

Alliance for Children on the Move
Standard Operating Procedures for Guardians

AS  P4G

INDEX OF LEGISLATION RELATING TO UNACCOMPANIED CHILDREN



Co-funded by the European
Union's Rights, Equality
and Citizenship Programme
(2014-2020)

INDEX OF LEGISLATION
RELATING TO
UNACCOMPANIED
CHILDREN

The project “Alliance for Children on the Move: Standard Operating Procedures for Guardians”-ASOP4G (REC-CHILD-AG-2016-02/764244-ASOP4G) has been co-funded by the European Union’s Rights, Equality and Citizenship Programme (2014-2020).

The present Index has been jointly developed by the ASOP4G project team, consisting of members of the Institute of Child Health-Department of Mental Health and Social Welfare (GR), Defence for Children International-Italy (IT), University of Nicosia-School of Humanities and Social Sciences/Department of Social Sciences/Social Work Program (CY) and Kazimieras Simonavičius University-Faculty of Law (LT).

Authors: Eglė Kavoliūnaitė-Ragauskienė, Edita Bumblienė and Olegas Beriozovas [Kazimieras Simonavičius University (LT)].

Coordinator of the Project



Institute of Child Health - Department of
Mental Health and Social Welfare, Greece

Partners of the Project



University of Nicosia, Cyprus



Kazimieras Simonavičius University, Lithuania



Defence for Children International-Italia, Italy

External evaluator

Dr. Kevin Browne

© Institute of Child Health, University of Nicosia, Kazimieras Simonavičius University and Defence for Children International-Italy. All rights reserved. Reproduction or presentation of this publication is permitted, if the copyright is respected.

Alliance for Children on the Move
Standard Operating Procedures for Guardians



INDEX OF LEGISLATION RELATING TO UNACCOMPANIED CHILDREN

Co-funded by the European Union's
Rights, Equality and Citizenship
Programme (2014-2020)



November 2019

Within the framework of the project “Alliance for children on the Move: Standard Operating Procedures for Guardians” a comprehensive toolkit has been developed for guardians of unaccompanied children consisting of the following publications:

- Handbook on Standard Operating Procedures for Guardians
- Index of international, EU and national legislation relating to unaccompanied children
- Transnational Cooperation Protocol for Guardians
- Trainer’s Manual
- Accreditation procedure for Guardians
- Brochure for professionals working with unaccompanied minors about the role of the guardian
- Brochure for children about the role of the guardian

Project url: <https://asop4g.eu/>

This publication was funded by the European Union’s Rights Equality and Citizenship Programme (2014-2020). The content of this document represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

CONTENTS

INTRODUCTION

The ASOP4G toolkit.....	007
Aim and structure of this Index of legislation relating to unaccompanied children.....	009
Terms and definitions.....	011

PART I: INTERNATIONAL AND REGIONAL LAW

1. Human rights.....	015
1.1. Fundamental human rights.....	015
1.2. Social, economic and cultural rights.....	016
1.3. Civil and political rights.....	019
2. Children’s rights.....	021
2.1. Fundamental rights of children.....	021
2.2. Custody and contact.....	023
2.3. Adoption and intercountry adoption.....	026
3. Rights of asylum seekers and refugees.....	028
3.1. Fundamental rights of asylum seekers and refugees..	028
3.2. Family reunification.....	030
3.3. Repatriation and return.....	031
4. Rights of stateless persons.....	032
5. Nationality.....	034
6. Children as victims of violence.....	035
6.1. Child soldiers.....	035
6.2. Trafficking.....	037
6.3. Child prostitution, child pornography and sexual abuse.....	040
6.4. Torture.....	042
6.5. Child labour.....	046
6.6. Domestic violence.....	046
7. Discrimination.....	048
7.1. Discrimination against national minorities.....	048
7.2. Racial discrimination.....	050
7.3. Gender discrimination.....	052
7.4. Discrimination against disabled people.....	054
8. Data protection.....	056
9. Access to justice.....	057
Part II: EUROPEAN UNION LAW	
1. Human rights and children’s rights.....	063

1.1. Fundamental human rights and children’s rights.....	063
1.2. Custody.....	067
2. Rights of asylum seekers, refugees, stateless persons, long-term residents.....	068
2.1. Fundamental rights of asylum seekers, refugees and stateless persons.....	068
2.2. Fundamental rights of long-term residents.....	075
2.3. Family reunification.....	077
2.4. Repatriation and return.....	078
3. Children as victims of violence.....	079
3.1. Child soldiers.....	079
3.2. Trafficking.....	080
3.3. Child prostitution, child pornography and sexual abuse.....	084
3.4. Torture.....	085
3.5. Child labour.....	087
4. Discrimination.....	088
4.1. Racial discrimination.....	088
4.2. Gender discrimination.....	089
4.3. Discrimination against disabled people.....	090
5. Data protection.....	091
6. Access to justice.....	095

Introduction

Each year EU countries receive several millions of asylum seekers and immigrants, seeking protection in the EU, because of conflicts, poor living conditions and lack of protection in different countries of origin. Unaccompanied minors arrive among such people, travelling for the same main reasons, whether escaping danger or poverty. Each year the number of them is rapidly increasing.

EU reception countries have different legal systems, therefore the legal status of unaccompanied minors, the child protection system, the safeguard of their rights and the guardianship system differs from country to country. EU reception countries lack a common practical and legal approach to unaccompanied minors. In order to secure the best interests of every child in all countries, it is necessary to create a uniform system with common standards and safeguards throughout the EU.

The project “Alliance for children on the Move: Standard Operating Procedures for Guardians” – ASOP4G

The project entitled “Alliance for children on the Move: Standard Operating Procedures for Guardians” – ASOP4G [REC-CHILD-AG-2016/764244-ASOP4G], which was implemented during 2018-2020 in Greece, Italy, Cyprus and Lithuania has attempted to address this issue by drawing on existing international standards and tools, as well as the views of all involved actors (guardians, children, stakeholders) and developing Standard Operating Procedures for guardians, which could be adapted in more EU countries. Noteworthy that “guardians are one of the most important features of a protection system for children who are deprived of their family environment or who cannot have their interests represented by their parents, as may be the case in situations of parental abuse or neglect” (FRA 2015, p.3).

The ASOP4G aimed to: a) implement common standards on guardianship for unaccompanied children; b) improve the capacity-building of guardians in order to enhance their competencies and skills and thus better safeguard the rights of unaccompanied children; c) promote interagency cooperation and understanding and in this way to further contribute to a comprehensive child protection system; and d) reinforce child protection in cross-border movement of children.

Taking into account the overall goal of this project, that is to contribute to the safeguarding of unaccompanied children’s rights and their wellbeing within the EU by promoting the implementation of common standards on guardianship in EU countries, the following actions have been taken:

- Concrete guidelines for guardians (Standard Operating Procedures) were developed
- Guardians’ capacity has been enhanced so as to better safeguard the rights of the child & his/her best interests
- The role of the guardian has been strengthened
- Interagency cooperation and understanding for establishing a comprehensive child protection system has been enhanced
- Children’s protection in cross-border & transnational situations by setting guidelines for action in cases of children’s cross-border movement has been reinforced.

THE ASOP4G TOOLKIT

Within the framework of the ASOP4G project, a set of tools have been developed to assist the guardian to better carry out his/her mandates:

- Handbook on Standard Operating Procedures for Guardians
- Index of legislation relating to unaccompanied children
- Transnational collaboration protocol for guardians
- Leaflets for professionals on the role of the guardian
- Informative leaflets for children on the role of the guardian
- Trainers' manual for the implementation of guardians' capacity building

AIM AND STRUCTURE OF THIS INDEX OF LEGISLATION RELATING TO UNACCOMPANIED CHILDREN

The index of legislation relating to unaccompanied children (further – Index) is one of the ASOP4G projects' tools. It is intended to assist the guardian to better carry out his/her mandates.

International, EU and national legislation regulates issues relating specifically to unaccompanied children in a very fragmentary way, making it very difficult for guardians to protect the rights and interests of the children in their care. Therefore the aim of the Index is to provide a systematic list of International, EU and national legislation relating unaccompanied children in order to help guardians perform their functions properly.

In the Index the legislation is systematized according to the most important areas of their lives that unaccompanied children are most likely to encounter in practice. This makes it easy for guardians, even if they have no legal knowledge, to use this Index.

The Index indicates: the title of the legal document, the name of the institution which adopted it, the date of entry into force or the date of proclaim, the online link to the legal document, the scope of the legal document and related definitions, the rights of children and unaccompanied children, that are established in the legal document, the monitoring of the legal document.

The Index consists of three main chapters. The first chapter examines the contents of the International legislation, concerning unaccompanied children.

The foremost international legal instrument to protect and support children's rights worldwide is the United Nations Convention on the Rights of the Child, which includes general principles of non discrimination (Article 2), the principle of the best interests of the child (Article 3), the right of the child to life, survival and development (Article 6) and the child's right to express his or her views freely (Article 12). Also the Convention recognizes social, economic, civil and cultural rights to all children. All EU Member States and most of the States from where unaccompanied children come from have therefore committed themselves to respect and implement all principles and rights to all children under their national jurisdictions. Also the rights of the children have been recognised in a number of other international agreements signed by the Member States of international organizations. Most of these agreements are legally binding and for this reason have been implemented at national level. Through these International legal instruments the rights of the unaccompanied children are protected more effectively.

The EU legislation concerning unaccompanied children has been examined in chapter two. The rights of the child constitute an integral part of fundamental rights which the EU and Member States are bound to respect by virtue of European and international law. Legally, the most significant recent development at European level is the entry into force of the Lisbon Treaty which establishes among the aims of the EU the 'protection of the rights of the child' (Article 3) and whereby the European Charter of Fundamental Rights became binding. In accordance with Article 24 of the Charter, children now 'have the right to such protection and care as is necessary for their well-being'; their best interests must be a primary consideration in 'all actions relating to children, whether taken by public authorities or private institutions'; and every child has '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'. Afterwards various EU policies and programs on children's rights have been developed. They cover many issues, ranging from antidiscrimination, to health and safety of a child, and countering of child labour, trafficking and prostitution.

The third chapter presents an analysis of the national legislation of the destination countries of the ASOP4G project (Greece, Italy, Cyprus and Lithuania).

National legislation covers different aspects of unaccompanied minors' life in a reception country – the legal status of unaccompanied children, the child protection and guardianship systems, the safeguard of their rights, the legal entry procedures, the reception and integration issues. The index will help guardians to understand how these issues are regulated by national law.

TERMS AND DEFINITIONS

Child

According to the Convention on the Rights of the Child (Article 1), the term child is referred to “any person below 18 years of age”.

Third country national

According to the Directive 2008/115/EC (Return Directive, Article 3(1)) and the Regulation (EU) 2016/399 (Schengen Borders Code, Article 2(6)) a third country national is a person who does not hold the citizenship of an EU Member State.

Stateless person

According to the 1954 Convention relating to the Status of Stateless Persons (ratifying law 139/1975, Article 1) stateless is a person who, under national laws, does not enjoy citizenship in any country (no legal bond between the person and the state). One can obtain citizenship either during his/her birth or later on his/her life by meeting specific requirements set by each State. During birth citizenship can be obtained by persons who are in a State which recognizes as citizen every person born on its territory (jus soli· e.g. USA, France) or whose parents have citizenship of a State which applies jus sanguinis and therefore their children are automatically recognized as its citizens too (e.g. Greece, Lithuania).

Unaccompanied minor

According to the Qualification Directive 2011/95/EU (Article 2 (1)) unaccompanied minor is defined as a third country national or stateless person under the age of 18 years, , who arrives on the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or

by the practice of the Member State concerned, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States.

Separated child

According to the UN Committee on the Rights of the Child General Comment No. 6 CRC/GC/2005/6 and the UN Guidelines for the Alternative Care of Children (UN Alternative care guidelines A/HRC/11/L.13) (paragraph 14) a child is characterized as separated when he/she “has been 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”.

Guardian

According to the UN Committee on the Rights of the Child General Comment No. 6 CRC/GC/2005/6 and the UN Guidelines for the Alternative Care of Children (UN Alternative care guidelines A/HRC/11/L.13) (paragraph 14) for the purposes of the present index “a guardian is considered to be an independent person who safeguards the child’s best interests and general well-being, and to this effect complements the limited legal capacity of the child, when necessary, in the same way that parents do”.

Part I



International and regional law

1. HUMAN RIGHTS

1.1. Fundamental human rights

European Convention on Human Rights (ECHR)

Council of Europe

Entered into force from 3 September 1953

https://www.echr.coe.int/Documents/Convention_ENG.pdf

The ECHR is one of the most important international conventions to protect human rights and political freedoms and to promote democracy in European countries. The ECHR was drafted in 1950 by the then newly formed Council of Europe. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity. Governments signed up to the ECHR have made a legal commitment to abide by certain standards of behavior and to protect the basic rights and freedoms of ordinary people within their jurisdiction.

The ECHR guarantees specific rights and freedoms and prohibits unfair and harmful practices. The ECHR secures:

- the right to life (Article 2);
- freedom from torture (Article 3);
- freedom from slavery (Article 4);
- the right to liberty (Article 5);
- the right to a fair trial (Article 6);
- the right not to be punished for something that wasn't against the law at the time (Article 7);
- the right to respect for family and private life (Article 8);
- freedom of thought, conscience and religion (Article 9);
- freedom of expression (Article 10);
- freedom of assembly (Article 11);
- the right to marry and start a family (Article 12);
- right to an effective remedy (Article 13);
- the right not to be discriminated against in respect of these rights (Article 14);
- the right to protection of property (Protocol 1, Article 1);

- the right to education (Protocol 1, Article 2);
- the right to participate in free elections (Protocol 1, Article 3);
- the abolition of the death penalty (Protocol 13).

The ECHR is regularly updated and amended by Protocols. Governments, parliaments and courts in each country are mainly responsible for upholding implementing and enforcing the rights and freedoms set out in the ECHR. Nonetheless they are allowed to make interpretations, consistent with their own legal systems.

