Baseline Study on the Participation of Children in Legal Proceedings

Austria, the Czech Republic, Malta, the Netherlands, and Slovakia

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VOICE project – Be Seen Be Heard - Empowering Child VOICEs in Legal Proceedings

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1. Introduction

This baseline study report presents an assessment of the participation of children in legal proceedings across five EU Member States: Austria, the Czech Republic, Malta, the Netherlands, and Slovakia.

Conducted as part of the VOICE project (Be Seen Be Heard - Empowering Child VOICEs in Legal Proceedings), it provides a comprehensive overview of current national legal frameworks, and practices concerning child participation in judicial proceedings. The study is exploring the implementation of the right to be heard and participate principle (Article 12 UN Convention on the Rights of the Child (CRC)), which guarantees every child the right to express their views freely in all matters affecting them, and that their views are taken into consideration, as also reflected in the EU Charter on Fundamental Rights (Article 24) and the EU Strategy on the Rights of the Child. The study aims to provide a comprehensive understanding of how the right to be heard is implemented in law and in practice. The research draws on interviews with legal experts, justice professionals, child representatives, and, where feasible, children themselves.

While the studied legal frameworks generally provide provisions affirming the right of the child to be heard and the best interests of the child principle, a significant gap persists between law and practice. The study reveals that the implementation of children's participation rights faces recurring, cross-cutting challenges across countries, for instance:

- The level of protection afforded to children varies significantly across civil, family, criminal, and administrative law. In practice, children are not consistently treated as rights holders, where their voices are often disregarded. Migrant children are especially vulnerable in these contexts.
- Children are more willing to participate when they feel genuinely heard and respected. The availability and effectiveness of support mechanisms and child representatives play a critical role in shaping meaningful participation. However, the child's ability to participate might still depend on parental involvement.

Justice professionals often lack the necessary training in child-friendly procedures and communication with children, especially children with disabilities.

This report provides a foundation for future activities aimed at strengthening children's effective participation in proceedings in accordance with international and EU standards. It underscores the need to make justice systems more inclusive, responsive, and child centered.

The sections of the baseline study were respectively drafted by the Österreichische Juristenkommission (Austria), Forum for Human Rights (the Czech Republic and Slovakia), the Aditus Foundation (Malta), and the Nederlands Juristen Comité voor de Mensenrechten (the Netherlands).

2. Austria

2.1. Civil and Family Law

In all matters related to the minor, the child's wellbeing shall be the guideline. § 138 of the Austrian Civil Code (ABGB) provides for mandatory individual consideration when assessing the best interest of the child.

Rights of being heard: From the age of ten, children have to be heard by the court in proceedings on custody or rights of contact. Younger children should also be heard, if possible; such questioning may be performed by the court, by a court-appointed expert or by a family court assistant.[1]

[1] *Infra* p. 6.

The wishes of the child become more important with the advancing age of the child, yet in case of doubt, the child's wellbeing prevails over any wishes voiced by the child. In principle, the older the child, the more should the wishes of the child be complied with.

Right of application: From the age of 14, children have the right in custody proceedings to file their own applications with the court, independent of a parent.

The Non-Contentious Proceedings Act (AußStrG)[2] provides procedural regulations which take into account the special requirements of the guardianship proceedings in the area of custody and contact rights. It grants minors procedural rights and rights of participation. The AußStrG contains some procedural provisions for custody and contact rights proceedings that differ from those in the general section of the AußStrG.

Until the Child and Guardianship Act (KindRÄG) 2001, minors did not have their own legal capacity in guardianship proceedings. But Austrian case law had subsequently recognized the legal capacity of minors from the age of 14 in matters relating to custody and contact rights with regard to independently filing an appeal. The new § 104 par. 1 AußStrG stipulates that minors who have reached the age of 14 can act independently before the court in proceedings concerning care and upbringing or the right to personal contact.

These minors thus have their own legal capacity to file applications, meaning that they are particularly entitled to file applications initiating proceedings themselves. All other procedural results[3] and the decision of the court must also be served to the minors aged above 14. The court must instruct and support them in this process. If, in an individual case, the minor lacks the presumed capacity to understand and judge, the court may, ex officio or upon application by the person entrusted with custody, declare that, as an exception, they are not to be granted legal capacity.[4] The authority of the minor's legal representative to take procedural steps, including on their behalf, remains unaffected by the independent legal capacity of minors. If the applications of the minor and the legal representative do not agree on the substance, all applications must be considered in the decision on the merits.[5]
If a minor who has already turned 14 years of age expressly refuses to maintain personal contact, the application for regulating personal contact must be rejected without further substantive review, or the enforcement of the application must be abandoned. However, this requires that the minor has previously been informed of the legal basis and that initiating or maintaining contact with both parents is fundamentally in their best interests, and that attempts to find an amicable agreement have been unsuccessful. The minor does not have to provide reasons for their refusal; it is sufficient if they voluntarily refuse further contact, which the court must verify in the proceedings. Younger children, on the other hand, can still be required to have contact even against their will.

