Coordinating Chamber for Minors, Ministry of Justice (Fiscal de Sala Coordinador de Menores, Ministerio de Justicia) → Spanish Commission for Refugee Aid (Comisión Española de Ayuda al Refugiado) → Spanish Catholic Migration Commission Association (Asociación Comisión Católica Española de Migraciones) → SOS Racism (SOS Racismo) → Jesuit Migrant Service (Servicio Jesuita a Migrantes)
SWEDEN	→ Swedish Migration Agency (Migrationsverkt) → Swedish Border Police (Gränspolisen) → Children's Ombudsman (Barnombudsmannen) → Swedish Refugee Law Center (Asylrättscentrum) → UNHCR Sweden → Swedish National Council for Crime Prevention (Brottsförebyggande rådet)

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https://fra.europa.eu/en/themes/asylum-migration-and-borders

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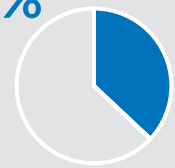
Refugee and Migrant Children in Europe Accompanied, Unaccompanied and Separated

Overview of Trends January to June 2020

Some **6,200** children arrived in Greece, Italy, Bulgaria, Spain, Cyprus and Malta between January and June 2020 (**14% girls and 86% boys**). Child arrivals in Greece, Italy, Bulgaria and Spain in the first half of 2020 decreased by **32%** compared to the first half of 2019 (**8,236**).

37%



Some **2,302** children who arrived in Europe between January and June 2020 were **unaccompanied and separated**.

Some **5,800** children (**24% girls and 28% boys**) were under resettlement procedures in Europe in the first half of 2020.

Out of the total number of children

who sought international protection in Europe between January and June 2020, about 80% were registered in just five countries: **Germany (37%), France (14%), Greece and Spain (12% each) and the United Kingdom (5%).**

Arrivals to Europe between January and June 2020[1]

Between January and June 2020, **6,177** children arrived in Greece, Italy, Spain, Bulgaria, Cyprus and Malta. Of these, **2,302** (37%) were unaccompanied or separated children (UASC)[2]. Child arrivals in Greece, Italy, Bulgaria and Spain in the first half of 2020 decreased by **32%** compared to the first half in 2019 (**8,236**).

Greece

Between January and June 2020, some 3,340[3] children arrived in Greece by land and sea, including 391 UASC (12%)[4]. Like the number of people arriving overall in 2020 so far, the number of children also decreased, with 43% fewer children arriving than in the first half of 2019 (5,905). The number of children arriving unaccompanied or separated also decreased, with 61% less children compared to the same period in 2019 (994). Most children, including UASC, were from Afghanistan, the Syrian Arab Republic, the Democratic Republic of Congo, Iraq and State of Palestine.

Spain

Between January and June 2020, some 870[5] children were estimated to have arrived by sea and land, including some 329 (38%) UASC. This is a 50% decrease compared to the same period in 2019 (1,750). Arrivals of UASC in the first half of 2020 also decreased by 39% compared to the same period in 2019 (538). Based on estimates, most children, including UASC, originated from Algeria, Morocco, Guinea and Côte d'Ivoire.

Italy

Among the 1,289 children who arrived in Italy between January and June 2020, 1,080 (84%) were UASC – a ratio amongst all children that has remained consistent in recent years. Arrivals of children in the first half of 2020 more than doubled compared to the same period in 2019 (486). Most children originated from Bangladesh, Tunisia, Côte d'Ivoire, and Guinea.[6]

Bulgaria

Between January and June 2020, some 101 children lodged their asylum applications in Bulgaria. Among them, 48% were UASC (48). Most asylum-seeking children originated from Afghanistan, the Syrian Arab Republic and Iraq.[7]

Malta

Between January and June 2020, some 446[8] children, including 415 (93%) UASC were among arrivals resulting from search and rescue activities. Most children, including UASC, originated from Sudan, Somalia and Bangladesh.

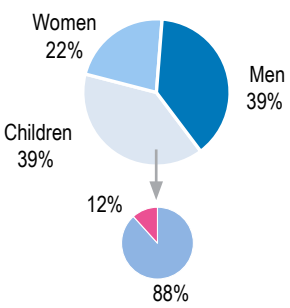
Cyprus

Among the 131 children who arrived in Cyprus between January and June 2020 by sea, 39 (30%) were UASC. Most children, including UASC, originated from the Syrian Arab Republic and Somalia.