The monitoring of the ECHR. The ECHR established the European Court of Human Rights. Person who feels his or her rights have been violated under the ECHR by a state party can take a case to the Court after he or she have used up every possible chance of appeal at the national level. Judgments finding violations are binding on the States concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgments, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained.

1.2. Social, economic and cultural rights

Revised European Social Chart (RESC)

Council of Europe
Entered into force from February 26 1965
<https://rm.coe.int/168007cf93>

The RESC is a Council of Europe treaty that guarantees fundamental social and economic rights as a counterpart to the ECHR. The RESC is seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

The RESC guarantees a broad range of everyday human rights related to employment, housing, health, education, social protection and welfare. The basic rights set out in the Charter are:

→ the labour rights - the right to work, the right to just conditions of work, the right to safe and healthy working condition, the right to a fair remuneration, the right of children and young persons to protection, the right of employed women to protection of maternity; the right to vocational guidance and trainings, the right to dignity at work (Part II, Articles 1, 2, 3, 4, 7, 8, 9, 10, 22, 25, 26);

→ the right to organize - the freedom of workers and employers to form organizations for the protection of their economic and social interests and to promote joint consultation between workers and employers, the right of workers' representatives to protection (Part II, Article 5, 6, 28);

→ the right to protection of health (Part II, Article 11);

→ the right to social security and to social and medical assistance (Part II, Article 12, 13, 14, 24, 30);

→ the right of children and young persons to social, legal and economic protection - the State Parties undertake to take all appropriate and necessary measures designed to ensure that children and young persons, 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; to protect children and young persons against negligence, violence or exploitation; to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support; to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools. (Part II, Article 17);

→ the right to engage in a gainful occupation in the territory of other State Parties (Part II, Article 18);

→ the right of migrant workers and their families to protection and assistance (Part II, Article 19);

→ the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Part II, Article 20);

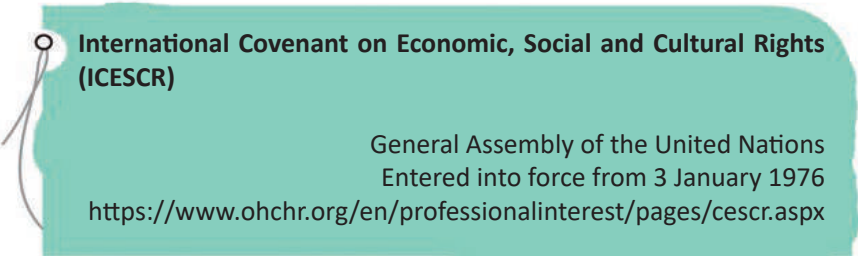
→ the right of workers with family responsibilities to equal opportunities and equal treatment (Part II, Article 27);

→ the right to protection against poverty and social exclusion (Part II, Article 30);

→ the right to housing - the State Parties undertake to take measures designed to promote access to housing of an adequate standard; to prevent and reduce homelessness with a view to its gradual elimination; to make the price of housing accessible to those without adequate resources (Part II, Article 31).

The RESC lays specific emphasis on the protection of vulnerable persons such as elderly people, children, people with disabilities and migrants (Part II, Articles 15 – 19, 23). It requires that enjoyment of the abovementioned rights be guaranteed without discrimination.

The monitoring of the RESC. The European Committee of Social Rights is the body responsible for monitoring compliance in the State Party to the RESC. The Committee is composed of 15 independent members who are elected by the Council of Europe’s Committee of Ministers for a period of six years, renewable once. The Committee investigates complaints of violations of the RESC.



International Covenant on Economic, Social and Cultural Rights (ICESCR)

General Assembly of the United Nations
Entered into force from 3 January 1976

<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

The ICESCR is a multilateral treaty, that commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living.

The State Parties to the ICESCR, shall promote the realization of these rights:

- the right of all peoples to self-determination, including the right to “freely determine their political status”, pursue their economic, social and cultural goals, and manage and dispose of their own resources (Article 1);
- the rights to work, under “just and favorable conditions”, with the right to form and join trade unions (Articles 6, 7, and 8);
- the right to social security, including social insurance (Article 9);
- the right to family life, including paid parental leave and the protection of children (Article 10);
- the right to an adequate standard of living, including adequate food, clothing and housing, and the “continuous improvement of living conditions” (Article 11);

- the right to health, specifically “the highest attainable standard of physical and mental health” (Article 12);
- the right to education, including free universal primary education, generally available secondary education and equally accessible higher education. This should be directed to “the full development of the human personality and the sense of its dignity; and enable all persons to participate effectively in society (Articles 13 and 14);
- the right to participation in cultural life (Article 15).

The ICESCR requires all rights be recognized “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The rights can only be limited by law, in a manner compatible with the nature of the rights, and only for the purpose of “promoting the general welfare in a democratic society.

The monitoring of the ICESCR. The implementation of the ICESCR is monitored by the Committee on Economic, Social and Cultural Rights of the United Nations. The Committee consists from 18 members, who are elected for a term of four years by State Parties. Members serve in their personal capacity and may be re-elected if nominated. The Committee usually meets twice per year in Geneva to consider the five-yearly reports submitted by State Parties on their compliance with the ICESCR. All State Parties are obliged to submit regular reports to the Committee on how the rights are being implemented. The Committee also publishes its interpretation of the provisions of the Covenant, known as general comments.

1.3. Civil and political rights

International Covenant on Economic, Social and Cultural Rights (ICESCR)

General Assembly of the United Nations
Entered into force from 3 January 1976

<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>


The ICCPR is an international human rights treaty that commits its parties to respect the civil and political rights of individuals. The ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights. Countries that have ratified the ICCPR are obligated to protect and preserve basic human rights and compelled to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.

The rights protected under the ICCPR include:

- the right to life (Article 6);
- the freedom from torture and other cruel, inhuman or degrading treatment or punishment (Articles 7 – 11);
- the fair trial rights (Article 14 – 16);
- the freedom of movement and rights of aliens (Article 12, 13);
- the freedom of thought, religion and expression (Articles 18, 19);
- the privacy, home and family life (Articles 17, 23, 24);
- the equality and non-discrimination (Articles 26, 27);
- the political rights (Articles 20, 21, 25).

The ICCPR allows for certain circumstances for State Parties to derogate from their responsibilities under the ICCPR, such as during times of public emergencies. However, State Parties may not derogate from Articles 6, 7, 8, 11, 15, 16 and 18 (the right to life, the freedom from torture, the prohibition of slavery, the fair trial rights and freedom of religion or belief).

The monitoring of the ICCPR. The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of State parties on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests. The Committee meets in Geneva and normally holds three sessions per year.



Second Optional Protocol of the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (SOP)

General Assembly of the United Nations
Entered into force from 11 July 1991
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>

The SOP to the ICCPR, aiming at the abolition of the death penalty is the only international treaty of worldwide scope to prohibit executions and to provide for total abolition of the death penalty. The SOP underscores the significance of abolition of the death penalty as a measure enhancing human rights and assumes the commitment of State Parties to this end.

The SOP provides for a ban on executions and for the abolition of the death penalty within the jurisdiction of State Parties.

The SOP allows States to reserve the right to apply the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime. This reservation can only be made at the time of ratification. Since no other reservation may be made at any time, State Parties to the Protocol are committed to abolition even in the event of future changes in national legislation.

The monitoring of the SOP. The SOP is monitored by the United Nations Human Rights Committee (described above; see the paragraph: “The monitoring of the ICCPR”).

2. CHILDREN’S RIGHTS

2.1. Fundamental rights of children




Convention on the Rights of the Child (CRC)

General Assembly of the United Nations
Entered into force from 2 September 1990

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

The CRC is an international treaty that recognizes the human rights of children. The European Union Member States and most of the States from where unaccompanied children come from have therefore committed themselves to respect and implement all principles and rights to all children under their national jurisdictions. The CRC sets out principles and standards for the protection, implementation and promotion of children’s rights and covers all aspects of a child’s life (health, psychological, material, educational, legal and social issues).



The CRC defines „a child“ as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (Article 1).

The guiding principles of the CRC are also applicable to the situation of unaccompanied children:

- non-discrimination (Article 2);
- the best interests of the child as a primary consideration in all actions concerning children (Article 3);
- the child’s inherent right to life, and State Parties’ obligation to ensure to the maximum extent possible the survival and development of the child (Article 6);
- the child’s right to express his or her views freely in all matters affecting the child, with those views being given due weight (Article 12).

All unaccompanied children are entitled to the rights foreseen at the CRC with no possible exclusion. State Parties must ensure that all children:

- without discrimination in any form benefit from special protection measures and assistance (Article 8);
- have access to services such as education and health care (Articles 23, 24, 28);
- can develop their personalities, abilities and talents to the fullest potential (Article 29);
- grow up in an environment of happiness, love and understanding (Preamble);
- are informed about and participate in, achieving their rights in an accessible and active manner (Article 40).

Some rights established by the CRC are particularly relevant for unaccompanied children:

- the right to alternative care (Section 2 of Article 20);
- the right to legal representation and legal assistance (Section 2 of Article 18, Section 2 of Article 40);
- the right to equal and full access to education. The child’s education shall be directed to 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 (Articles 28, 29);

→ the right to equivalent access to health care as to national children (Article 24);

→ the right to adequate nutrition, clothing and accommodation (Article 27);

→ protection from economic exploitation (Article 32);

→ the obligation of a State Party to respect conditions and restrictions when child's liberty is deprived (Article 37).

The monitoring of the CRC. The implementation of the CRC is monitored by the Committee on the Rights of the Child, consisting of 18 Independent experts. All State Parties are obliged to submit regular reports to the Committee on how the rights are being implemented. The Committee is also able to consider individual complaints alleging violations of the CRC.

2.2. Custody and contact



European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (ECCC)

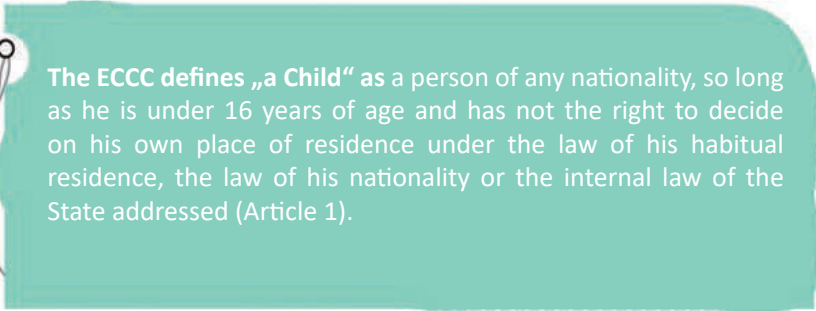
Council of Europe

Entered into force from 1 September 1983

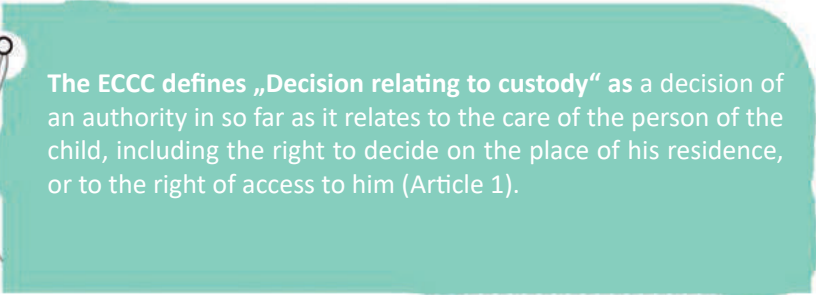
<https://rm.coe.int/1680078b09>

The ECCC is an international treaty that deals with international child abduction. The ECCC purpose is to deter international child abduction and to secure the return of children wrongfully removed or retained from their home country.

The ECCC protects custody and access rights in international situations and provides for free, prompt, non-bureaucratic assistance from central authorities designated by each Party in discovering the whereabouts and restoring custody of a child improperly removed.



The ECCC defines „a Child“ as a person of any nationality, so long as he is under 16 years of age and has not the right to decide on his own place of residence under the law of his habitual residence, the law of his nationality or the internal law of the State addressed (Article 1).



The ECCC defines „Decision relating to custody“ as a decision of an authority in so far as it relates to the care of the person of the child, including the right to decide on the place of his residence, or to the right of access to him (Article 1).

Application for the restoration of custody of a child may be made directly either to a court or to the central authorities of any Party concerned. Central authorities are required, *inter alia*:

- to assist the applicants in their action;
- to discover the whereabouts of the child;
- to avoid, in particular by any necessary provisional measures, prejudice to the interests of the child or of the applicant;
- to secure the recognition or enforcement of the custody decision;
- to secure the delivery of the child to the applicant where enforcement is granted;
- to inform the requesting authority of the measures taken and their results (Article 5).

The monitoring of the ECCC. Each Contracting State appoints a central authority to carry out the functions provided for by the ECCC. Federal States and States with more than one legal system can appoint more than one central authority and determine the extent of their competence.

The central authorities of the Contracting States co-operate with each other and promote co-operation between the competent authorities in their respective countries.

Convention on Contact concerning Children (CCCC)

Council of Europe

Entered into force from 1 September 2005

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370f>

The CCCC is an international treaty that aims to: 1) determine general principles to be applied to contact orders; 2) fix appropriate safeguards and guarantees to ensure the proper exercise of contact and the immediate return of children at the end of the period of contact; 3) establish co-operation between central authorities, judicial authorities and other bodies in order to promote and improve contact between children and their parents, and other persons having family ties with children.

The CCCC defines “Contact” as: the child staying for a limited period of time with or meeting a person, whom he or she is not usually living; any form of communication between the child and such person; the provision of information to such a person about the child or to the child about such a person (Article 2).

The CCCC establishes such children rights:

- the right to obtain and maintain regular contact with parents (Article 4);
- the right to obtain and maintain regular contact with persons other than his or her parents having family ties with the child and to other persons if so provided by State parties (Article 5);
- the right to receive all relevant information, to be consulted and to express his or her views (Article 6).