In proceedings concerning custody or contact rights, the court must generally hear minors in person pursuant to § 105 par. 1 AußStrG. However, this can also be conducted by the child and youth welfare service, by family court assistance service,[6] or by other appropriate means (experts),

- if the minor is under the age of ten,
- if their development or state of health requires it, or
- if an expression of the minor's serious and uninfluenced opinion cannot otherwise be expected.

If these exceptional cases do not apply, the minors must in any case be heard in person by the judge. Questioning by third parties without the legal requirements being met constitutes a procedural violation if this circumstance had an impact on the decision of the court. Hearing minors, even if they are under the age of ten, serves not only to assess the circumstances relevant to the decision from the child's perspective, but above all to gain a personal impression

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[2] §§ 104-111 AußStrG.
[3] § 15 AußStrG.
[4] § 175 ABGB.
[5] § 104 par. 2 AußStrG.
[6] *Infra* p. 6.

of the child. Hearing the minor should only be omitted if doing so would endanger the child's well-being or if a considered statement on the subject matter of the proceedings cannot be expected.

Special training for judges dealing with guardianship/family cases is offered in many ways, but not mandatory. According to judges there is a need for more practical training on how to interrogate / hear minors.

Child legal advisor / child guardian (Kinderbeistand): In custody or contact rights cases, the court may appoint a child legal advisor. A Kinderbeistand is a psychologically trained guide for children up to the age of 14. Their task is to establish a relationship of trust with the child, to inform the child about the proceedings and to give the wishes of the child weight and voice before the court. The Kinderbeistand may only communicate the content of the discussions with the child to the parent or to the court if the child has agreed to such communication.

In 2010 the Child Assistance Act entered into force. The act gives children the right to professional support and guidance. A Kinderbeistand is appointed by the Austrian judicial support agency (Justizbetreuungsagentur) and then appointed by the court for an individual case. Only those individuals may be appointed who are qualified for this role based on their profession, professional experience in dealing with children and young people, and their training. The appointment ends with the final, legally binding resolution of the case.

The Kinderbeistand must be appointed for minors under the age of 14, and in special cases with their consent, also for minors under the age of 16, if this is necessary for them to support the child in view of the intensity of the dispute between the other parties. The Kinderbeistand has access to the court files, will be provided with all applications (including those initiating proceedings) and must be notified of all hearings. They may attend oral hearings and, at the minor's request, accompany the minor to evidence taking outside of the oral hearing.

Planned reforms seek to strengthen the role and involvement of the Kinderbeistand. Some institutions, e.g. the Austrian Children and Youth Ombuds Offices, are of the opinion that the appointment of a Kinderbeistand shall be mandatory in all cases. Taking into account the budgetary situation of the Judiciary, this is currently not likely to be introduced.

Family Court Assistance Service - Familiengerichtshilfe:[7] The basic concept of family court assistance is that social workers, psychologists, or educators assist the court, on its behalf, in gathering the basis for decisions, initiating an amicable settlement, and informing the parties in proceedings regarding custody and personal contact. Family court assistance thus acts on behalf of the court in individual cases. It can conduct a clearing (informing the parties, identifying the main points of conflict and possible ways to an amicable solution), carry out social work surveys and findings, e.g. home visits, accompanying visits, psychological findings, draft expert opinions, and assist / mediate contacts.

The Family Court Assistance Service has the right to summon and question parties, to have direct contact with the child, to request information and access to files (from police, the public prosecutor's office, courts, and institutions for the education, care, and treatment of minors), to request information from child and youth welfare agencies, and, on the other hand, to maintain confidentiality. The Family Court Assistance Service also has the option of having the court order appropriate coercive measures against persons who violate their obligation to cooperate in Family Court Assistance investigations. The objective of family court assistance is to provide family court assistance for every district court acting as a guardianship court. § 106c AußStrG authorizes the Federal Minister of Justice to order the establishment of family court assistance, subject to budgetary, technical, and organizational possibilities. The services provided to the courts are very helpful and appreciated by judges. Unfortunately the service is under-staffed and it takes a long time to receive their reports or expert opinions.

[7] §§ 106a-106c AußStrG.

2.2. Criminal Law

The Juvenile Justice Act (Jugendgerichtsgesetz, JGG) adjusts criminal law for young offenders.

In criminal matters, the right to be heard is respected at all stages of the proceedings. If minors between the age of 14 and 18 are accused of a crime, they have the right to a defense lawyer according to the EU Directive 2016/800.[8] But there is no legal obligation that minors between 14 and 18 must have a defense lawyer in police investigations.

In criminal matters regarding minors between the age of 14 and 18 the legal guardian has theirselves an own right to appeal certain decisions of the criminal court – the right of the child being independent of the rights of the guardian. In case of conflict of interests, a special trustee is appointed to secure the rights of the child.[9]

Regarding remedies, in criminal matters children have the same rights as adults under the Austrian Criminal Code of Criminal Procedure.

The legal guardian has their own rights in criminal proceedings.[10]

In criminal matters there is no minimum age for children to be heard. The judge will decide in each case individually, if the child is able to give witness.

In criminal proceedings minors who are victims are interrogated by a specialized psychologist in a room, separated from the defendant, the defense lawyer and the prosecutor.[11] Children have the right to legal and psychological litigation support free of charge.

In police investigations there are adapted rooms for children victims, but not for the defendants. In the courtrooms the rooms are usually not adapted in a child-friendly matter.