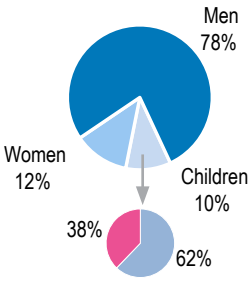
UNHCR The UN Refugee Agency unicef IOM UN MIGRATION

Demographic of Arrivals, including Accompanied, Unaccompanied and Separated Children

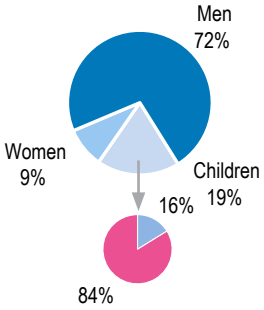
GREECE



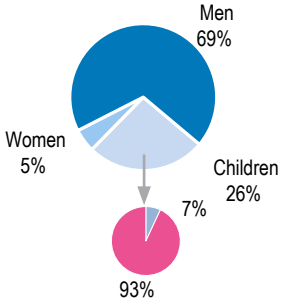
SPAIN



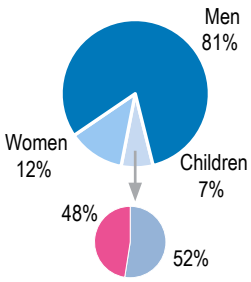
ITALY



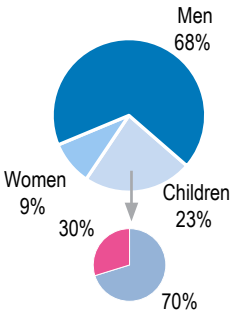
MALTA



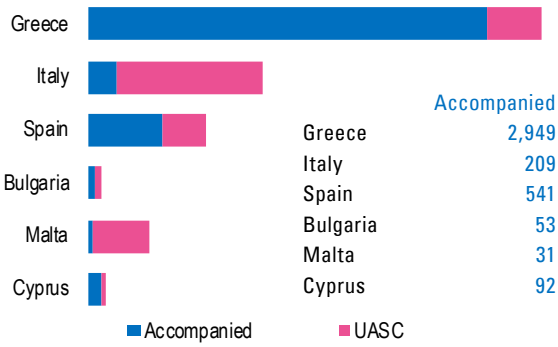
BULGARIA



CYPRUS



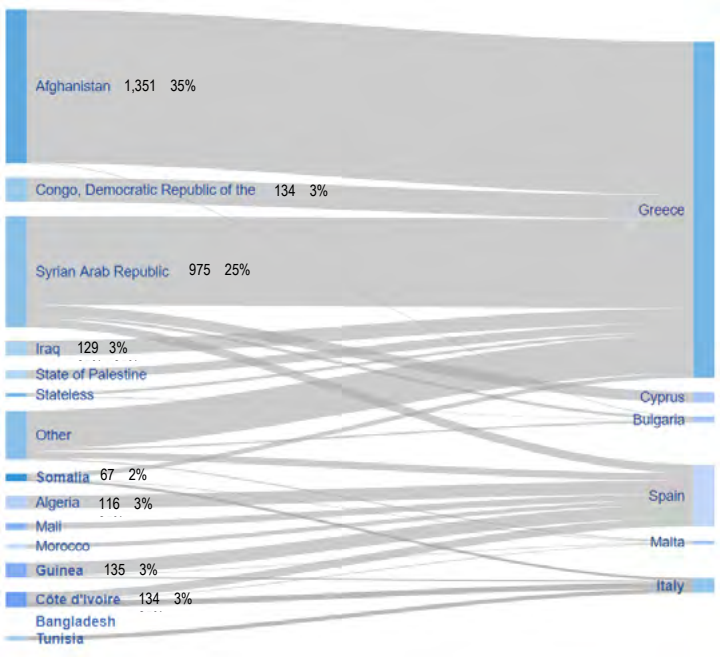
Accompanied, Unaccompanied and Separated Children by Country of Arrival