The monitoring of the CCCC. Each Contracting State appoints a central

authority to carry out the functions provided for by the CCCC. Federal States and States with more than one legal system can appoint more than one central authority and determine the extent of their competence. The central authorities of the Contracting States co-operate with each other and promote co-operation between the competent authorities in their respective countries.

2.3. Adoption and intercountry adoption

European Convention on the Adoption of Children (revised) (ECAC)

Council of Europe

Entered into force from 1 September 2011

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084823>

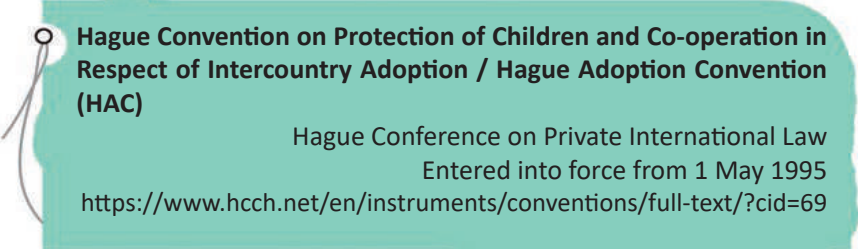
The ECAC is an international treaty that aims to harmonize the adoption of children in Europe according to the core principles of the Council of Europe. The convention takes account of the social and legal developments of recent years as well as the case law of the European Court of Human Rights. It underlines that the best interests of the child must always take precedence over any other considerations.

The ECAC applies to the adoption of a child who, at the time when the adopter applies to adopt him or her, has not attained the age of 18, is not and has not been married, is not in and has not entered into a registered partnership and has not reached majority (Article 1).

The new provisions by the ECAC are the following:

- the father's consent is required in all cases, even when the child was born out of wedlock (Article 5);
- the child's consent is necessary if the child has sufficient understanding to give it (Article 6);
- it leaves States free to extend adoptions to heterosexual unmarried couples who have entered into a registered partnership in States which recognize that institution, to homosexual couples and same sex-couples living together in a stable relationship (Article 7);
- the minimum age of the adopter must be between 18 and 30, and the age difference between adopter and child should preferably be at least 16 years (Article 9).

The monitoring of the ESAC. Each State Party shall adopt such legislative or other measures as may be necessary to ensure the conformity of its law with the provisions of this Convention and shall notify the Secretary General of the Council of Europe of the measures taken for that purpose.



Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption / Hague Adoption Convention (HAC)

Hague Conference on Private International Law

Entered into force from 1 May 1995

<https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

The HAC is an international convention dealing with international adoption, child laundering, and child trafficking in an effort to protect those involved from the corruption, abuses, and exploitation which sometimes accompanies international adoption. The Convention has been considered crucial because it provides a formal international and intergovernmental recognition of intercountry adoption to ensure that adoptions under the HAC will generally be recognized and given effect in other party countries.

The HAC states, that intercountry adoptions shall be made in the best interests of the child and with respect for his or her fundamental rights and to prevent the abduction of, the sale of, or traffic in children and each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin.

The main objectives of the HAC are:

- to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law,
- to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children,
- to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

The monitoring of the HAC. Each Contracting State appoints a central authority to carry out the functions provided for by the HAC. Federal States and States with more than one legal system can appoint more than one

central authority and determine the extent of their competence. The central authorities co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the HAC.

3. RIGHTS OF ASYLUM SEEKERS AND REFUGEES

3.1. Fundamental rights of asylum seekers and refugees

Convention Relating to the Status of Refugees (CRSR)

General Assembly of the United Nations

Entered into force from 22 April 1954

<https://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>

The CRSR is a multilateral treaty that defines who a refugee is, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum. The CRSR also sets out which people do not qualify as refugees, such as war criminals.

The CRSR defines „Refugee“ 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 (Article 1).

With the passage of time and the emergence of new refugee situations, the need was increasingly felt to make the provisions of the CRSR applicable to such new refugees. As a result, a Protocol relating to the Status of Refugees was prepared, and entered into force on 4 October 1967 (see below).

Countries that have ratified the CRSP are obliged to protect refugees that are on their territory, in accordance with its terms. Refugees shall be treated at least like nationals in relation to:

- the freedom to practice their religion (Article 4);
- the respect and protection of artistic rights and industrial property (Article 14);
- the rationing (Article 20);
- the elementary education (Article 22);
- the public relief and assistance (Article 23);
- the labour legislation and social security (Article 24).

The monitoring of the CRSR. Although the CRSR is legally binding, there is no body that monitors the compliance. The United Nations High Commissioner for Refugees has supervisory responsibilities, but cannot enforce the CRSR, and there is no formal mechanism for individuals to file complaints. The CRSR specifies that complaints should be referred to the International Court of Justice. It appears that no nation has ever done this.

Protocol Relating to the Status of Refugees (PRSR)

General Assembly of the United Nations
Entered into force from 4 October 1967
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolStatusOfRefugees.aspx>

The PRSP is a key treaty in international refugee law. Considering that new refugee situations have arisen since the Convention Relating to the Status of Refugees (CRSR) was adopted and that the refugees concerned may therefore not fall within the scope of the CRSR, the State Parties agreed, that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951.

The monitoring of the PRSR. The State Parties to the PRSP 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 the present Protocol.

3.2. Family reunification

The General Comment N° 6 CRC/GC/2005/6 (General Comment N° 6)

The Committee on the Rights of the Child
Published on 1 September 2005
<https://www.refworld.org/docid/42dd174b4.html>

The General Comment N° 6 is the document of the Committee on the Rights of the Child that interprets the content of human rights provisions, concerning the treatment of unaccompanied and separated children outside their country of origin.

The General Comment N° 6 defines “Unaccompanied children” (also called unaccompanied minors) as children, as defined in article 1 of the CRC, 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 (point 7).

The General Comment N° 6 defines “Separated children” as children, as defined in article 1 of the CRC, who have been 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 (point 8).

The General Comment N° 6 suggests five possible durable solutions to the situation of an unaccompanied child:

- family reunification in the country of origin, in the country of destination or in a third country;
- the return of the child to his/her country of origin;
- the child’s integration into the host society;
- the child’s resettlement in a third country;
- Inter-country adoption.

The monitoring of the General Comment N° 6. The General Comment N° 6 is monitored by the Committee on the Rights of the Child.

3.3. Repatriation and return

European Convention on the Repatriation of Minors (ECRM)

Council of Europe

Entered into force from 28 July 2015

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680072d3c>

The ECRM is a Council of Europe treaty, which allows a state to request that other states return minors to its legal jurisdiction.

The ECRM defines “Repatriation” as the transfer, in implementation of this Convention, of a minor from one Contracting State to another Contracting State, whether or not the latter is the State of which he is a national (Article 1).

A state party to the ECRM is empowered to demand from any state party the repatriation of any minor from the first state (the “requesting state”) who is present in the second state (the “requested state”). **A repatriation can be requested in three circumstances:**

- the presence of the minor in the requested state is against the will of the legal guardians of the minor;
- the presence of the minor in the requested state is incompatible with a measure of protection or re-education taken in respect of the minor by government authorities of the requesting State; or
- the presence of the minor is necessary in the requesting state because there proceedings there with a view to taking measures of protection and re-education in respect of the minor.

If the requested state has legislation outside of the ECRM which allows for the repatriation of minors upon request, the ECRM also allows repatriation in cases where the requesting state deems the minor’s presence in the requested

state to be incompatible with the interests of the minor or the interests of the requesting state.

The monitoring of the ECRM. The Council of Europe shall keep itself informed concerning the application of the ECRM and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

4. RIGHTS OF STATELESS PERSONS

○ Convention Relating to the Status of Stateless Persons (CRSSP)

General Assembly of the United Nations
Entered into force from 6 June 1960

https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf

The CRSSP is a multilateral treaty that aims to protect stateless individuals and to ensure that stateless people enjoy a minimum set of human rights.

○ **The CRSSP establishes the legal definition of a “Stateless person”** as someone who is “not recognized as a national by any state under the operation of its law.” A stateless person is someone who does not have the nationality of any country (Article 1).

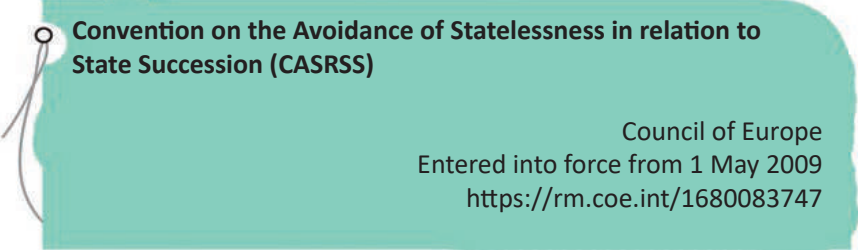
The CRSSP establishes minimum standards of treatment for stateless people in respect to a number of rights. These include, but are not limited to:

- the right to gainful employment (Articles 17-19);
- the right to housing (Article 21);
- the right to public education (Articles 22);
- the right to social security (Article 24);
- the right to administrative assistance (Article 25);
- freedom of movement (Article 26);
- the right to identity and to travel documents (Articles 27, 28).

The CRSSP applies to stateless persons under the protection of the United Nations High Commissioner for Refugees, but not to those under the protection of other United Nations Agencies.

The CRSSP does not apply to: 1) persons with rights and obligations acknowledged by their country of residence as indistinguishable from those attached to the possession of that country's nationality; 2) war criminals or to the perpetrators of crimes against humanity or against peace; 3) persons, who have demonstrated themselves to have been enemies of international peace and co-operation.

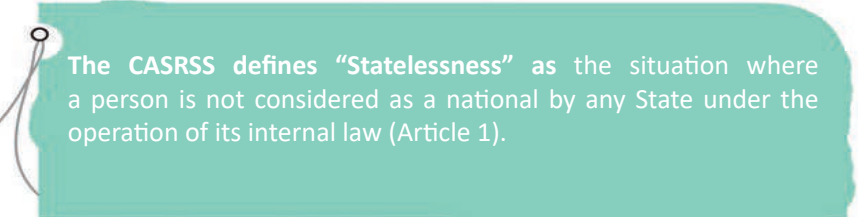
The monitoring of the CRSSP. The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the CRSSP.



Convention on the Avoidance of Statelessness in relation to State Succession (CASRSS)

Council of Europe
Entered into force from 1 May 2009
<https://rm.coe.int/1680083747>

The CASRSS regulates the prevention of statelessness in the specific context of state succession.



The CASRSS defines “Statelessness” as the situation where a person is not considered as a national by any State under the operation of its internal law (Article 1).



The CASRSS defines “State succession” as the replacement of one State by another in the responsibility for the international relations of territory (Article 1).

State Parties of the CASRSS shall take all necessary action to prevent cases of statelessness arising from State succession. The measures to be applied might include the drawing up of international treaties on the prevention of statelessness and the application of this principle in their internal law.

The CASRSS establishes that everyone who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession **has the right to the nationality** of a State concerned.

The monitoring of the CASRSS. In order to adopt appropriate measures to avoid statelessness arising from State succession, States concerned shall cooperate among themselves, including by providing information with regard to the operation of their relevant internal law. For the same purpose States concerned shall also co-operate with the Secretary General of the Council of Europe and the United Nations High Commissioner for Refugees (UNHCR) and, where appropriate, with other States and international organizations.

5. NATIONALITY

European Convention on Nationality (ECN)

Council of Europe
Entered into force from 1 March 2000
<https://rm.coe.int/168007f2c8>

The ECN is the first international treaty dealing with the law of nationality. The ECN deals with two primary issues: the acquisition and loss of nationality and the specific situation of nationality in the context of state succession.

The ECN defines “Nationality” as legal bond between a person and a state, and does not indicate the person’s ethnic origin (Article 2a).

The ECN embodies principles and rules applying to all aspects of nationality. The ECN is designed for these purposes:

- to make acquisition of a new nationality and recovery of a former one easier;
- to ensure that nationality is lost only for good reason and cannot be arbitrarily withdrawn;
- to guarantee that the procedures governing applications for nationality are just, fair and open to appeal;

- to regulate the situation of persons in danger of being left stateless as a result of State succession;
- to regulate multiple nationality, military obligations and co-operation between State Parties.

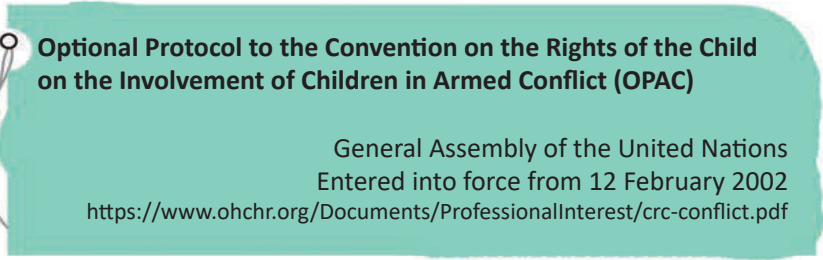
The ECN establishes a number of children rights, concerning nationality:

- the right to a nationality (Article 4);
- the right to acquired nationality at birth by descent from either parent to those born within the territory of the state (Article 6);
- the right to acquired nationality by virtue of birth in the territory of state; however, states may limit this to only children who would be otherwise stateless (Article 6);
- the right to naturalization (Article 6).

The monitoring of the ECN. State Parties provide the Secretary General of the Council of Europe with information about their internal law relating to nationality, including instances of statelessness and multiple nationality, and about developments concerning the application of the ECN. Also State Parties provide each other upon request with information about their internal law relating to nationality and about developments concerning the application of the ECN. State Parties co-operate amongst themselves and with other member States of the Council of Europe in order to deal with all relevant problems and to promote the progressive development of legal principles and practice concerning nationality and related matters.