In criminal proceedings against minors, it is mandatory that the court requests a report from the juvenile court assistance service (Jugendgerichtshilfe). This report covers the social and family background, the personal views of the minor regarding the offence committed, and it also gives recommendations to the court. In practice, the capacities of this institution are limited, which might have a negative effect on proceedings.

If the accused (minor) is charged with committing a severe sexual offense, the law provides that at least one of the judges must have the same gender of the accused`s gender and the gender of the person whose gender may have been violated by the offense.[12]

Judges and public prosecutors in all instances as well as district attorneys who are entrusted with juvenile criminal cases must have the necessary pedagogical understanding and appropriate knowledge in the fields of social work, psychology, psychiatry and criminology. The Federal Minister of Justice must ensure that further training in accordance with these criteria is offered.[13] Due to budgetary reasons there are / will be shortages in trainings.

2.3. Administrative Law

As far as applicable the concept of evolving capacities is applied in practice in the administrative procedure in a way that the participation of minors in the proceedings shall be undertaken in an age appropriate manner while taking into account the maturity and also social and educational background of the minor. Decisions are taken in a case-by-case manner.

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[8] § 39 JGG.
[9] § 277 par. 2 ABGB.
[10] § 38 JGG.
[11] § 66a (1) Z 3, (2) Z 3 StOP.
[12] Further details in § 32 (2) StOP.
[13] § 30 JGG.

In practice the question of participation of minors and the framework of such a participation in administrative (court) proceedings arises more often in asylum and migration cases than in other administrative proceedings.

There is no provision in administrative procedure law comparable to §105 AußStrG. There is no obligation of the administrative authority or courts to hear minors. In practice and as regards court proceedings administrative judges shall balance the stress and burden for the child that a court and formal interview situation represent with the benefits deriving from hearing the minor directly. The guiding principle is the best interests of the child.[14]

Due to the lack of concrete procedural rules and after a public debate on the topic (following a decision of the court) the Federal Administrative Court issued guidelines on how to ensure the best interest of the child in asylum and migration cases. There is also training available for judges in administrative proceedings to raise awareness regarding the special needs of children in proceedings and to ensure the best interests of the child in such proceedings. However, this is not mandatory.

Depending on the subject matters of the proceedings, in general, children's views are not very often actively sought and considered. Asylum cases: in general, applicants are interviewed firstly by police to establish identity and travel route, and then by the authority (BFA) to establish the relevant facts of the case, unless – because of the circumstances – he/she is not able to contribute to the establishment of the facts.[15] This last point can be taken into consideration regarding very young minors in asylum cases.

There is no minimum age for the child to be heard in administrative cases. Authorities and courts shall balance the interests involved when deciding whether a child shall be heard in proceedings.[16] The law provides that minors may only be interviewed with their legal guardians present.[17] The presence of parents / the guardian is obligatory in court proceedings. Interrogations in asylum/migrations cases should ideally be conducted with specially trained interpreters.

In administrative cases children are generally represented by their legal guardian (parents or court appointed guardian). In asylum cases each parent can represent the minor;[18] in case of a dispute about the right to represent, the mother represents the child born out of wedlock, if the father does not enjoy sole custody. There are no legal provision regarding asylum-seeking children to present their claims independently of their parents. In practice this is depending on the individual circumstances, i.e. ability to contribute to the findings of the facts, risk of re-traumatisation and burden for the child, familial pressure.

Children can challenge decisions or lodge complaints if they feel their voice was not heard within the framework of the general appeal procedure.

Unaccompanied minors ("whose interests cannot be represented by their legal guardians") are entitled to lodge asylum requests and undertake procedural acts according to the migration act (FPG) to their benefit. Legal guardians in these proceedings – depending on the level of the proceedings – are a legal counsel (Rechtsberater) or the Child and Youth Welfare Office. Such children under the age of 14 may only be interrogated in the presence of their legal guardian. There is no mandatory guardianship for unaccompanied minors. Due to this fact, there are currently shortcomings regarding access to the Supreme Administrative Court. The government is planning to undertake a reform, resulting in legal guardianship "from day one" for unaccompanied minors.

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[14] See for a comprehensive opinion: decision of the Supreme Administrative Court - VwGH, 25.10.2023, Ra 2023/20/0125.
[15] Article 19 § 1 and 2 Asylum Act.
[16] See again VwGH, 25.10.2023, Ra 2023/20/0125.
[17] Article 19 § 5 Asylum Act
[18] Article 10 BFA-VG.

Article 20 Asylum Act provides that, if an applicant claims an interference with sexual self-determination, they shall be interviewed by an official or judge of the same sex provided, that they do not explicitly request otherwise. In appeal procedure such an interference needs to be claimed either in the administrative proceedings or latest in the appeal.

2.4. Children with disabilities

In general, there are no special procedural regulations for children with disabilities that differ from those of disabled persons (adults).

2.5. Other relevant institutions

Children and Youth Welfare Service: The Federal Child and Welfare Act (Kinder- und Jugendhilfegesetz) sets guidelines for child protection and welfare in Austria. The Act states that if a child is in need of care and protection and is unlikely to receive it at home, the local Youth Services is responsible for ensuring that they receive appropriate care. The child may be placed in care by a voluntary care agreement with the parent(s)/guardian(s) or by a court order.