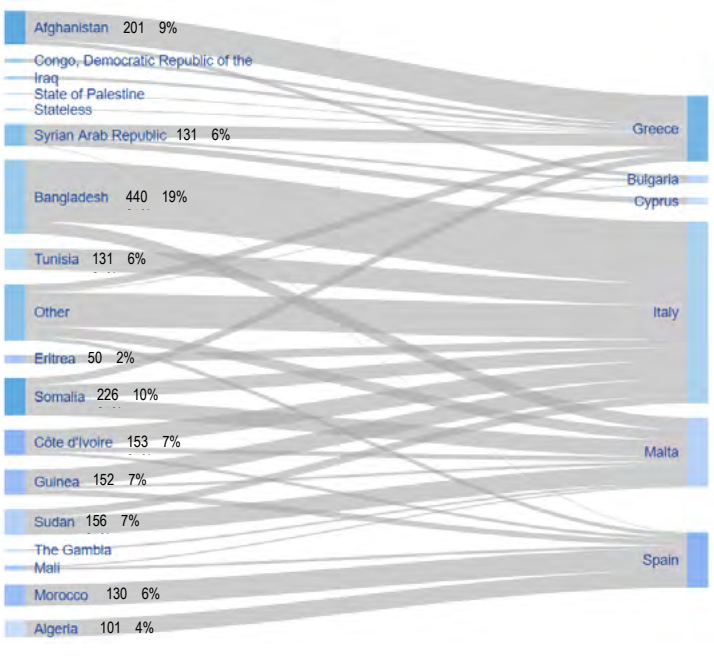
	Accompanied	UASC
Greece	2,949	391
Italy	209	1,080
Spain	541	329
Bulgaria	53	48
Malta	31	415
Cyprus	92	39

Nationality of Accompanied, Unaccompanied and Separated Children by Country of Arrival

Accompanied Children by Country of Origin and Arrival



UASC by Country of Origin and Arrival

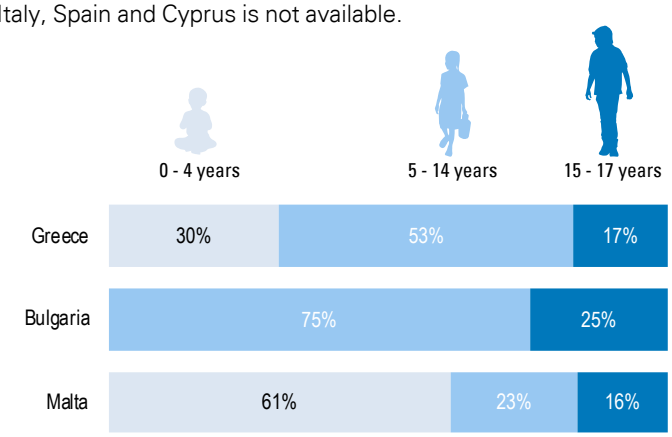


Source: Hellenic Police, EKKA; Italian Ministry of Interior; Bulgaria State Agency for Refugees; Spanish Ministry of Interior; Malta Immigration Police; and Ministry for Home Affairs, National Security and Law Enforcement, Malta (MHAS).

Age and sex breakdown of all Children by Country of Arrival

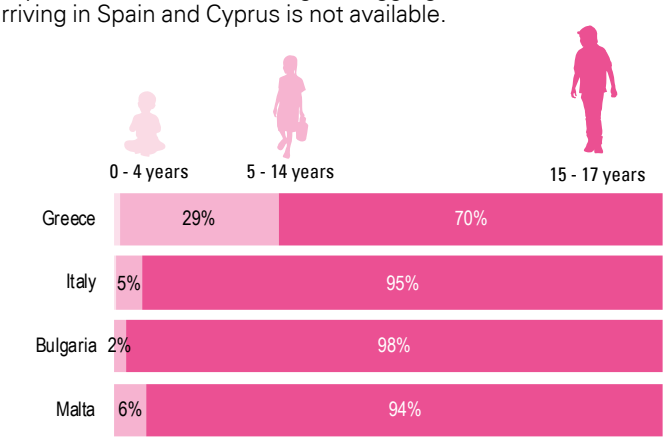
Accompanied Children - Age Breakdown

Among the 3,033 accompanied children who arrived in Greece, Bulgaria and Malta between January and June 2020, 30% were 0 to 4 years old, 53% were 5 to 14 years old and 17% were 15 to 17 years old. The age breakdown for accompanied children in Italy, Spain and Cyprus is not available.



Unaccompanied Children - Age Breakdown

The majority of UASC who arrived in Italy, Greece, Bulgaria and Malta between January and June 2020 were between 15 and 17 years old (90% overall). Age disaggregated data on children arriving in Spain and Cyprus is not available.