6. CHILDREN AS VICTIMS OF VIOLENCE

6.1. Child soldiers



Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)

General Assembly of the United Nations
Entered into force from 12 February 2002

<https://www.ohchr.org/Documents/ProfessionalInterest/crc-conflict.pdf>

The United Nations General Assembly adopted the OPAC as a supplementary protocol to the CRC by resolution 54/263 on 25 May 2000.

The OPAC also known as the child soldier treaty, is a multilateral treaty whereby States agree to:

- prohibit the conscription into the military of children under the age of 18;
- ensure that military recruits are no younger than 16;
- prevent recruits aged 16 or 17 from taking a direct part in hostilities;
- forbid non-state armed groups from recruiting anyone under the age of 18 for any purpose.

The main obligations of the State Parties of the OPAC treaty are:

- no state party may recruit any person who has yet to attain a minimum age specified by the state, and in all cases the minimum age must not be lower than 16 years;
- State Parties whose armed forces recruit children aged 16 or 17 must: not compel children to join their armed forces; ensure that “reliable proof of age” is provided before enlistment; ensure prior to enlistment that child applicants are “fully informed” of the duties of military service, that their choice to enlist is “genuinely voluntary”, and that their parents or legal guardians give their “informed consent”; and “take all feasible measures” to ensure that child recruits do not take part directly in hostilities;
- non-state armed groups “should not, under any circumstances, recruit or use in hostilities” any child under the age of 18.

The monitoring of the OPAC. The implementation of the OPAC is monitored by the Committee on the Rights of the Child. State Parties to the OPAC must report periodically on its implementation to the Committee.

Paris Principles. Principles and guidelines on children associated with armed forces or armed groups (Paris Principles)

Adopted in February 2007
UN Children’s Fund (UNICEF)

<https://www.unicef.org/emerg/filesParisPrinciples310107English.pdf>

The Paris Principles are designed to guide interventions for the protection and well-being of children associated with armed forces and armed groups and to assist in making policy and programming decisions. The Paris Principles lay out detailed guidelines for protecting children from recruitment and for providing assistance to those already involved with armed groups or forces.


They complement the political and legal mechanisms to protect children from exploitation and violence.

The Paris Principles aim to guide interventions with the following objectives:

- to prevent unlawful recruitment or use of children;
- to facilitate the release of children associated with armed forces and armed groups;
- to facilitate the reintegration of all children associated with armed forces and armed groups;
- to ensure the most protective environment for all children.

The monitoring of the Paris Principles. The Secretary General UNICEF and the Office of the Special Representative of the Secretary General for Children Affected by Armed Conflict are tasked with a lead role in the implementation of a mechanism for monitoring and reporting on unlawful recruitment or use of children and other egregious violations against children in armed conflict. They are tasked with working alongside UN Peacekeeping forces and UN Country Teams. They act in collaboration with local and international NGOs, civil society actors and other partners.


6.2. Trafficking



Convention on Action against Trafficking in Human Beings (CTHB)

Council of Europe
Entered into force from 1 February 2008
<https://rm.coe.int/168008371d>

The CTHB is a regional human rights treaty of international human rights law. The CTHB entered into force on 1 February 2008. Every state in the Council of Europe has ratified the treaty except the Russian Federation. The CTHB is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention, for example Belarus acceded to the convention in 2013.



The CTHB defines “Trafficking in human beings” as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (Article 4).

While building on existing international instruments, the CTHB goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims. The CTHB aims to (Article 1):

- prevent and combat all forms of human trafficking, whether national or transnational, whether or not connected with organized crime;
- to protect and assist victims and witnesses of trafficking;
- to ensure effective investigation and prosecution;
- to promote international co-operation against trafficking.

The CTHB provides for a series of rights for victims of trafficking:

- the right to be identified as a victim (Article 10);
- the right to be protected and assisted (Articles 11, 12);
- the right to be given a recovery and reflection period of at least 30 days (Article 13);
- the right to be granted a renewable residence permit (Article 14);
- the right to receive compensation for the damages suffered (Article 15).

The monitoring of the CTHB. The CTHB is monitored by the Group of Experts on Action against Trafficking in Human Beings (GRETA). The CTHB stipulates that GRETA shall have a minimum of 10 and a maximum of 15 members and stresses the need to ensure geographical and gender balance, as well as a multidisciplinary expertise when electing GRETA members. GRETA meets in plenary sessions three times a year. GRETA carries out visits and draws up and publishes country reports evaluating legislative and other measures taken by State Parties to give effect to the provisions of the Convention. In addition, GRETA regularly publishes general reports on its activities.

Convention against Transnational Organized Crime and three Protocols (Palermo Convention)

General Assembly of the United Nations
Convention entered into force from 29 September 2003
Protocols entered into force from December 25 2003, 28 January 2004, 3 July 2005
<https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

The Palermo Convention is the main international instrument in the fight against transnational organized crime. It is the first international convention to fight transnational organized crime, trafficking of human beings, and terrorism.

The Palermo Convention defines “Organized criminal group” as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit (Article 2).

States that ratify the Palermo Convention commit themselves to taking a series of measures against transnational organized crime, including:

- the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice) (Articles 5 – 9, 23);
- the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation (Articles 16 – 20, 26, 27);
- the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities (Articles 29 – 30).

The Palermo Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime:

- **The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children** is the first global legally binding instrument with an agreed definition on trafficking in persons. An additional objective of

the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights;

→ **The Protocol against the Smuggling of Migrants by Land, Sea and Air** is the first global international instrument, that developed a definition of smuggling of migrants. The Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among State Parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process;

→ **The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition** is the first global legally binding instrument on small arms.

Countries must become parties to the Convention itself before they can become parties to any of the Protocols.

The monitoring of the Palermo Convention. The United Nations Office on Drugs and Crime (UNODC) acts as custodian of the Palermo Convention and its protocols. It offers practical help to states with drafting laws, creating comprehensive national anti-trafficking strategies, and assisting with resources to implement them.

6.3. Child prostitution, child pornography and sexual abuse

○ **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)**

General Assembly of the United Nations
Entered into force from 18 January 2002

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

The OPSC is a protocol to the Convention on the Rights of the Child and requires parties to prohibit the sale of children, child prostitution and child pornography.

The OPSC prohibits sale of children, child prostitution and child pornography, which are defined as:

- sale of children – any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- child prostitution – use of a child in sexual activities for remuneration or any other form of consideration;
- child pornography – any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes (Article 2).

The monitoring of the OPSC. The implementation of the OPSC is monitored by the Committee on the Rights of the Child. State Parties to the OPSC must report periodically on its implementation to the Committee.

Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CSESC)

Council of Europe

Entered into force from 1 July 2010

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084822>

The CSESC is a multilateral treaty whereby states agree to criminalize certain forms of sexual abuse against children. The CSESC is the first instrument to establish the various forms of sexual abuse of children as criminal offences, including such abuse committed in the home or family, with the use of force, coercion or threats.

The CSESC defines “Sexual abuse” as: 1) engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities; 2) engaging in sexual activities with a child where use is made of coercion, force or threats; or –abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence (Article 18).

The main obligations of the State Parties of the CSESC are:

- to take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children (Articles 4 – 9);
- to take the necessary measures to ensure the co-ordination on a national or local level between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children (Article 10);
- to establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care (Articles 11 – 14);
- to promote effective intervention programmes or measures for the persons subject to criminal proceedings or convicted of any of the offences of a sexual nature against children (Articles 15 – 17);
- to take the necessary legislative or other measures to ensure that the offences of a sexual nature against children, established in the CSESC, are criminalized (Articles 18 – 23);
- to take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child (Articles 30 - 36).

The monitoring of the CSESC. The Committee of the Parties monitors the implementation of the CSESC. The Committee facilitates the collection, analysis and exchange of information, experience and good practice between States to improve their capacity to prevent and combat sexual exploitation and sexual abuse of children. The Committee also expresses an opinion on any question concerning the application of the CSESC and facilitate the exchange of information on significant legal, policy or technological developments. The Committee is assisted by the Secretariat of the Council of Europe in carrying out its functions.

6.4. Torture

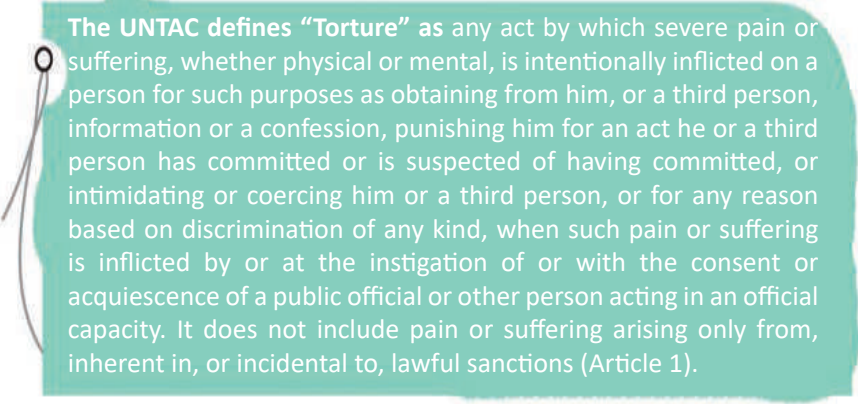


Convention against torture and other cruel inhuman or degrading treatment or punishment (UNCAT)

General Assembly of the United Nations
Entered into force from on 26 June 1987

<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

The UNTAC is commonly known as the United Nations Convention against Torture. It is an international human rights treaty, under the review of the United Nations that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.



The UNTAC defines “Torture” as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions (Article 1).

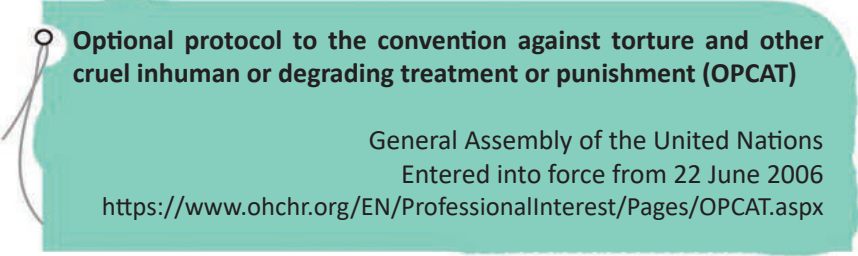
State Parties of the UNTAC commit themselves to take effective measures to prevent any act of torture in any territory under their jurisdiction including:

- to ensure that torture is a criminal offense under a party’s municipal law (Article 4);
- to establish jurisdiction over acts of torture committed by or against a party’s nationals (Article 5);
- to ensure that torture is an extraditable offense (Article 8);
- to investigate any allegation of torture (Articles 12 and 13);
- to ensure, that victims of torture, or their dependents in case victims died as a result of torture, must have an enforceable right to compensation (Article 14);
- to ban the use of evidence produced by torture in their courts (Article 15);
- to ban a deporting, extraditing, or refouling people where there are substantial grounds for believing they will be tortured (Article 3);
- to train and educate their law enforcement personnel, civilian or military personnel, medical personnel, public officials, and other persons involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention, or imprisonment, regarding the prohibition against torture (Article 10);
- to keep interrogation rules, instructions, methods, and practices under systematic review regarding individuals who are under custody or physical

control in any territory under their jurisdiction, in order to prevent all acts of torture (Article 11);

→ to prevent all acts of cruel, inhuman, or degrading treatment or punishment in any territory under their jurisdiction, and to investigate any allegation of such treatment (Article 16).

The monitoring of the UNTAC. The UNTAC is monitored by the Committee against Torture - a body of human rights experts. All State Parties are obliged to submit regular reports to the Committee on how rights are being implemented. Upon ratifying the UNTAC, states must submit a report within one year, after which they are obliged to report every four years. The Committee examines each report and addresses its concerns and recommendations to the state party in the form of “concluding observations.” Under certain circumstances, the Committee may consider complaints or communications from individuals claiming that their rights under the UNTAC have been violated and empowers it to investigate allegations of systematic torture.

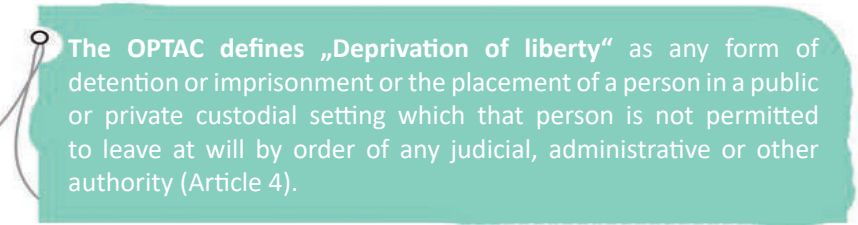


Optional protocol to the convention against torture and other cruel inhuman or degrading treatment or punishment (OPCAT)

General Assembly of the United Nations
Entered into force from 22 June 2006

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

The OPCAT is a treaty that supplements to the UNTAC. The objective of the OPTAC is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment (referred to as places of detention).



The OPTAC defines „Deprivation of liberty“ as any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority (Article 4).

The monitoring of the OPTAC. The functions laid down in the OPTAC are carried out by a Subcommittee on Prevention of Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment (further - Subcommittee on Prevention) of the Committee against Torture. Subcommittee on Prevention visits the places of detention and makes recommendations to State Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.



European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)

Council of Europe

Entered into force from 1 February 1989

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007a67f>

After the European Convention on Human Rights, the ECPT is widely regarded as being one of the most important of the Council of Europe's treaties. It has been ratified by all 47 of the Council of Europe's member states, and ratification of the ECPT has been a pre-condition for all states who have joined the Council of Europe in the last few years.

The ECPT states that the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The monitoring of the ECPT. The functions laid down in the ECPT are carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee examines, by means of visits, the treatment of persons deprived of their liberty with a view to strengthening, if necessary, and their protection from torture and from inhuman or degrading treatment or punishment.

6.5. Child labour

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour / Worst Forms of Child Labour Convention (WFCLC)

International Labour Organisation
Entered into force from 19 November 2000
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

The WFCLC was adopted by the International Labour Organization (ILO). It is one of eight ILO fundamental conventions.