According to § 106 AußStrG, before decisions are made by the court regarding custody or personal contacts, the children and youth welfare service may be heard.

Ombudsoffice for children's rights (Kinder- und Jugendanwaltschaft - KIJA): The KIJAs are legally established in each of the nine federal states of Austria. In their work they are not subject to directives from the government. Staff members are only bound by the instructions of the head of the KIJA. KIJAs are:

- an Ombudsoffice for children and youths,
- representing the rights and interests of minors,
- giving advice and help,
- are based on the CRC.

KIJA works free of charge, confidential, anonymous and unbureaucratic, only with consent of minor. The KIJA can be contacted in case of conflicts with parents / teachers / colleagues / friends, the occurrence of violence or sexual assault, in cases of divorce / separation of parents, despair or breach of law.

3. The Czech Republic[19]

3.1. Family law proceedings with emphasis put on proceedings on the removal of the child from their family or on other coercive interventions against the child and their families

This section, which is the core of the study, can be divided into four parts. In the first part we will focus on the child's right to information and to have their opinion heard, in the second part we will focus on the child's procedural representation, in the third part we will present a specific case study, and in the fourth part we will briefly highlight the approach of family conferencing and how it can constitute good practice for ensuring the child's participatory rights.

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[19] The baseline study on the Czech Republic was prepared using desk-based research and supplemented by 4 interviews:

- with a judge (3 March 2025)
- with a child with direct experience with proceedings on the child's removal from his family and placement in institutional care (20 March 2025)
- with a lawyer with experience from non-governmental organisation providing legal assistance and other support to persons in a situation of migration (9 April 2025)
- with social workers working with children at risk who are also coordinators of family conferences (10 April 2025).

3.1.1. The right of the child to information and to have their views ascertained

a. The child's views in relation to determining the content of the child's best interests

The main substantive legal regulation that ensures children the right to information and the right to be heard in court proceedings concerning them is Section 867 of Act No. 89/2012 Coll., the Civil Code (hereinafter referred to as the "Civil Code"). That provision requires the court to provide the child with the information necessary to enable them to form and communicate their own opinion (paragraph 1). It further provides for a rebuttable presumption that children over the age of 12 are presumed to be able to receive the information, form their own opinion, and communicate it. At the same time, it emphasizes that the court must give due weight to the child's opinion (paragraph 2). If the child is not able to accept the information or form their own opinion, the court is obliged to inform and interrogate someone who is able to protect the child's interests, under the condition that the person's interests do not conflict with those of the child (paragraph 2).

Indeed, the age limit of 12 years should act as a rebuttable presumption, strengthening the child's right to be heard directly by the court. It should not be interpreted in a way that would result in younger children being automatically denied the exercise of this right. This position is also supported by the case law of the Constitutional Court.[20] In general, the Constitutional Court accepts the conclusion that children have sufficient intellectual and emotional maturity already around the age of 10.[21] In its decision, No. IV. ÚS 412/22, the Constitutional Court stated that in the case of a child aged 11, the court is obliged, in view of the child's age, to ascertain the child's opinion directly and not through a representative or child protection authority.[22] In its decision, No. IV. ÚS 827/18, the Constitutional Court held that the court should have directly ascertain the child's views even in a case of a 7-year-old child.[23]

On the other hand, the Constitutional Court also recognizes that children may not always and in all circumstances be heard directly by the court. However, in the case of older children, for whom sufficient intellectual and emotional maturity is otherwise generally presumed, there must be absolute exceptions due to "particularly significant circumstances."[24] The Constitutional Court generally articulates the rule that a child need not be heard directly by the court either if it is not in their best interests, which would be the cases just mentioned, or if it is not factually possible. The second group includes situations where the child is too young or where there is a risk of delay.[25]

The Constitutional Court relies in its jurisprudence on the relevant general comments of the UN Committee on the Rights of the Child (CRC Committee), in particular General Comment No. 12[26] and General Comment No. 14,[27] especially with regard to the rule of the relationship between the child's opinion and the best interests of the child. In particular, the Constitutional Court

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[20] See the decision of the Constitutional Court of 1 November 2023, No. II. ÚS 2225/23, para. 22: "The age limit is not strictly defined; the court can assess on a case-by-case basis whether the child has a sufficient intellectual and will maturity. It cannot be ruled out that a younger child will also have the capacity to express their views on their future care arrangements in the light of that maturity. However, the age of twelve is the latest possible point at which a child is able to present their views coherently and without significant prejudice in court. After that age, it is necessary, unless particularly important circumstances prevent it, to ascertain the child's attitude (wishes) directly before the court."

[21] See, for instance, the decision of the Constitutional Court of 12 June 2023, No. III. ÚS 1318/22, in which the children were 10,5 and 12,5 and the Constitutional Court drew the conclusion about their sufficient intellectual and emotional maturity towards both of them. See also decision of the Constitutional Court of 5 February 2025, No. I. ÚS 2364/24 in which the children were 8 and 10 years old and the Constitutional Court founded them to have sufficient intellectual and emotional maturity to have their own view to express.