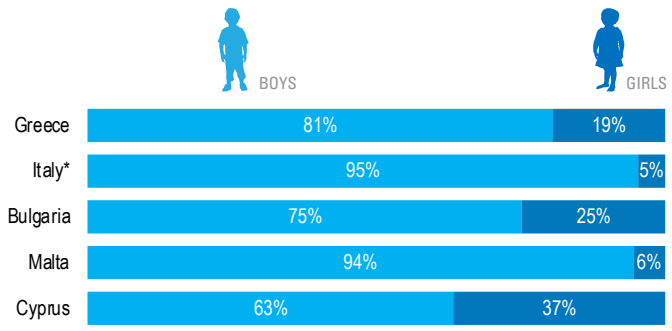


Source: Hellenic Police, EKKA, Italian Ministry of Labour and Social Policies on UASC in reception, Spanish Ministry of Interior and Social Policy, Bulgarian State Agency for Refugees, Maltese Ministry for Home Affairs, National Security and Law Enforcement (MHSE).

Note: Due to the limited disaggregation or inconsistency of data by age and sex across countries, these graphs refer to estimates.

Sex Breakdown of Children by Country of Arrival

Overall, the proportion of boys among arrivals remains high: 85% of children who arrived through various Mediterranean routes between January and June 2020 were boys. The proportion of girls arriving alone in Greece in the same period decreased by half (19%) compared to the first half in 2019 (42%), whereas the proportion of boys arriving unaccompanied in Italy remained consistent with previous trends. The proportion of boys among arrivals to Malta remained similar compared to the children arrived in the whole of 2019.



**For Italy, the calculation is based on the estimated 5,016 UASC registered in the reception system as of 30 June 2020 according to the Italian Ministry of Labour and Social Policies.*

Reception on arrival as of June 2020

Greece

- Of all children present in Greece, 48% were living in urban areas (apartments, hotels, shelters for unaccompanied children, self-settled, etc.); 28% were in accommodation sites; 1% were in safe zones for unaccompanied children and 23% were in Reception and Identification Centres.
- An estimated 45,100 children were present in Greece as of 30 June 2020, an increase from 32,000 in June 2019.

Italy

- The majority of UASC registered at the end of June 2020 (94%) were in shelters for unaccompanied children run by state authorities and non-profit entities, while the rest were in family care arrangements (6%).
- As of June 2020, some 5,016 unaccompanied migrant and asylum-seeking children (95% boys and 5% girls) were present in the country.

Spain

- There are specialised government-run reception centers across the 17 Autonomous communities and the 2 autonomous cities of Ceuta and Melilla available to accommodate children.
- As of the end of February 2020, there were 11,978 UASC in reception (1,099 female and 10,879 male), according to the ADEXTTRA registry of unaccompanied migrant children.

Malta

- Upon arrival, unaccompanied children awaiting age assessment are placed in detention facilities. After the age assessment has been conducted, those found to be underage may be placed in open reception centers with dedicated sections for unaccompanied children over the age of 16. Unaccompanied children below the age of 16 are usually accommodated in Dar Il-Liedna open centre, designated for children.
- At the end of June 2020, an estimated 350 unaccompanied children were accommodated in open centers, while a further 338 remained in detention facilities. Another 90 unaccompanied children were hosted at the Initial Reception Center.

Bulgaria

- 101 children, including 48 unaccompanied children, were accommodated in reception facilities in Sofia and Southern Bulgaria.

Bosnia and Herzegovina

- Migrant and asylum-seeking/refugee children are hosted in Temporary Reception Centres and other formal accommodation throughout Bosnia and Herzegovina.
- Unaccompanied children were accommodated in Usivak, Bira, Miral, Borici, Sedra, and Blazuj Temporary Reception Centers.
- As of June 2020, a total of 817 migrant and asylum-seeking/ refugee children were present in the country. Of these 468 children (268 boys and 200 girls) were accommodated with family members and 349 were unaccompanied (348 boys, one girl).

Croatia

- The Croatian government designated two facilities for children in Zagreb and in Split for the initial reception of UASC during which best interests' procedures are undertaken. These should be completed within 3 months to determine appropriate solutions, including on accommodation and care. The children, irrespective of their legal status, are largely entitled to the same protection and care as Croatian children.
- From January to June 2020 there were 104 UASC registered as seeking international protection in Croatia, of which 97 boys (10 boys of 0-13 years old, 13 boys of 14-15 years old, 74 boys of 16-17 years old) and 7 girls (2 girls of 0-13 years old, 1 girls 14-15 years old, 4 girls 16-17 years old).