Each State Party which ratifies the WFCLC is obliged to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The WFCLC establishes, that the worst forms of child labour are:

- slavery and forced labour, including child trafficking and forced recruitment for armed conflict;
- child prostitution and pornography;
- production and trafficking of drugs;
- work likely to harm the health, safety or morals of children (Article 3).

The monitoring of the WFCLC. Each State Party shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to the WFCLC.

6.6. Domestic violence

Convention on preventing and fighting Violence against Women and Domestic Violence (Istanbul Convention)

Council of Europe
Entered into force from 1 August 2014
<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

The Istanbul Convention is the first legally-binding instrument which creates a comprehensive legal framework and approach to combat violence against women and is focused on preventing domestic violence, protecting victims and prosecuting accused offenders.

The Istanbul Convention defines „Violence against women” as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Article 3).

The Istanbul Convention defines “Domestic violence” as all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim (Article 3).

The main obligations of the State Parties of the Istanbul convention are:

- take the necessary measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.(Article 4);
- to exercise due diligence when preventing violence, protecting victims and prosecuting perpetrators (Article 5);
- to criminalize offences, including: psychological violence, stalking, physical violence; sexual violence, including rape, explicitly covering all engagement in non-consensual acts of a sexual nature with a person, forced marriage; female genital mutilation, forced abortion and forced sterilization (Articles 33 – 39).

State Parties shall take the necessary measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

- providing for the protection of victims from intimidation, retaliation and repeat victimisation;
- ensuring that victims are informed, when the perpetrator escapes or is released temporarily or definitively;
- informing victims of their rights and the services at their disposal;

- enabling victims to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;
- providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;
- ensuring that measures may be adopted to protect the privacy and the image of the victim;
- ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;
- providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;
- enabling victims to testify in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available;
- a child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.

The monitoring of the Istanbul Convention. The Istanbul Convention mandates an independent expert body, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), with monitoring the implementation of the convention. Its members are elected by the State parties. GREVIO may adopt, where appropriate, general recommendations on the implementation of the Istanbul Convention.

7. DISCRIMINATION

7.1. Discrimination against national minorities

Framework Convention for the Protection of National Minorities (FCNM)

Council of Europe
 Entered into force from 1 February 1998
<https://rm.coe.int/16800c10cf>

The FCNM is one of the most comprehensive treaties designed to protect the rights of persons belonging to national minorities.

The State Parties of the FCNM undertake to guarantee to persons, including children, belonging to national minorities these rights:

- the right freely to choose to be treated or not to be treated as national minority (Article 3);
- the right of equality before the law and of equal protection of the law (Article 4);
- the right to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage (Article 5);
- the right to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion (Article 7);
- the right to manifest his or her religion or belief and to establish religious institutions, organizations and associations (Article 8);
- the right to freedom of expression, including freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers (Article 9);
- the right to use freely and without interference his or her minority language, in private and in public, orally and in writing and the right to learn his or her minority language (Articles 10, 14);
- the right to use his or her surname and first names in the minority language and the right to official recognition of them (Article 11);
- equal opportunities for access to education at all levels (Article 12);
- the right to set up and to manage their own private educational and training establishments (Article 13);
- the right to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States (Article 17).

The monitoring of the FCNM. The Committee of Ministers of the Council of Europe monitors the implementation of the FCNM by the State Parties. The State Parties periodically transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in the FCNM.

7.2. Racial discrimination

International Convention for the elimination of all forms of racial discrimination (ICERD)

General Assembly of the United Nations

Entered into force from 4 January 1969

<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

The ICERD is a third-generation human rights instrument. The ICERD commits its State Parties to the elimination of racial discrimination and the promotion of understanding among all races. The ICERD requires its parties to outlaw hate speech and criminalize membership in racist organizations. The ICERD also includes an individual complaints mechanism, effectively making it enforceable against its parties.

The ICERD defines “Racial discrimination” as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (Article 1).

State Parties of the ICERD undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights (Article 5):

- the right to equal treatment before the tribunals and all other organs administering justice;
- the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- the right to freedom of movement and residence within the border of the State;

- the right to leave any country, including one's own, and to return to one's country;
- the right to nationality;
- the right to marriage and choice of spouse;
- the right to own property alone as well as in association with others;
- the right to inherit;
- the right to freedom of thought, conscience and religion;
- the right to freedom of opinion and expression;
- the right to freedom of peaceful assembly and association;
- the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
- the right to form and join trade unions;
- the right to housing;
- the right to public health, medical care, social security and social services;
- the right to education and training;
- the right to equal participation in cultural activities;
- the right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

The monitoring of the ICERD. The ICERD establish a dispute resolution mechanism between State Parties. A party that believes another party is not implementing the ICERD may complain to the Committee on the Elimination of Racial Discrimination. The Committee will pass on the complaint, and if it is not resolved between the two State Parties, may establish an ad hoc Conciliation Commission to investigate and make recommendations on the matter.

The ICERD also establishes an individual complaints mechanism. State Parties may at any time recognise the competence of the Committee on the Elimination of Racial Discrimination to consider complaints from individuals or groups who claim their rights under the ICERD have been violated. Such State Parties may establish local bodies to hear complaints before they are passed on. Complainants must have exhausted all domestic remedies, and anonymous complaints and complaints that refer to events that occurred before the country concerned joined the ICERD are not permitted. The Committee can request information from and make recommendations to a party.

7.3. Gender discrimination

Convention for the elimination of all forms of discrimination against women (CEDAW)

General Assembly of the United Nations
Entered into force from 3 September 1981
<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

The CEDAW is described as an international bill of rights for women. It is an international legal instrument that requires countries to eliminate discrimination against women in all areas and promotes women's equal rights.

The CEDAW defines “Discrimination against women” as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (Article 1).

State Parties of the CEDAW shall grant women equal rights with men in these fields:

→ in the political and public life of the country (the right to vote in all elections and public referenda, the right to participate in the formulation of government policy, the right to participate in non-governmental organizations, the right to represent their Governments at the international level etc.) (Article 7, 8);

→ to acquire, change or retain their nationality - neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband; equal rights with men with respect to the nationality of their children (Article 9);

→ in the field of education (access to the same conditions for career and vocational guidance, the right to the same curricula, the same examinations; the same opportunities to benefit from scholarships and other study grants; the same opportunities to participate actively in sports and physical education etc.) (Article 10);

→ in the field of employment (the right to the same employment opportunities, the right to free choice of profession and employment; the right to promotion and job security; the right to equal remuneration; the right to social security; the right to protection of health and to safety in working conditions; the right to special protection to women during pregnancy and maternity leave etc. (Article 11);

→ in the field of health (access to health care services, including those related to family planning) (Article 12);

→ in other areas of economic and social life (the right to family benefits; the right to bank loans, mortgages and other forms of financial credit; the right to participate in recreational activities, sports and all aspects of cultural life) (Article 13);

→ in rural areas (the right to participate in the elaboration and implementation of development planning at all levels; the right to have access to adequate health care facilities; the right to benefit directly from social security programs; the right to obtain all types of training and education; the right to organize self-help groups; the right to participate in all community activities; the right to have access to agricultural credit and loans; the right to enjoy adequate living conditions etc.) (Article 14);

→ relating to marriage and family relations (the same right to enter into marriage; the same right freely to choose a spouse and to enter into marriage only with their free and full consent; the same rights and responsibilities during marriage and at its dissolution; the same rights and responsibilities as parents; the same rights to decide freely and responsibly on the number and spacing of their children; the same personal rights as husband and wife etc.) (Article 16).

The monitoring of the CEDAW. The implementation of the CEDAW is monitored by the Committee on the Elimination of Discrimination against Women consisting of State Parties representatives and experts of high moral. The experts are elected by State Parties from among their nationals. State Parties report to the Committee on the legislative, judicial, administrative and other measures which they have adopted to give effect to the provisions of the CEDAW - within one year after the entry into force for the State concerned; thereafter at least every four years and further whenever the Committee so requests.

7.4. Discrimination against disabled people

Convention on the Rights of Persons with Disabilities (CRPD)

General Assembly of the United Nations

Entered into force from 3 May 2008

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

The CRPD is an international human rights treaty intended to protect the rights and dignity of people with disabilities. The CRPD has served as the major catalyst in the global movement from viewing people with disabilities as objects of charity, medical treatment and social protection towards viewing them as full and equal members of society, with human rights. It is also the only UN human rights instrument with an explicit sustainable development dimension.

The CRPD defines “Persons with disabilities” as persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (Article 1).

The CRPD defines “Discrimination on the basis of disability” as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation (Article 2).

State Parties to the CRPD are required to promote, protect, and ensure the full enjoyment of human rights by people with disabilities and ensure that they enjoy full equality under the law. Rights specific to the persons with disabilities include:

→ the right to live independently and be included in the community (Article 19);

→ the right to personal mobility (Article 20);

- the right to accessibility including the information technology (Article 21);
- the right to habilitation and rehabilitation (Article 26);
- the right to participation in political and public life (Article 29);
- the right to cultural life, recreation and sport (Article 30).

The CRPD establishes specific guarantees to children with disabilities. State Parties 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 (Article 7);
- in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration (Article 7);
- ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right (Article 7);
- States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families (Article 23);
- 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. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents (Article 23);
- where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting (Article 23).

The monitoring of the CRPD. The Committee on the Rights of Persons with Disabilities is a body of human rights experts tasked with monitoring the implementation of the CRPD. It consists of independent human rights experts.

8. DATA PROTECTION

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (APPD)

Council of Europe

Entered into force from 1 October 1985

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680078b37>

The APPD is the first binding international instrument which protects the individual against abuses which may accompany the collection and processing of personal data and which seeks to regulate at the same time the transfrontier flow of personal data.

The APPD defines “Personal data” as any information relating to an identified or identifiable individual (“data subject”) (Article 2).

State Parties of the APPD shall take the necessary measures in its domestic law to give effect to the basic principles for data protection. Personal data undergoing automatic processing shall be:

- obtained and processed fairly and lawfully;
- stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
- adequate, relevant and not excessive in relation to the purposes for which they are stored;
- accurate and, where necessary, kept up to date;
- preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored (Article 5);
- personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions (Article 6).

The APPD establishes additional safeguards for the data subject. Any person shall be enabled:

→ to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;

→ to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;

→ to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this Convention;

→ to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs b and c of this article is not complied with (Article 8).

The monitoring of the APPD. State Parties agree to render each other mutual assistance in order to implement the APPD. For that purpose each Party shall designate one or more authorities, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe.

The implementation of the APPD is monitored by a Consultative Committee. Each Party appoints a representative to the Committee and a deputy representative. The Consultative Committee may make proposals with a view to facilitating or improving the application of the APPD, may make proposals for amendment of the APPD and may at the request of a Party, express an opinion on any question concerning the application of the APPD.

9. ACCESS TO JUSTICE

European Convention on the Exercise of Children's Rights (ECECR)

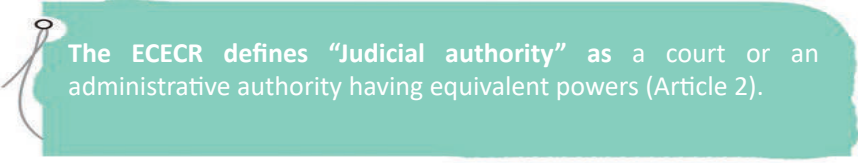
Council of Europe

Entered into force from 1 July 2000

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cdaf>

The ECECR is intended to promote the rights of the children, to grant them procedural rights, particularly in family proceedings, and to facilitate the exercise of these rights by ensuring that children shall be informed and allowed to participate in proceedings affecting them before a judicial authority.

The ECECR is applies to children who have not reached the age of 18 years.



The ECECR defines “Judicial authority” as a court or an administrative authority having equivalent powers (Article 2).

For the purposes of the ECECR, the proceedings before a judicial authority affecting children are family proceedings, in particular those involving the exercise of parental responsibilities such as residence and access to children. These rights of children are:

- the right to be informed and to express their views in proceedings that concern them (Article 3);
- the right to appoint their own representative (Article 9);
- the right to be assisted by an appropriate person of their choice in order to help them express their views (Article 5);
- the right to apply themselves, or through other persons or bodies, for the appointment of a separate representative, in appropriate cases a lawyer (Article 5);
- the right to be informed of the possible consequences of these views and the consequences of any decision (Article 10).

The monitoring of the ECECR. A Standing Committee is set up for the purposes of the ECECR. Each Party is be represented on the Standing Committee by one or more delegates. The Standing Committee: 1) considers any relevant questions concerning the interpretation or implementation of the ECECR. The Standing Committee’s conclusions may take the form of a recommendation; 2) proposes amendments to the ECECR and examines them; 3) provides advice and assistance to the national bodies and promotes international co-operation between them.



Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPICRC)

General Assembly of the United Nations

Entered into force from 14 April 2014

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICRC.aspx>

The OPICRC recognizes that children have the right to appeal to an international mechanism specific to them, when national mechanisms fail to address violations effectively.

The OPICCRC establishes children right to complain directly to the Committee on the Rights of the Child of the United Nations about alleged violations of their rights. The Committee is guided by the principle of the best interests of the child. It also has regard for the rights and views of the child in accordance with the age and maturity of the child.

The monitoring of the OPICCRC. A State party to the OPICCRC recognizes the competence of the Committee on the Rights of the Child of the United Nations.



First Optional Protocol of the International Covenant on Civil and Political Rights (FOP)


General Assembly of the United Nations
Entered into force from 23 March 1976

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>

The FOP is an international treaty establishing an individual complaint mechanism for the ICCPR.

State Parties agree to recognize the competence of the United Nations Human Rights Committee to consider complaints from individuals who claim their rights under the ICCPR have been violated. Several complainants must have exhausted all domestic remedies, and anonymous complaints are not permitted. The Committee must bring complaints to the attention of the relevant party, which must respond within six months. Following consideration, the Committee must forward its conclusions to the party and the complainant.