[22] See, for instance, the decision of the Constitutional Court of 12 June 2023, No. III. ÚS 1318/22, in which the children were 10,5 and 12,5 and the Constitutional Court drew the conclusion about their sufficient intellectual and emotional maturity towards both of them. See also decision of the Constitutional Court of 5 February 2025, No. I. ÚS 2364/24 in which the children were 8 and 10 years old and the Constitutional Court founded them to have sufficient intellectual and emotional maturity to have their own view to express.

[23] Decision of the Constitutional Court of 10 April 2018, No. IV. ÚS 827/18.

[24] Decision of the Constitutional Court of 29 October 2019, No. III. ÚS 2396/19, para. 34.

[25] Decision of the Constitutional Court of 19 December 2017, No. II. ÚS 1931/17, para. 39.

[26] General Comment of the CRC Committee No. 12 (2009): The right of the child to be heard, CRC/C/GC/12, available at: https://digitallibrary.un.org/record/671444?ln=en.

[27] Article3(1) General Comment of the CRC Committee No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, available at: https://digitallibrary.un.org/record/778523?ln=en.

emphasizes that "provided that the child is sufficiently intellectually and emotionally mature, their wishes must be regarded as an essential guide in the search for their best interests."[28] In this context, the Constitutional Court stresses the importance of taking into account the child's evolving capacities, applying this perspective in the direction of empowering the child to make decisions about their life, as required by the CRC Committee,[29] and not in a direction that would lead to the child's incapacitation. Here again, the Constitutional Court generally takes the view that, as a general rule, from the age of 10 years, the child's opinion must be a fundamental guide in determining the content of the child's best interests. In its decision, No. III. ÚS 1318/22, the Constitutional Court used in its reasoning a reference to the age of adolescence as defined by the CRC Committee in its General Comment No 20.[30] In its decision, No. I. ÚS 2364/24, it also reached this conclusion in relation to an 8-year-old child.[31]

It is true that the Constitutional Court always emphasizes in its decisions that the courts cannot simply adopt the child's opinion, but that other aspects must also be taken into account, such as the child's age and the degree of objectivity (independence) of the child's attitude.[32] However, it can be deduced from its case-law that, unless the case concerns children at risk or a situation where there is a suspicion that the child is being manipulated by one parent against another parent, the Constitutional Court will tend to reach a conclusion that corresponds to the child's opinion.[33]

Both of these exceptions can be problematic from a child's rights perspective. In the case of the possible manipulation of a child, which is usually thematized mainly in relation to parental conflicts, one can understand the reasons why the Constitutional Court urges restraint in the child's expressed opinion. On the other hand, however, it cannot be overlooked that by designating a situation as a manipulation of a child, it is objectified - the viewpoint of the person/system assessing it is applied. From the child's subjective point of view, even an opinion that is the product of manipulation may be their core belief at that moment. Moreover, in these cases, the parent who may be manipulating the child against the other parent tends to be the closest person in the child's life. These feelings of the child are authentic from the child's point of view at that place and time. From the child's point of view, the attempts of institutions, including the courts, to intervene in this situation can appear as a manifestation of sheer and detached institutional violence, which prevents them from living the life they want and which is intended to impose on them the correct view of their parents. In short, it is questionable whether it is appropriate to apply the perspective of justice also to relationships as intimate as those between a child and their parent/s. Moreover, it cannot be overlooked that, in the practice of the lower courts, reference to the fact that a child is being manipulated by their parent is still not infrequently used to place the child in alternative care, a so-called 'neutral environment'. In its case-law, the Constitutional Court has objected to such practices,[34] but that does not mean that decisions to place a child in a neutral environment are not still accepted in the practice of the courts.

The decision-making on children in situations of so-called social danger (children at risk), including the decision-making of the Constitutional Court, then appears as if the above rules did not apply. Simply put, two basic situations can be distinguished in this area. The first is the situation where a child is removed from their parents/family for reasons on the part of the parents or family. In these cases, it is often assumed that the children are not aware of the full context of their situation, especially as regards the future prospects if they were to remain in the care of their parents/family. In other words, there is implicitly an assumption that children are incapable of understanding the full context of a situation that needs to be addressed by authoritative intervention.

[28] Decision of the Constitutional Court of 12 June 2023, No. III. ÚS 1318/22, para. 33.
[29] See the General Comment of the CRC Committee No. 7 (2005): Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, para. 17. Available at: https://digitallibrary.un.org/record/584854?ln=en&v=pdf.
[30] Decision of the Constitutional Court of 12 June 2023, No. III. ÚS 1318/22, para. 45.
[31] Decision of the Constitutional Court of 5 February 2025, No. I. ÚS 2364/24, paras. 31–32.
[32] See, for instance, the decision of the Constitutional Court of 12 June 2023, No. III. ÚS 1318/22, para. 33.
[33] See, for instance, the decision of the Constitutional Court of 12 June 2023, No. III. ÚS 1318/22, or the decision of the Constitutional Court of 29 October 2019, No. III. ÚS 2396/19.
[34] See, for instance, the decision of the Constitutional Court of 29 November 2023, No. IV. ÚS 412/22.