Hungary

- Unaccompanied children cannot legally be detained in Hungary, while accompanied children may be detained for up to 30 days with their families. Unaccompanied children are accommodated in a dedicated children's home in Budapest.
- From 1 January to 21 May 2020, about 207 children, including 6 separated children, were detained in the transit zones.
- In June, there were about 50 accompanied children in the reception centres. 7 unaccompanied (6 boys, 1 girl) were additionally accommodated in the Children's Home as of June.

Montenegro

- A total of 78 children were accommodated in closed and open receptions centers in facilities in Podgorica, Spuz and Konik. Of those, 38 were accompanied boys, 4 unaccompanied boys, and 36 accompanied girls. There were no unaccompanied girls.

Poland

- Accompanied children may be placed in detention, reception facilities or private accommodation together with their parents or legal guardians. Unaccompanied children are placed in childcare facilities together with Polish children.
- On 30 June, there was one unaccompanied child in the asylum procedure in Poland.

Romania

- Families with children, who do not have sufficient resources for private accommodation, are hosted in one of six existing reception facilities.
- UAC under the age of 16 are usually referred to national child protection services and placed in residential facilities run by the Child Protection Directorate, where they are accommodated together with Romanian children in similar situations. Older adolescents typically remain in government-run reception facilities for asylum seekers and refugees of all ages.
- As of June 2020, some 89 unaccompanied children submitted their asylum requests.

Slovenia

- Asylum-seeking UAC are placed in quarantine (related to COVID) at Logatec closed accommodation facility for 10 days. Some are then transferred to student dormitories in Postojna. One of these has been designated for the reception of UAC and can accommodate up to 22 children.
- Unaccompanied children who do not apply for asylum may be confined (related to COVID) in accordance with the Foreigners Act. Also asylum-seeking children accompanied by their parents may be confined.

Reception systems for children vary greatly across and within countries and can pose protection risks if not appropriate for the needs of children, particularly unaccompanied and separated children. A significant number of unaccompanied children are not hosted in formal shelters or family-based care arrangements. While official information is unavailable, reports suggest many of these children have moved onwards, residing in informal accommodation or on the streets.

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AFGHAN CHILD IN FYLAKIO CENTRE NEAR THE GREEK-TURKISH BORDER, GREECE, FEB 2020.

Impact of COVID

The impact which COVID-19 has had on entire systems and population groups of course extends to refugee and migrant children. Suspension of procedures such as registration, age assessment and asylum impacted access to services for children, including guardianship, and in some contexts access to appropriate shelter. Family reunion/reunification has been delayed with the suspension of asylum procedures, consular services in third countries and limited flight options to facilitate transfers. Physical distancing and confinement measures have exacerbated previous challenges of individual oversight and case management, effective information provision to children as well as support for caregivers and parents. Access to education has been a challenge particularly in reception facilities, as refugee and migrant children may not have the same levels of connectivity for online learning, and with crowded reception conditions being far less conducive to learning than school environments. Integration may also be hindered as regular interaction in schools and with host community children and teachers has been disrupted. Overall, heightened risk factors such as increased poverty and food insecurity, limited access to education, disruption of peer and social support networks for children/caregivers, as well as community and social support services, have had a detrimental effect on mental health and psycho-social well-being, and exacerbated the risk of violence, abuse and neglect for children, both unaccompanied and within families.

Positive practices:

- In France, self-declared minority was accepted to facilitate access to child protection services while age assessment procedures remained suspended
- In a number of national contexts, remote case management for children continued while confinement measures prevented in-person support and visits
- In a number of national contexts, the validity of residence permits – including those for unaccompanied children and asylum seekers - due to expire in the first half of 2020 has been extended, as access to police and administration offices was delayed due to COVID-19 restrictive measures.
- The storybook "My Hero is You" is a child-friendly publication developed by the IASC MHPSS reference group and already translated into several languages to explain covid to children.
- In Bulgaria, the child protection agency has set up a hotline accessible for covid-related advice and information for parents and children.

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Asylum Applications and Decisions

During the first half of 2020, countries in Europe[9] recorded some **218,755** new asylum seekers. Nearly a third of them (**69,010**) were children – a decrease of **29%** compared to the number of child asylum applicants in the first half in 2019 (97,235).

During the first half of 2020, the **Syrian Arab Republic** continued to be most common country of origin among child asylum seekers (22%), followed by Afghanistan (13%), **Iraq** (6%), **Venezuela, Colombia** and **Eritrea** (4% each).