The monitoring of the FOP. The FOP is monitored by the United Nations Human Rights Committee (described above; see the paragraph: “The monitoring of the ICCPR”).



Optional Protocol to the Convention on the Rights of Persons with Disabilities (OPCRPD)

General Assembly of the United Nations
Entered into force from 3 May 2008

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/optional-protocol-to-the-convention-on-the-rights-of-persons-with-disabilities.html>

The OPCRPD is a side-agreement to the Convention on the Rights of Persons with Disabilities (CRPD). The OPCRPD establishes an individual complaints mechanism for the CRPD.

State Parties of the OPCRPD agree to recognize the competence of the Committee on the Rights of Persons with Disabilities to consider complaints from individuals or groups who claim their rights under the Convention have been violated. The Committee can request information from and make recommendations to a party. State Parties may permit the Committee to investigate, report on and make recommendations on “grave or systematic violations” of the CRPD. State Parties may opt out of this obligation on signature or ratification.

The monitoring of the OPCRPD. The Committee on the Rights of Persons with Disabilities is a body of human rights experts tasked to implement the OPCRPD.

Part II



II. European Union law

1. HUMAN RIGHTS AND CHILDREN'S RIGHTS

1.1. Fundamental human rights and children's rights

Treaty on the European Union (TEU)

Heads of Member States of the European Communities
Signed on 13 December 2007
https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

The TEU is one of the primary Treaties of the EU. The TEU forms the basis of EU law by setting out general principles of the EU's purpose, the governance of its central institutions, as well as the rules on external, foreign and security policy.

The TEU provides a general principle that rights of the child should be respected: the EU shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter (Article 3(5)).

Charter of Fundamental Rights of the European Union (CFR)

The European Parliament, the Council of the European Union,
the European Commission
Legally binding from 1 December 2009
https://www.europarl.europa.eu/charter/pdf/text_en.pdf

The provisions of CFR are addressed to the institutions and bodies 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 (Article 51).

The CFR constitutes primary EU law. The CFR enshrines fundamental – political, social, and economic – rights and freedoms for EU citizens and residents into EU law.

The CFR provides the rights of the child, including:

→ 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 4);

→ the right to non-discrimination. 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 (Article 21);

→ the right to such protection and care as is necessary for children well-being (Article 24);

→ the right to express the views freely. Such views shall be taken into consideration on matters which concern children in accordance with their age and maturity (Article 24);

→ 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 24);

→ in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration (Article 24);

→ prohibition of child labour and protection of young people at work. The minimum age of admission to employment may not be lower than the minimum school-leaving age. 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 32);

→ the right to the protection of the family. The family shall enjoy legal, economic and social protection (Article 33).

Regulation (EC) No (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (Brussels IIa recast Regulation)

The Council of the European Union

Proclaimed on 25 June 2019

Apply from 1 August 2022

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1111&from=en>

The Brussels IIa Regulation will apply to all Member States, except Denmark.

The Council adopted improvements to the Brussels IIa Regulation that protect children in the context of cross-border disputes relating to parental responsibility and child abduction. The new rules (Brussels IIa Recast Regulation) make court proceedings clearer, faster and more efficient.

All Member States (except Denmark) are taking part in the adoption and application of this revised instrument.

Brussels IIa recast Regulation applies only in cross-border cases within the EU. It sets out rules determining which country's courts are responsible for dealing with matrimonial matters, parental responsibility and child abduction in disputes involving more than one country. It ensures that judgments issued in one EU country are recognised and enforced in another EU country.

Brussels IIa recast Regulation applies in civil matters of divorce, legal separation or marriage annulment; the attribution, exercise, delegation, restriction or termination of parental responsibility:

- rights of custody and rights of access;
- guardianship, curatorship and similar institutions;
- the designation and functions of any person or body having charge of the person or property of a child, or representing or assisting a child;
- the placement of a child in institutional or foster care;
- measures for the protection of the child relating to the administration, conservation or disposal of the property of a child.

Brussels IIa recast Regulation does not apply to:

- the establishment or the contesting of a parent-child relationship;
- decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- the name and forenames of a child;
- emancipation;
- maintenance obligations;
- trusts or succession;
- measures taken as a result of criminal law offences committed by children.

The main amendments of Brussels IIa recast Regulation include:

- new rules on the hearing of the child;
- the abolition of exequatur for all decisions on parental responsibility;
- revised rules on child abduction cases within the EU;
- clearer provisions on the placement of a child in another Member State;
- harmonized rules for the enforcement procedure.

The Brussels IIa recast Regulation provides the protection of rights of the child during all proceedings:

- the protection of the best interests of the child. The best interests of the child should be interpreted in light of Article 24 of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child of 20 November 1989 as implemented by national law and procedure (19 paragraph of Preamble);
- the protection of right of the child to express his or her views (39, 71 paragraph of Preamble);
- the protection of right of the child to preserve his or her identity and the right to maintain contact with the parents, or, where appropriate, with other relatives, in light of Articles 8, 9 and 20 of the UN Convention on the Rights of the Child (84 paragraph of Preamble).

1.2. Custody

Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIa Regulation)

The Council of the European Union
Proclaimed on 27 November 2003
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003R2201>

The Brussels II a Regulation applies to all Member States, except Denmark.

The Brussels II a Regulation is single legal instrument to help international couples resolve disputes, involving more than one country, over their divorce and the custody of their children.

The Brussels II a Regulation applies to civil law cases involving more than one country that relate to divorce, legal separation, the annulment of a marriage, any aspect of parental responsibility (such as custody and access rights). Brussels II a regulation does not deal with substantive family law matters.

The Brussels II a Regulation sets out:

- rules determining which court is responsible for dealing with matrimonial matters and parental responsibility in disputes involving more than one country;
- rules making it easier to recognize and enforce judgments issued in one EU country in another;
- a procedure to settle cases in which a parent abducts a child from one EU country and takes them to another.

The Brussels II a Regulation provides the rights of the child, including (Article 11):

- the right of a child to be heard in judicial proceedings;
- the right of a child to maintain contact with both parents, even if they are separated or live in different EU countries.

2. RIGHTS OF ASYLUM SEEKERS, REFUGEES, STATELESS PERSONS, LONG-TERM RESIDENTS

2.1. Fundamental rights of asylum seekers, refugees and stateless persons

Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (Qualifications Directive)

The European Parliament, the Council of the European Union
Proclaimed on 13 December 2011
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>

The Qualification Directive applies to all Member States, except the UK, Ireland and Denmark.

The Qualification Directive establishes common grounds to grant international protection. It aims to: 1) lay down common standards for the identification of non-EU citizens or stateless persons genuinely in need of international protection in the EU, either as refugees or as beneficiaries of subsidiary protection; 2) to ensure that those persons can use a minimum level of benefits and rights in all EU countries.

The Qualification Directive establishes a series of rights:

- the right on protection from non refoulement;
- the right to residence permits, travel documents;
- the access to employment;
- the access to education, social welfare, healthcare;
- the access to accommodation;
- the access to integration facilities.

The Qualification Directive establishes specific guarantees for unaccompanied children. Member States shall take the necessary measures (Article 31):

- to ensure the representation of unaccompanied minors by a legal guardian or, where necessary, by an organization responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order;
- to ensure that the minor's needs are duly met by the appointed guardian or representative; the appropriate authorities shall make regular assessments;
- to ensure that unaccompanied minors are placed either: with adult relatives or with a foster family, or in centers specialized in accommodation for minors, or in other accommodation suitable for minors;
- to ensure that the views of the child shall be taken into account in accordance with his or her age and degree of maturity;
- to ensure that siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity;
- to start tracing unaccompanied minors' family members as soon as possible after the granting of international protection;
- to ensure, that those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.

Directive 2013/32/EU on common procedures for granting and withdrawing international protection (Asylum Procedures Directive)

The European Parliament, the Council of the European Union
Proclaimed on 26 June 2013
[https://eur-lex.europa.eu/legal-content/en/
ALL/?uri=celex%3A32013L0032](https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032)

The Asylum Procedures Directive applies to all Member States, except to the UK, Ireland and Denmark.

Asylum Procedures Directive sets up common procedures for granting and withdrawing international protection – refugee status and the protection given to people who are not refugees but who would risk serious harm if returned to their country of origin.

According to the Asylum Procedures Directive EU countries must ensure that applicants:

- have their applications examined individually, objectively and impartially;
- are informed, in a language they can understand, of the process being followed, their rights and the decision made;
- they must be given an interpreter to help them make their case if necessary;
- have the right to consult a legal adviser, at their own cost;
- have the right to an effective appeal before a court or tribunal and have free legal assistance during their appeal;
- a person cannot be detained for the sole reason that he/she is an asylum applicant.

The Asylum Procedures Directive establishes specific guarantees for unaccompanied children. Member States shall take the necessary measures (Article 25):


- to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive;
- the representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end;
- to ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview;
- unaccompanied minors and their representatives shall be provided, free of charge, with legal and procedural information;
- any medical examination in order to determine the age of unaccompanied minor shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result;
- to ensure that unaccompanied minors are informed prior to the examination of their application for international protection, and in a

language that they understand or are reasonably supposed to understand, of the possibility that their age may be determined by medical examination;

→ to ensure that unaccompanied minors and/or their representatives consent to a medical examination being carried out to determine the age of the minors concerned;

→ to ensure that the decision to reject an application for international protection by an unaccompanied minor who refused to undergo a medical examination shall not be based solely on that refusal;

→ to ensure that the best interests of the child shall be a primary consideration for Member States when implementing this Directive.



Regulation (EU) No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation)

The European Parliament, the Council of the European Union
Proclaimed on 26 June 2013
<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604>



The Dublin III Regulation applies to all EU Member States.

The Dublin III Regulation establishes the EU country responsible for examining an asylum application. It affords applicants better protection until their status is established. It also creates a new system for detecting early problems in national asylum or reception systems and tackling their root causes before they develop into full-blown crises.

The Dublin III Regulation establishes specific guarantees for unaccompanied children. Member States shall take the necessary measures (Article 6):

→ to ensure that the best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation;

→ to ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation;

→ to take due account of the following factors: 1) family reunification possibilities; 2) the minor's well-being and social development; 3) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking; 4) the views of the minor, in accordance with his or her age and maturity;

→ where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child;

→ to call for the assistance of international or other relevant organizations, and may facilitate the minor's access to the tracing services of such organizations.

Directive 2013/33/EU laying down standards for the reception of applicants for international protection (Living Conditions Directive)

The European Parliament, the Council of the European Union
Proclaimed on 26 June 2013
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>

The Living Conditions Directive applies to all EU Member States.

Living Conditions Directive creates EU rules on living (or 'reception') conditions for applicants for international protection (asylum seekers or people seeking subsidiary protection) who are waiting for their application to be examined. This directive aims to guarantee a dignified standard of living for asylum seekers in the EU and ensure their human rights are respected.

The Living Conditions Directive aims to harmonize reception conditions throughout the EU. These conditions include:

- access to housing, food, clothing, financial allowances, a decent standard of living, and medical and psychological care;
- employment within 9 months;
- education for children under 18.

The Living Conditions Directive establishes specific guarantees for minors and unaccompanied minors. Member States shall take the necessary measures:

→ to grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centers (Article 14);

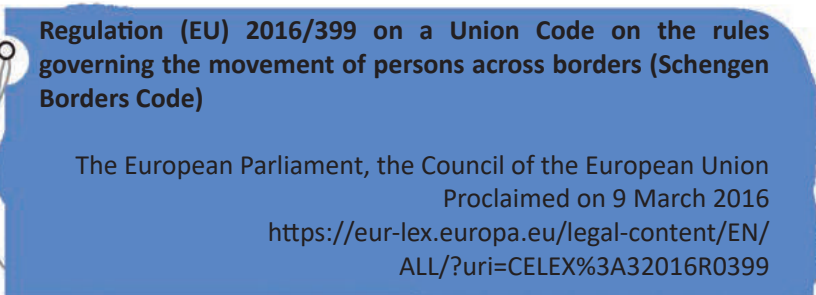
→ to ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development (Article 23);

→ to take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of the representative (Article 24);

→ to ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centers (Article 23);

→ to ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed (Article 23);

→ to ensure that minor children of applicants or applicants who are minors are lodged with their parents, their unmarried minor siblings or with the adult responsible for them whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned (Article 23).



Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)

The European Parliament, the Council of the European Union
Proclaimed on 9 March 2016

[https://eur-lex.europa.eu/legal-content/EN/
ALL/?uri=CELEX%3A32016R0399](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32016R0399)



Bulgaria, Cyprus, Croatia and Romania are not yet full members of the Schengen area but must follow the rules concerning controls at the external borders.

The Schengen Borders Code rules on crossing the EU's external borders; and the absence of border controls at internal borders.

The Schengen Borders Code establishes that in the event of an intended stay on the territory of a Schengen country, for no more than 90 days in any 180-day period, non-EU country nationals must:

- be in possession of a valid travel document and visa, if required;
- justify the purpose and the conditions of their intended stay and prove that they have sufficient means of subsistence;
- not be the subject of an alert in the Schengen SIS for the purpose of refusing entry;
- not be considered a threat to EU public policy, internal security, public health or the international relations of any of the EU countries.

The Schengen Borders Code establishes that in the area without internal border controls (meaning the Schengen area with the exception of Bulgaria, Croatia, Cyprus and Romania):

- any person of any nationality may cross any internal border without border checks being carried out;
- national police authorities have the right to carry out police checks, including in the border area, subject to specific rules and limitations;
- countries which are part of the area without internal border controls must remove all obstacles to smooth traffic flow at road crossing-points at internal borders, and in particular any speed limits not exclusively based on road-safety considerations.