The second situation is when the child is removed for reasons on the child's side, typically referred to as 'behavioral problems'. This usually concerns children who have already entered adolescence. However, once again, it seems as if the conclusions on maturity drawn in cases without a link to a situation of social danger suddenly do not apply here. Although the Constitutional Court has stated, for example, that children as young as 13 cannot have their care arrangement adjusted against their will,[35] in such cases it often recognizes as justified, for example, the placement of children in institutional care, which is also, by its very nature, a care arrangement, even in the case of significantly older children.[36] A notable exception is the case dealt with in the Constitutional Court's decision, No. II. ŮS 2225/23,[37] in which the Constitutional Court sided with the 16-year-old boy, who should have been placed in a closed educational institution against his will at his parents' request because of his behavioral problems. However, it is precisely the Constitutional Court's decision, No I. ÚS 2891/24,[38] for example, which shows that this was indeed an exception, not a restatement of case-law.

b. Ensuring the child's information and participation in court proceedings

The described substantive legal regulation is reflected in the procedural level, namely in Section 20(4) of Act No. 292/2013 Coll., on special court proceedings. This provision establishes the obligation of the court towards a child who is capable of understanding the situation to proceed in such a way that the child receives the necessary information about the court proceedings and is informed about the possible consequences of complying with their opinion and the consequences of the court decision. The same obligation is then incumbent on the child's legal representative (parent) or guardian.

This provision fits into a broader concept of the child's participatory rights than "merely" ascertaining the child's opinion. The Constitutional Court also leans towards this concept in its case law. It "understands the child's right to be heard more broadly than as a mere opportunity to express their opinion on the issue under consideration; this right must be interpreted in the context of the more general right to be present at the hearing of their case and understood as an important guarantee that children's rights are not decided without their participation."[39] In this context, the Constitutional Court refers specifically to the right of the child to be allowed to participate in the proceedings concerning them, depending on their age and intellectual and emotional maturity, and to be informed of the conduct of the proceedings at all.[40]

The Constitutional Court then formulated a very broad obligation of the court to ensure the child's participation in the proceedings in its decision, No. II. ÚS 725/18. It emphasized that the court must not rely solely on the child's legal representative or appointed guardian to ensure the child's participation rights.[41] Thus, even the appointment of a guardian does not relieve the court of the obligation to involve the child in the decision, unless this is contrary to the child's best interests. The Constitutional Court emphasized that if the child is capable of being heard directly by the court, "then there is no reason in principle not to subsequently inform the court directly of the outcome of the proceedings, including an assessment of the child's views and interests and of the consequences of the decision for the child (unless this is contrary to the child's best interests)."[42]

In practice, however, ensuring that the court provides the child with the required information about the ongoing proceedings is a problem, especially in the post-decision phase. The child's contact with the court takes place primarily when the child's opinion is sought, and during this process the court may, or rather must, in order for the child to form their own opinion, also outline the subject matter of the proceedings, their course and consequences. The manner in which this interaction takes place always depends on the personality of the individual judge. However, once the decision has been given, there is no further contact between the judge and the child unless the child is present when the decision is given. However, this is not an issue

[35] See, for instance, the decision of the Constitutional Court of 13 October 2015, No. III. ÚS 3462/14.
[36] See the case study in section 3.1.3.
[37] Decision of the Constitutional Court of 1 November 2023, No. II. ÚS 2225/23.
[38] Decision of the Constitutional Court of 12 March 2025, No. I. ÚS 2891/24. See the case study in section 3.1.3.
[39] Decision of the Constitutional Court of 1 November 2023, No. II. ÚS 2225/23, para. 24.
[40] *Ibidem*, para. 24.
[41] Decision of the Constitutional Court of 8 October 2018, No. II. ÚS 725/18, para. 42.
[42] *Ibidem*, para. 57.

that judges necessarily overlook. Rather, from their point of view, it is a complex issue of how to communicate the decision, especially when it may still be subject to appeal. They may also choose, instead of direct contact with the child, to ask the guardian *ad litem* to translate the court decision for the child.[43]

The contact of the guardian *ad litem* with the child after the court decision is issued seems to be crucial from a systemic point of view, given that the task of the guardian *ad litem* should be to discuss with the child whether the child wants to challenge the decision with the available remedies. However, this does not happen in practice in most cases.[44]

With effect from 1 July 2021, Act No 99/1963 Coll., the Civil Procedure Code, was amended to require that, if the child is over 15 years of age, the court decision must be served not only on the legal representative or the guardian *ad litem*, but also directly on the child. In practice, however, this requirement is not always fulfilled.[45]

c. Rules for the course of the court's ascertainment of the child's views

The actual process of ascertaining the child's views is regulated in Section 100(3) of the Civil Procedure Code. The following important rules follow from it:

- the court must ascertain the child's views directly; indirect ascertainment of the child's views (through the child's representative, an expert's report or a child protection authority) must be exceptional;
- the ascertainment of the child's views may take place without the presence of other persons. However, persons may be excluded only if their presence could be expected to influence the child so that they do not express their true opinion;
- the child has the right to request the presence of their trustee who is not the child's legal representative. The trustee may be excluded only if their presence would defeat the purpose of the ascertainment of the child's views;
- the court is obliged to take into account the child's views, taking into account their age and maturity of mind.