45% of all child asylum seekers were female. Among the top countries of origin for child asylum seekers, females represented a high proportion of those from **Côte d'Ivoire** (64%), followed by **Guinea (54%), Nigeria** (52%), **Venezuela** (50%), **Turkey** and the **Democratic Republic of Congo** (49%), **Colombia** (48%), **Russian Federation** (47%), **Eritrea** and **Syrian Arab Republic** (46% each).

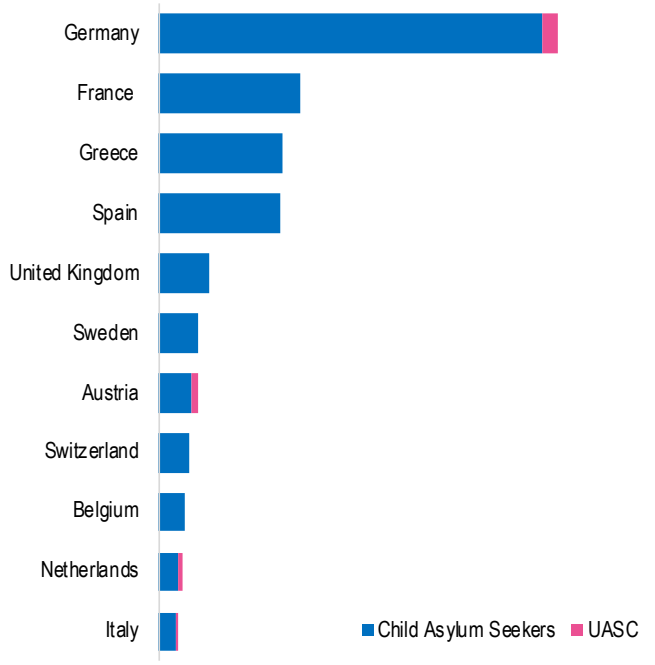
Like previous years, **Germany** remained the top destination for refugee and migrant children, registering 37% of all child asylum applications between January and June 2020 (25,755 children). Other countries that recorded large numbers of child asylum seekers included **France** (9,590 children, 14%), **Greece** (8,385 children, 12%), **Spain** (8,115 children, 12%), and the **United Kingdom** (3,445 children, 5%).

Between January and June 2020, a total of **74,635** decisions were issued for child asylum claims by national authorities across Europe. Among those, **60%** were positive – a similar percentage as compared to the first half of 2019 (59%). Most decisions granting refugee status and subsidiary protection were issued by Germany to Syrian, Iraqi and Afghan children, while the majority of decisions granting humanitarian status were issued by Spain to Venezuelan and Ukrainian children.

Of all children who received a positive decision, **68%** were granted **refugee status** (slightly down from 72% same period in 2019), 18% were granted subsidiary protection (19% same period in 2019) and 15% humanitarian status (up from 9% same period in 2019).

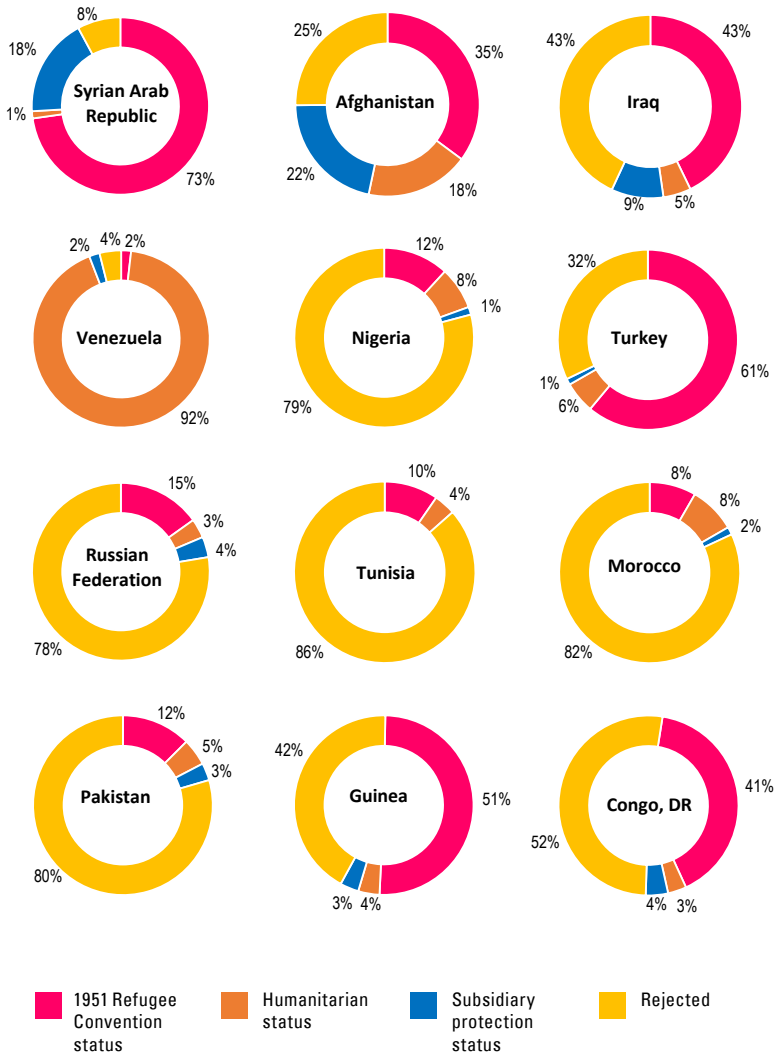
Among top countries of origin, the share of negative decisions was notably higher among those coming from North and West African countries, as well as children from Pakistan (80%), Russian Federation (78%) and Iraq (43%).