The Schengen Borders Code provides specific rules apply to checks of minors and unaccompanied minors (Annex VII, Article 6):

- minors crossing an external border shall be subject to the same checks on entry and exit as adults;
- border guards shall pay particular attention to minors, whether travelling accompanied or unaccompanied;
- in the case of accompanied minors, the border guard shall check that the persons accompanying minors have parental care over them, especially where minors are accompanied by only one adult and there are serious

grounds for suspecting that they may have been unlawfully removed from the custody of the person(s) legally exercising parental care over them. In the latter case, the border guard shall carry out a further investigation in order to detect any inconsistencies or contradictions in the information given;

→ in the case of minors travelling unaccompanied, border guards shall ensure, by means of thorough checks on travel documents and supporting documents, that the minors do not leave the territory against the wishes of the person(s) having parental care over them;

→ Member States shall nominate national contact points for consultation on minors and inform the Commission thereof. A list of these national contact points shall be made available to the Member States by the Commission.

2.2. Fundamental rights of the long-term residents

Directive 2003/109/EC concerning the status of third country nationals who are long term residents (Long Term Residents Directive)

The Council of the European Union
Proclaimed on 25 November 2003
<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003L0109>

The Long Term Residents Directive applies to all Member States, except the UK, Ireland or Denmark which have special arrangements for immigration and asylum policy.

The Long Term Residents Directive sets out the terms and conditions for granting and withdrawing long-term residence status to non-European Union citizens (third-country nationals) living legally in EU country for at least 5 years. It determines their rights and the areas where they enjoy equal treatment with EU citizens and spells out the conditions which apply if they wish to move to another EU country.

The Long Term Residents Directive does not apply to certain categories of non-EU nationals, such as students or those working temporarily as au pairs or seasonal workers.

The Long Term Residents Directive establishes conditions to obtain long-term resident status:

- non-EU citizens must have lived legally and continuously in an EU country for 5 years;
- absences of less than 6 consecutive months and no more than 10 months over the whole period are permitted when calculating the 5 years;
- non-EU nationals must prove they have stable and regular economic resources to support themselves and their family and have sickness insurance;
- national authorities must give a decision on applications, accompanied by the relevant documentation, within 6 months of receiving them;
- authorities may refuse to grant resident status for reasons of public policy or public security, but not for economic reasons;
- successful applicants are given a residence permit that is valid for at least 5 years and is automatically renewable.

The Long Term Residents Directive establishes the rights of long-term residents:

- long-term residents enjoy equal treatment with the country's nationals in areas such as employment, education, social security, taxation and freedom of association. In certain cases, EU countries may restrict this equal treatment;
- long-term residents may move to live, work or study in another EU country for more than 3 months, provided they satisfy certain conditions. They may be accompanied by their family members.

The Long Term Residents Directive provides that Member States should remain subject to the obligation to afford access for minors to the educational system under conditions similar to those laid down for their nationals.

2.3. Family reunification

Directive 2003/86/EC on the right to family reunification (Family Reunification Directive)

The Council of the European Union
Proclaimed on 22 September 2003
[https://eur-lex.europa.eu/legal-content/en/
ALL/?uri=celex%3A32003L0086](https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32003L0086)

The Family Reunification Directive applies to all Member States, except Ireland, Denmark and the United Kingdom.

The Family Reunification Directive sets out common rules of law relating to the right to family reunification. The intention is to enable family members of non-EU nationals residing lawfully on the territory of the EU to join them in the EU country in which they are residing.

The Family Reunification Directive establishes such conditions for family reunification:

- Non-EU nationals who hold a residence permit valid for at least one year in one of the EU countries and who have the legal option of long-term residence can apply for family reunification;
- Directive does not apply to family members of an EU citizen, or to non-EU nationals applying for recognition of refugee status whose application has not yet given rise to a final decision or who are under a temporary form of protection;
- the following are eligible for family reunification: 1) the sponsor's spouse; 2) the minor children of the couple (i.e. unmarried children below the legal age of majority in the EU country concerned), or of one member of the couple, where he/she has custody and the children are dependent on him/her, including adopted children;
- EU countries remain free to authorize, under certain conditions, family reunification of: 1) first-degree ascendants in the direct line (father and mother of the foreign national); 2) unmarried children above the age of majority; 3) unmarried partners;
- polygamy is not recognized; only one spouse can benefit from the

right to reunification. Likewise, children of the ineligible spouses are excluded from the right to reunification unless their best interests warrant it;

→ EU countries are permitted to require the non-EU national and his/her spouse to be of a minimum age (subject to a maximum of 21 years), before they can exercise the right to family reunification.

The Family Reunification Directive establishes specific guarantees for unaccompanied minors. Member States (Article 10):

→ shall authorize the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a) (i.e. first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin);

→ may authorize the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

2.4. Repatriation and return

Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive)

The European Parliament, the Council of the European Union
Proclaimed on 16 December 2008
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115>

The Return Directive applies to all EU Member States except Ireland and the United Kingdom and the following non-EU Schengen Area countries: Iceland, Liechtenstein, Norway and Switzerland.

The Return Directive establishes a common set of rules for the return of non-EU nationals who do not or who no longer fulfil the conditions for entry, stay or residence within the territory of any EU country, and the related procedural safeguards, while encouraging the voluntary return of immigrants. It aims to ensure the EU has an effective and humane return policy as a necessary element of a well-managed migration policy.

The Return Directive seeks to limit the detention of unaccompanied minors and families and sets out appropriate detention conditions (Articles 10, 17):

- before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child;
- before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return;
- unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time;
- families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy;
- minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education;
- unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age;
- the best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.

3. CHILDREN AS VICTIMS OF VIOLENCE

3.1. Child soldiers

EU Guidelines on Children and Armed Conflict (Guidelines)

The Council of the European Union
Adopted on 8 December 2003
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ar10113>

The Guidelines apply to all EU Member States.

The Guidelines commit the EU Member States:

- to addressing the short, medium and long-term impacts of armed conflict on children;
- to persuade governments and organizations around the world to apply humanitarian law and human rights that protect children from the effects of armed conflict;
- to stop the recruiting of children into armed forces and impunity for crimes against children.

3.2. Trafficking

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Anti-Trafficking Directive)

The European Parliament, the Council of the European Union
Proclaimed on 5 April 2011
<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>

The Anti-Trafficking Directive applies to all EU Member States.

The Anti-Trafficking Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

The Anti-Trafficking Directive establishes that:

- the following intentional acts are punishable: the recruitment, the transportation, the transfer, the harboring or reception of persons by force for the purpose of exploitation;
- the exploitation includes as a minimum: 1) sexual exploitation or prostitution; 2) forced labour or services (including begging, slavery, exploitation of criminal activities, or the removal of organs);
- the maximum penalty for these offences should be at least 5 years' imprisonment and at least 10 years in the case of aggravating circumstances, for example if the offence was committed against particularly vulnerable

victims (such as children) or if it was committed by a criminal organization;

→ victims receive assistance before, during and after criminal proceedings so that they can exercise the rights conferred on them under the status of victims in criminal proceedings. This assistance may consist of the reception in shelters, or the provision of medical and psychological assistance and information services and interpretation.

The Anti-Trafficking Directive establishes special assistance, support and protection for child victims. Member States shall:

→ ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection (Article 13);

→ ensure that the specific actions to assist and support child victims in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child (Article 14);

→ provide access to education for child victims and the children of victims (Article 14);

→ appoint a guardian or a representative for a child victim from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child (Article 14);

→ take measures to provide assistance and support to the family of a child victim when the family is in the territory of the Member States (Article 14);

→ ensure that in criminal investigations and proceedings competent authorities appoint a representative for a child victim where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim (Article 15);

→ ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources (Article 15);

→ ensure that in criminal investigations and proceedings interviews with the child victim: 1) take place without unjustified delay after the facts

have been reported to the competent authorities; 2) take place in premises designed or adapted for that purpose; 3) are carried out, where necessary, by or through professionals trained for that purpose; 4) the same persons, if possible and where appropriate, conduct all the interviews with the child victim; 5) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings; 6) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person; 7) may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law (Article 15);

→ ensure that in criminal court proceedings: 1) the hearing take place without the presence of the public; 2) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies (Article 15).

The Anti-Trafficking Directive establishes special assistance, support and protection for unaccompanied minors. Member States shall take the necessary measures (Article 16):

→ to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings;

→ to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family.

Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (Resident Permit for VHT Directive)

The Council of the European Union
Proclaimed on 29 April 2004
[https://eur-lex.europa.eu/legal-content/EN/
ALL/?uri=CELEX%3A32004L0081](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0081)

The Resident Permit for VHT Directive applies to all Member States, except the United Kingdom, Ireland, and Denmark.

The Resident Permit for VHT Directive sets out the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration.

The Resident Permit for VHT Directive applies to non-EU nationals regardless of whether they have entered the EU illegally. Permits can be granted to those who have reached the age of majority in the respective EU country and may apply to children under the conditions set out in national laws.

The Resident Permit for VHT Directive establishes the conditions for temporary renewable residence permit, valid for at least 6 months, to be issued:

- presence of the victim can help the investigation;
- victim has shown a clear intention to cooperate;
- victim cut all contact with those suspected of the given offences.

The Resident Permit for VHT Directive establishes specific guarantees for minors and unaccompanied minors. Member States shall (Article 10):

- ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period;
- ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system;
- In the case of third-country nationals who are unaccompanied minors, Member States shall take the necessary steps to establish their identity, nationality and the fact that they are unaccompanied. They shall make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary, in accordance with national law.

3.3. Child prostitution, child pornography and sexual abuse

Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (Sexual Exploitation Directive)

The European Parliament, the Council of the European Union
Proclaimed on 13 December 2011
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0093>

The Sexual Exploitation Directive is applied to all EU Member States.

The Sexual Exploitation Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It also introduces provisions to strengthen the prevention of those crimes and the protection of the victims thereof.

The Sexual Exploitation Directive defines (Article 2):

- “child” as any person below the age of 18 years;
- “age of sexual consent” as the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;
- “child pornography” as: 1) any material that visually depicts a child engaged in real or simulated sexually explicit conduct; 2) any depiction of the sexual organs of a child for primarily sexual purposes; 3) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or 4) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes;
- “child prostitution” as the use of a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that payment, promise or consideration is made to the child or to a third party;
- “pornographic performance” as live exhibition aimed at an audience, including by means of information and communication technology, of:

1) a child engaged in real or simulated sexually explicit conduct; or 2) the sexual organs of a child for primarily sexual purposes.

The Sexual Exploitation Directive introduces special rules for protection of child victims:

- extensive assistance and support measures for child victims, in particular to prevent that they suffer additional trauma through their involvement in criminal investigations and proceedings (Article 18);
- access to assistance and support as soon as there are reasonable grounds to suspect offence (Article 18);
- special protection for children reporting abuse within the family (Article 19);
- making assistance and support not conditional on cooperation with criminal proceedings (Article 20);
- protection of a victim’s privacy, identity and image (Article 20).

3.4. Torture

Directive 2013/33/EU laying down standards for the reception of applicants for international protection (Living Conditions Directive)

The European Parliament, the Council of the European Union
Proclaimed on 26 June 2013
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>

The Living Conditions Directive applies to all EU Member States.

Living Conditions Directive creates EU rules on living (or ‘reception’) conditions for applicants for international protection (asylum seekers or people seeking subsidiary protection) who are waiting for their application to be examined. This directive aims to guarantee a dignified standard of living for asylum seekers in the EU and ensure their human rights are respected.

The Living Conditions Directive explicitly considers the situation of vulnerable asylum seekers, including victims of torture and child victims of torture (Article 21). Member States shall ensure that:

→ victims of torture shall be identified within the asylum procedure (Annex I);

→ ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed (Article 23);

→ persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care (Article 25);

→ those working with victims of torture, rape or other serious acts of violence shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work (Article 25).

Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (Ban on TIT Regulation)

The European Parliament, the Council of the European Union
Proclaimed on 16 January 2019

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1550829571808&uri=CELEX:32019R0125>

The Ban on TIT Regulation is applied to all EU Member States.

The Ban on TIT Regulation lays down rules governing trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, and rules governing the supply of brokering services, technical assistance, training and advertising related to such goods.

The Ban on TIT Regulation defines “torture” as any act by which severe pain

or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from that person or from a third person information or a confession, punishing that person for an act that either that person or a third person has committed or is suspected of having committed, or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties. Capital punishment is not deemed a lawful penalty under any circumstances (Article 2).

The Ban on TIT Regulation bans:

- exports and imports of goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment (Annex II);
- the supply of technical assistance in respect of such goods;
- brokers and suppliers of technical assistance from providing training on the use of such goods to non-EU countries.

3.5. Child labour

Directive 94/33/EC on the protection of young people at work (PYPW Directive)

The Council of the European Union
Proclaimed on 22 June 1994
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31994L0033>

The PYPW Directive is applied to all EU Member States.

The PYPW Directive sets minimum requirements in order to guarantee improvements in the health and safety of young workers.

The PYPW Directive applies to all young people under the age of 18 who have an employment contract or an employment relationship defined by the law in force in EU country and/or subject to the law in force in EU country.

The PYPW Directive defines categories of young people as follows (Article 3):

- young people: young people under the age of 18;
- children: young people under the age of 15 or who are still in full-time compulsory education in accordance with national legislation;
- adolescents: young people between the ages of 15 and 18 who are no longer in full-time compulsory education in accordance with national legislation.

The PYPW Directive provides that EU countries take the necessary measures to prohibit the employment of children and shall ensure that:

- the employment of adolescents is strictly controlled and protected under the conditions provided for in the PYPW Directive;
- the minimum working or employment age is not lower than the minimum age at which compulsory full-time schooling as imposed by national law ends or 15 years in any event;
- that employers guarantee that young people have working conditions which suit their age;
- that young people shall be protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardize their education.

4. DISCRIMINATION

4.1. Racial discrimination

Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Discrimination Directive)

The Council of the European Union
Proclaimed on 29 June 2000
<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32000L0043>

The Racial Discrimination Directive is applied to all EU Member States.