In 2011, the Concluding Observations of the CRC Committee on the Third and Fourth Periodic Report of the Czech Republic on the Implementation of the CRC were issued, which strongly criticized the low level of ensuring children's participation rights.[46] Since then, there have been significant developments on the part of the courts, certainly under the influence of the above-quoted case law of the Constitutional Court. Generally speaking, it has become more of a norm for judges to actually meet children directly, especially if they are already school-age children. The conclusions of the 5th Family Law Symposium devoted specifically to the topic of children's participation rights emphasize that there is no age limit for children's participation and refer, among other things, to the above-quoted case law of the Constitutional Court, according to which the court was supposed to interact directly with children aged 7[47] or 6.[48] The conclusions therefore do not rely explicitly on age, but rather call for the courts to inform children, in a manner appropriate to their abilities, capacities and interests, about what is happening in their lives, when, how and to what extent they can participate in decision-making or comment on the procedures chosen.[49]

The age of 6-7 years, i.e., the beginning of the school age, was also confirmed by the interview with the judge for direct court interaction with the child. At the same time, this judge talked about being able to imagine also direct participation with older preschool-aged children. The

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[43] Information obtained from an interview with a judge (3 March 2025).
[44] For more on this, see section 3.1.2.
[45] See the case study in section 3.1.3.
[46] Concluding Observations of the CRC Committee on Third and Fourth Periodic Report of the Czech Republic, 2011, CRC/C/CZE/CO/3–4, para. 34. Available at: https://digitallibrary.un.org/record/708485?ln=en&v=pdf.
[47] Decision of the Constitutional Court of 10 April 2018, No. IV. ÚS 827/18.
[48] Decision of the Constitutional Court of 19 December 2017, No. II. ÚS 1931/17; decision of the Constitutional Court of 9 January 2018, No. IV. ÚS 3749/17.
[49] Judicial Academy. '5. rodinněprávní symposium – Participace dětí v opatrovnickém soudním řízení', p. 12–13. Available at:https://www.jacz.cz/images/rodinnepravni_sympozium/ANO_AKTUALNI_2025/5_sympozium_po_revizi_25.10.2025.pdf.

child's ability to understand the context is important. For younger children, it would then be more about observing behavior.[50]

The way the judge conducts the interview with the child depends very much on the personality of the judge. In general, the way in which the judge is able to communicate with the child seems to be more important than the emphasis on the premises in which the interview takes place. The adjustments of spatial conditions that are gradually taking place, whether within the courts or within the judges' chambers, are certainly a step forward, but should not be given more attention than the judge's own approach to the child. A judge with a good attitude can ensure the effective participation of the child even in a traditional courtroom. It is important to speak transparently to the child.[51] The judge's conversation with the child should not turn into the judge analyzing-diagnosing the child rather than communicating openly with the child. In its case law, the Constitutional Court emphasizes that the judge's opinion of the child should be obtained comprehensively, especially by indirect questions.[52]

In practice, it happens that the judge's interview with the child is attended by an employee of the child protection authority who has been appointed as the child's guardian *ad litem*. Given the possible overlapping roles of this body,[53] this may not be appropriate at all, especially for children who are considered to be at risk and in respect of whom the social protection body also plays the role of an administrative authority. It may be the same official who initiated the measure at issue in the court proceedings and with which the child disagrees. The children may not then feel safe in the official's presence to express themselves openly about what they think of the proposed measure and their situation.[54]

3.1.2. The representation of the child in the proceedings

Probably the most problematic part of ensuring children's participation rights in family law proceedings, especially in proceedings in which a decision is made to take coercive measures against the child and/or their family, is the issue of the child's procedural representation. The legal order provides that for this type of proceedings, the child's guardian would typically be the child protection authority.[55]

In the past, it has happened that the child protection authority also initiated proceedings by its own motion and acted in those proceedings as the procedural representative (guardian *ad litem*) of the child. This practice has been criticized by the European Court of Human Rights (ECtHR),[56] as a result of which a rule has been established that a child protection authority that initiated proceedings by its motion cannot be appointed as a guardian *ad litem* of the child in those proceedings.[57]

However, this rule has not proved to be very effective in practice, for several reasons. First of all, unless proceedings are initiated by an interim measure, which only the child protection authority is entitled to ask for, the child protection authority does not usually directly initiate the proceedings. In spite of the legislation, these authorities are accustomed to making notices to the courts and the proceedings are then formally initiated by a court decision, not by a proposal from the child protection authority. Formally, then, there is nothing to prevent the social protection authority in question from representing the child in the proceedings as a guardian *ad litem*, which is what normally happens.