First-time Asylum Applications Lodged by Children, and Asylum Applicants considered to be Unaccompanied and Separated Children, between January and June 2020, by Country of Asylum*



*The difference in numbers of arrivals and asylum applications can be explained by the long waiting times before people can claim asylum, backlogs in national asylum systems, as well as the fact that applications can be submitted by persons who have arrived previously or did not necessarily come through the Mediterranean Routes.

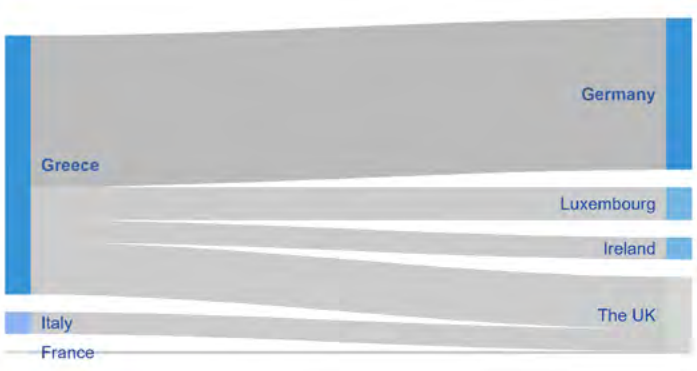
Decisions on Child Asylum Applications between January and June 2020



Source: Eurostat 2019

Relocation

After the official closure of the EU emergency relocation scheme in 2018, IOM has continued to support national authorities to relocate migrants and refugees arriving by sea to other EU Member States through bilateral agreements between countries involved, as well as increasingly through EC funded projects implemented by IOM in Greece and Malta in coordination with UNHCR and UNICEF. Despite the challenges faced due to COVID-19, IOM relocation efforts continued throughout all months of the reporting period. Between January and June 2020, a total of 108 children (95 boys, 13 girls) were relocated from Greece, Italy, France and Malta. Of them, 103 were unaccompanied children and were relocated to Germany (55), Ireland (8) and Luxembourg (12) under relocation projects, while others were relocated to the UK (28) under the Dubs scheme.



[source]

Returns from Greece to Turkey

Of all returnees from Greece to Turkey under the EU-Turkey Statement between 2016 and March 2020 (2,140), 107 (5%) were children. All of them were returned with their families.

[source]

Assisted with Voluntary Return and Reintegration (AVRR) to Children and UASC

Between January and June 2020, IOM provided AVRR support to 17,793 migrants globally (37% less than the same period in 2019). About 9% of them were children, including 14 unaccompanied and separated children. Overall, 5,834 beneficiaries were assisted to return from countries of the European Economic Area (EEA) and Switzerland. Of these, 29% (1,68) were assisted to return from Germany only and 19% (1,142) were children, including 14 who were unaccompanied or separated. Out of all beneficiaries assisted to return from the EEA and Switzerland, around 15% (881) returned to countries of South-Eastern, Eastern Europe and Central Asia; 8% (487) returned to the Middle East and Northern Africa, 8% (433) to countries of South America and the remaining 69% (4,033) to other regions.

Children Resettled to Europe

Of the total 11,200 people in resettlement procedures in Europe between January and June 2020, 52% were children (28% boys and 24% girls). Children's resettlement cases in Europe were most commonly being considered by Sweden, France, Germany, Norway, the United Kingdom and Netherlands. The most common nationalities of children whose cases were being considered by European stats for resettlement included Syrians, Congolese (DRC), South Sudanese, Sudanese and Eritreans.