The Racial Discrimination Directive is aimed at combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment. The Racial Discrimination Directive is based on the principle of equal treatment between persons and forbids both direct and indirect discrimination, harassment, instructions to discriminate and victimisation.

The Racial Discrimination Directive establishes, that “direct discrimination” shall be taken to occur where one person is treated less favorably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin (Article 2).

The Racial Discrimination Directive establishes, that “indirect discrimination” shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Article 2).

The Racial Discrimination Directive applies to all persons and to all sectors of activity, regarding (Article 3):

- access to employment;
- working conditions, including promotion, pay and dismissals;
- access to vocational training;
- involvement in workers’ or employers’ organisations, and in any professional organisation;
- access to social protection and to healthcare;
- education;
- social advantages;
- access to and supply of goods and services, including housing.

4.2. Gender discrimination

Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Gender Discrimination Directive)

The Council of the European Union
Proclaimed on 13 December 2004
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0113>



The Gender Discrimination Directive is applied to all EU Member States.

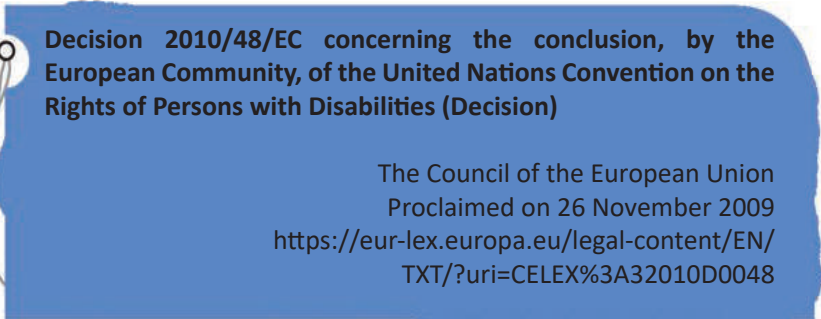
The Gender Discrimination Directive establishes a framework for combatting all gender discrimination in access and supply of goods and services, in both the public and private sectors, with a view to putting into effect in the Member States the principle of equal treatment between men and women.

The Gender Discrimination Directive applies to goods and services offered to the public, regardless of the persons concerned (that is to say, whatever the personal circumstances of the service recipient) and which are offered outside of the private and family spheres. The directive does not apply to either the content of media or advertising, or education.

The Gender Discrimination Directive prohibits (Article 4):

- any less favourable treatment of men or women by reason of their gender;
- any less favourable treatment of women due to pregnancy or maternity;
- harassment, sexual harassment or any incitement to discriminate with regard to the offer or supply of goods or services;
- taking gender into consideration when calculating insurance premiums and benefits in insurance agreements signed after 21 December 2007.

4.3. Discrimination against disabled people



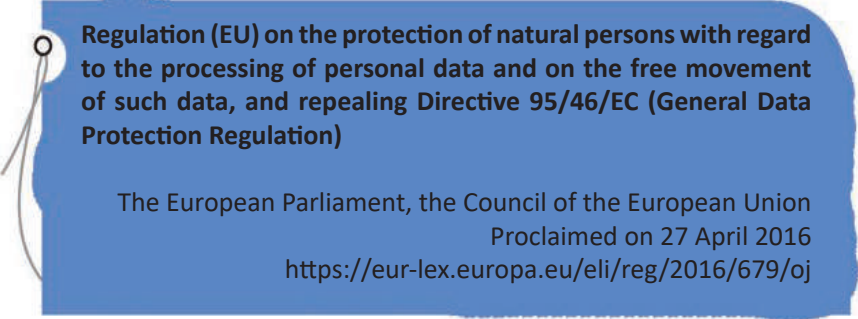
Decision 2010/48/EC concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (Decision)

The Council of the European Union
Proclaimed on 26 November 2009
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010D0048>

The Decision adopts on behalf the European Community (now the EU) the United Nations Convention on the rights of persons with disabilities, included in the annex to the Decision.

United Nations Convention on the Rights of Persons with Disabilities is described in the paragraph of this Legal index, called: “I. International Law. 7.4. Discrimination against disabled people”.

5. DATA PROTECTION



Regulation (EU) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

The European Parliament, the Council of the European Union
Proclaimed on 27 April 2016
<https://eur-lex.europa.eu/eli/reg/2016/679/oj>



The General Data Protection Regulation is applied to all EU Member States and the European Economic Area (EEA).

The General Data Protection Regulation is a regulation on data protection and privacy for all individual citizens of the EU and the EEA. It lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.

The General Data Protection Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data. These include:

- the right of access — including providing more information on how that data is processed and ensuring that that information is available in a clear and understandable way (Article 15);
- the right to data portability — making it easier to transmit personal data between service providers (Article 20);
- the right to erasure (“right to be forgotten”) — when an individual no longer wants their data processed and there is no legitimate reason to keep it, the data will be deleted (Article 17);

→ the right to know when the personal data has been hacked — companies and organizations will have to inform individuals promptly of serious data breaches. They will also have to notify the relevant data protection supervisory authority (Article 34).

The General Data Protection Regulation establishes specific conditions applicable to child’s consent in relation to information society services (Article 8):

→ where the data subject has given consent to the processing of his or her personal data for one or more specific purposes, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child;

→ Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years;

→ the controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

Regulation No 1052/2013 establishing the European Border Surveillance System (Eurosur Regulation)

The European Parliament, the Council of the European Union
Proclaimed on 22 October 2013
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1052>

The Eurosur Regulation is applied to all EU Member States, except Denmark, Ireland and the UK. However, it was agreed that Ireland and the United Kingdom could cooperate with Eurosur by means of regional networks. Denmark has since decided to participate in Eurosur.

The Eurosur Regulation establishes the European border surveillance system (Eurosur). Eurosur is a multi-purpose system to prevent illegal immigration and cross-border crime at the external borders. It will also contribute to ensuring the protection and saving the lives of migrants trying to reach European shores. It provides a mechanism allowing border surveillance agencies to rapidly exchange information and work together. By means of national coordination centres, all EU countries' national authorities responsible for border surveillance (e.g. border guards, police, coastguard, navy, etc.) must coordinate their activities with those of other EU countries and the EU border agency, Frontex.

The Eurosur Regulation establishes, that Member States and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union shall (Article 2):

→ comply with fundamental rights, in particular the principles of non-refoulement and respect for human dignity and data protection requirements, when applying the Eurosur Regulation;

→ give priority to the special needs of children, unaccompanied minors, victims of human trafficking, persons in need of urgent medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation.

Regulation (EU) No. 603/2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No. 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (Eurodac Regulation)

The European Parliament, the Council of the European Union

Proclaimed on 26 June 2013

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0603>



The Eurodac Regulation is applied to all EU Member States.

The Eurodac Regulation expands Eurodac, which is an EU-wide biometric database containing fingerprints of asylum applicants and non-EU/EEA nationals for comparison between EU countries.

The Eurodac Regulation aims to:

- make it easier for EU countries to determine responsibility for examining an asylum application by comparing the fingerprints of asylum applicants and non-EU/EEA nationals against a central database;
- enable law enforcement authorities, subject to strict conditions, to consult Eurodac for the investigation, detection and prevention of terrorist of serious criminal offences.

The Eurodac Regulation establishes such rules:

- each EU country must take the fingerprints of all asylum applicants and those apprehended while trying to cross a border irregularly (e.g. non-EU/EEA nationals or stateless persons entering without valid documents) over the age of 14 and, within 72 hours, transmit the data to Eurodac;
- when an asylum-seeker or non-EU/EEA national has been found to be present illegally in an EU country, then that EU country can consult Eurodac to determine whether the individual has previously applied for asylum in an EU country or has previously been apprehended when trying to unlawfully enter the EU;
- fingerprint data should be erased once asylum applicants, non-EU/EEA nationals or stateless persons obtain citizenship of an EU country;
- law enforcement agencies are only allowed to use Eurodac for comparisons: 1) if there are reasonable grounds that doing so will substantially assist them in preventing, detecting or investigating a terrorist offence or other serious criminal offence; 2) only as a last resort after several other checks have been carried out first;
- no Eurodac data may be shared with non-EU countries.

The Eurodac Regulation obliges the responsible institutions to determine and apply the procedure for taking fingerprints in accordance with the to respect the rights of the child (Article 3).

6. ACCESS TO JUSTICE

Directive 2002/8/EC to improve access to justice in cross border disputes by establishing minimum common rules relating to legal aid for such disputes (Legal Aid Directive)

The Council of the European Union
Proclaimed on 27 January 2003
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003L0008>

The Legal Aid Directive is applied to all EU Member States, except Denmark.

The Legal Aid Directive aims to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid in such disputes. It is applied in cross-border disputes, to civil and commercial matters whatever the nature of the court or tribunal. It is not extend, in particular, to revenue, customs or administrative matters.

The Legal Aid Directive defines “a cross-border dispute” as one where the party applying for legal aid in the context of this Directive is domiciled or habitually resident in a Member State other than the Member State where the court is sitting or where the decision is to be enforced (Article 1).

The Legal Aid Directive establishes the right to legal aid to EU citizens and nationals of non-EU countries living in the EU who cannot afford legal representation.

Legal aid may include (Article 3):

- legal advice;
- legal assistance and representation in court;
- exemption from court fees;
- exemption from certain fees in international cases (e.g. interpretation, translation, travel).

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims' Directive)

The European Parliament, the Council of the European Union
Proclaimed on 25 October 2012
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>

The Victims' Directive is applied to all EU Member States.

The Victims' Directive ensures that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

The Victims' Directive defines "victim: as: 1) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; 2) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death (Article 2).

The Victims' Directive establishes, that every EU Member State must ensure that victims of crime are recognized and treated in a respectful, sensitive and professional manner according to their individual needs and without any discrimination (for example based on nationality, resident status, race, religion, age, gender, etc.).

The Victims' Directive establishes the following rights of victims:

- the right to have their case heard in court (Article 10);
- the right to review a court's decision not to prosecute (Article 11);
- the right to receive legal aid (Article 13);
- the right to have their expenses reimbursed (Article 14);
- recover stolen property (Article 15).

The Victims' Directive establishes specific guarantees for minors and unaccompanied minors. Member States shall:

→ where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall be presumed to be a child (Article 24);

→ ensure that where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child (Article 1);

→ ensure that child victim may be heard during criminal proceedings and may provide evidence. Due account shall be taken of the child's age and maturity (Article 10);

→ ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim (Article 21);

→ child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation (Article 22);

→ ensure that in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings (Article 24);

→ in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family (Article 24);

→ where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility (Article 24).

Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings (Fair Trial Directive)

The European Parliament, the Council of the European Union
Proclaimed on 20 October 2010
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0064>

The Fair Trial Directive is applied to all EU Member States.

The Fair Trial Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.

The Fair Trial Directive establishes the obligation of Member States to ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned:

→ are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings (Article 2);

→ are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings (Article 3);

→ Member States shall meet the costs of interpretation and translation (Article 4).

Directive 2012/13/EU on the right to information in criminal proceedings (Information Directive)

The European Parliament, the Council of the European Union
Proclaimed on 22 May 2012
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012L0013>



The Information Directive is applied to all EU Member States.

The Information Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.

The Information Directive establishes the obligation of Member States to ensure:

→ that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively: 1) the right of access to a lawyer; 2) any entitlement to free legal advice and the conditions for obtaining such advice; 3) the right to be informed of the accusation; 4) the right to interpretation and translation; 5) the right to remain silent (Article 3);

→ that the information provided shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons (Article 3);

→ that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty (Article 4);

→ the Letter of Rights shall contain information about the following rights as they apply under national law: 1) the right of access to the materials of the case; 2) the right to have consular authorities and one person informed; 3) the right of access to urgent medical assistance; 4) the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority; 5) basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release (Article 4);

→ the Letter of Rights shall be drafted in simple and accessible language (Article 4);

→ that persons who are arrested for the purpose of the execution of a European Arrest Warrant are provided promptly with an appropriate Letter

of Rights containing information about the different rights that apply in that situation (Article 5);

→ that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence (Article 6);

→ that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers (Article 7).

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (AL Directive)

The European Parliament, the Council of the European Union
Proclaimed on 22 October 2013
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0048>

The AL Directive is applied to all EU Member States.

The Directive lays down minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant the European arrest warrant proceedings to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

The AL Directive establishes the rights of suspects and accused persons, including:

→ the right of access to a lawyer - persons have access to a lawyer from whichever of the following points in time is the earliest: 1) before they are questioned by the police or by another law enforcement or judicial authority;

2) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act; 3) without undue delay after deprivation of liberty; 4) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court (Article 3);

→ the right to have a third person informed of the deprivation of liberty - persons who are deprived of liberty have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay if they so wish (Article 5);

→ the right to communicate, while deprived of liberty, with third persons - persons who are deprived of liberty have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them (Article 6);

→ the right to communicate with consular authorities - persons who are non-nationals and who are deprived of liberty have the right to have the consular authorities of their State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if they so wish (Article 7);

→ the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities, subject to the agreement of those authorities and the wishes of the suspects or accused persons concerned (Article 7);

→ the right of access to a lawyer in the executing Member State upon arrest pursuant to the European arrest warrant (Article 10).

The AL Directive establishes specific guarantees for suspect or accused persons who are children (below the age of 18 years). Member States shall ensure that the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed (Article 5).

Coordinator of the Project



Institute of Child Health
Department of Mental Health and Social Welfare

Institute of Child Health - Department of
Mental Health and Social Welfare, Greece

Partners of the Project



UNIVERSITY of
NICOSIA

University of Nicosia, Cyprus



Kazimieras Simonavičius
UNIVERSITETAS

Kazimieras Simonavičius University, Lithuania



DEFENCE FOR CHILDREN
International-Italy

Defence for Children International-Italy, Italy

This publication was funded by the European Union's Rights Equality and Citizenship Programme (2014-2020). The content of this document represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

Co-funded by the European
Union's Rights, Equality
and Citizenship Programme
(2014-2020)