Source: Hellenic Police, Greek National Centre for Social Solidarity (EKKA), Italian Ministry of Interior, Bulgarian State Agency for Refugees, Spanish Ministry of Interior, Eurostat, BAMF-Germany, IOM, UNHCR resettlement portal and UNICEF.

Definitions:

A "**separated child**" is a child separated from both parents or from his/her previous legal or customary primary care-giver, but not necessarily from other relatives. This may, therefore, mean that the child is accompanied by other adult family members.

An "**unaccompanied child**" is a child separated from both parents and other relatives and are not being cared for by any other adult who, by law or custom, is responsible for doing so. [source]

A "**refugee**" is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country (Article 1 A 1951 Refugee Convention).

An "**asylum seeker**" is a person who has applied for asylum and is waiting for a decision as to whether or not they are a refugee. Determination of refugee status can only be of a declaratory nature. Indeed, any person is a refugee within the framework of a given instrument if he meets the criteria of the refugee definition in that instrument, whether he is formally recognized as a refugee or not (UNHCR Note on Determination of Refugee Status under International Instruments). [source]

A "**migrant**" refers to any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. [source]

About the factsheet

This factsheet is jointly produced by UNHCR, UNICEF and IOM with the aim to support evidence-based decision-making and advocacy on issues related to refugee and migrant children.

The document provides an overview of the situation in Europe with regards to refugee and migrant children (accompanied and UASC). It compiles key child-related data based on available official sources: arrival, asylum applications, asylum decisions, profiling of arrivals, relocation from Greece and Italy under the EU relocation scheme, as well as returns from Greece to Turkey under the EU-Turkey statement.

The present factsheet covers the period January to June 2020 and is produced every six months to provide up-to-date information on refugee and migrant children, including unaccompanied and separated children.

Endnotes

1. Data on arrivals is partial due to the large scale of irregular movements and reflects only sea arrivals for Greece and Italy. Data for Spain includes both sea and land arrivals and is based on UNHCR estimates, pending provision of final figures by Spanish Ministry of Interior (MOI); figures for UASC are only available for arrivals by sea (not for Ceuta or Melilla).
2. Separated children are children separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. Unaccompanied children are children 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 (IASC).
3. Arrival figures for Greece are collected in the framework of UNHCR border activities and are provided by Hellenic Police.
4. During the same period of time, a total of 739 referrals were made to the Greek National Centre for Social Solidarity (EKKA) based on children identified on islands and mainland Greece, including near the land border with Turkey in January-June 2020.
5. UNHCR estimated figures pending provision of final figures by Spanish Ministry of Interior (MOI); figures on UASC arrivals to Ceuta and Melilla are not included. Children arriving in the Canary Islands from Western Africa through the Atlantic are included.
6. Data on arrivals and demographic of refugees and migrants registered in Italy is based on information received from the Italian Ministry of Interior.
7. Statistics for Bulgaria are collected by the State Agency for Refugees. Observations on data and trends that isn't typically compiled by government institutions are collected by the Bulgarian Helsinki Committee.
8. Estimate on data provided by the Immigration Police and the Ministry for Home Affairs, National Security and Law Enforcement (MHAS), Malta. UASC figures are based on age declared by the refugees and migrants upon arrival. Not all the persons who make such a declaration are recognised to be UASC by the authorities after the age assessment is conducted.
9. European Union Member States + Iceland, Liechtenstein, Norway and Switzerland and the United Kingdom.

Limitation of available data on Children and UASC:

There is no comprehensive data on arrivals (both adults and children) in Europe, especially by land and air, as such movements are largely irregular and involve smuggling networks, which are difficult to track. If collected, data is rarely disaggregated by nationalities, risk category, gender or age. Reliable data on the number of UASC either arriving to, or currently residing in, different European countries is often unavailable. The number of asylum applications filed by UASC is used to provide an indication of trends but does not necessarily provide an accurate picture of the caseload due to backlogs in national asylum systems, onward irregular movements or children not applying for asylum at all. In addition, due to different definitions and national procedures and practices, collecting accurate data on separated children specifically is very challenging (e.g. separated children being registered as either accompanied or unaccompanied). It should also be noted that for UASC asylum claims for the period January to June 2020, since Eurostat publish UASC data on annual basis, data was available only for few countries at the time when this factsheet was released.

Jointly compiled and produced by:

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