In March 2025, the Constitutional Court issued a decision in which it ruled that a child protection authority should be excluded from representing a child even if it initiated the proceedings by a notice. However, it did not formulate this rule as absolute, but emphasized that the content of

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[50] Information obtained from an interview with a judge (3 March 2025).
[51] Information obtained from an interview with coordinators of family conferences (10 April 2025).
[52] Decision of the Constitutional Court of 12 June 2023, No. III. ÚS 1318/22, para. 33.
[53] See more in section 3.1.2.
[54] Information obtained from an interview with a social worker working with children at risk (10 April 2025).
[55] Section 469 (1) of the Act No. 292/2013 Coll., on special court proceedings.
[56] See especially *Havelka and Others v. the Czech Republic*, judgment of the ECtHR of 21 June 2007, Application No. 23499/06, para. 62.
[57] Section 469 (2) of the Act No. 292/2013 Coll., on special court proceedings.

the notice must be examined. In the present case, the Court then concluded that there had been no breach of the child's right to effective representation, despite the fact that the guardian *ad litem* had consistently taken a position in the proceedings with which the child disagreed.[58] It was sufficient for the Constitutional Court that the notice of the child protection authority was formulated only for the adoption of an educational measure against the child’s foster parent, and not for the revocation of foster care and the order for the minor's institutional upbringing, which were ultimately at issue in the proceedings.[59]

Another limitation of the effectiveness of the rule described above is that if the child protection authority is excluded from representing the child in the proceedings on the basis of the rule, another child protection authority is typically appointed as a guardian *ad litem* for the child. There is then communication between these authorities about the case, at least in the form of file sharing. The Ministry of Labour and Social Affairs, as the methodological body, has tried to prevent this practice, but its methodological objective has not yet been fulfilled in practice.[60] It emerged from the interview with the judge that the judge had never experienced a situation where one social protection authority acted against another social protection authority. [61] After all, all child protection authorities are united by the fact that, as administrative authorities, they are representatives of one entity, namely the State.[62]

The ineffectiveness of the representation of a child by a child protection authority as a guardian *ad litem* is also due to the fact that it is difficult for these authorities, whose primary task is precisely to perform the function of an administrative authority, i.e. authoritative role, to understand that the role of the guardian as a procedural representative should be different. The Czech legal system is anchored in a relatively progressive regulation of the guardian's duties in relation to the person represented, which was primarily adopted in relation to the guardianship of people with disabilities whose legal capacity has been limited. However, it is a general regulation which also applies to procedural guardianship, including procedural guardianship of children. For example, it requires the guardian to be in regular contact with the person represented,[63] to explain to the person represented the nature and consequences of the decisions the guardian is making on the person’s behalf in a comprehensible manner[64] and, above all, it specifies that the guardian may not deviate from the expressed wishes of the person represented in respect of living arrangements, unless those wishes can reasonably be contradicted.[65] The role of the guardian thus defined is also in line with the conclusions of the Constitutional Court adopted directly in relation to the role of the child's procedural guardian.[66]

However, the child protection authorities relate their role as guardian *ad litem* to the establishment of the facts rather than to the procedural representation of the child. They therefore perform their role more as an assistant to the court than as a representative of the child. This is also true in relation to children who are not considered to be at risk and in respect of whom the child protection authority does not also act as an administrative authority, for example in situations where a decision is taken on the division of custody of children following the separation of parents. For a very long time, the child protection authorities have exercised their role of guardian *ad litem* in these cases by carrying out so-called family investigations - investigations of conditions - in the children's homes. They then spoke to the child not primarily as a client to be represented in the proceedings, but as a source of information. The result of

[58] See the case study in section 3.1.3.
[59] Decision of the Constitutional Court of 12 March 2025, No. No. I. ÚS 2891/24, para. 39.
[60] Information obtained from the interview with a judge (3 March 2025). In the case law of the Constitutional Court, cases where the child protection authority representing the child as a guardian disagreed with the child protection authority acting as an administrative authority rarely appear. See, for instance, the decision of the Constitutional Court of 25 April 2023, No. III. ÚS 484/23, para. 6.
[61] Information obtained from the interview with a judge (3 March 2025). In the case law of the Constitutional Court, cases where the child protection authority representing the child as a guardian disagreed with the child protection authority acting as an administrative authority rarely appear. See, for instance, the decision of the Constitutional Court of 25 April 2023, No. III. ÚS 484/23, para. 6.
[62] Křístek, Adam. ‘Poznámky k procesnímu opatrovnictví. 2. část’, *Právo a rodina,* 2018, No. 4, pp. 8–11.
[63] Section 466(1) of the Civil Code.
[64] Section 466(2) of the Civil Code.
[65] Section 467(2) of the Civil Code.
[66] Decision of the Constitutional Court of 8 October 2018, No. II. ÚS 725/18, especially paras. 59 and 60.

their activities was then a report sent to the court, which served as a piece of evidence for the court's decision.

This practice has been successfully curbed in recent years. There are two reasons for this. The first is the methodological guidance of the Ministry of Labor and Social Affairs, which tries to emphasize the role of the guardian *ad litem* as a procedural representative of the child.[67] The second reason is the development of the so-called interdisciplinary cooperation (also referred to as the 'Cochem model'), i.e., cooperation between all the entities involved (mainly the court, the child protection authority, and services for families), which aims to bring the child's parents to an agreement. In the latter case, however, it may be considered problematic from the point of view of the child's procedural representation that the role of the guardian *ad litem* is not related to the establishment of the facts of the case, as it used to be, but it is packed with tasks aimed at guiding and educating the parents and ensuring agreement between them.[68] This dimension may also distract attention from the question of whether the child is actually effectively represented in these proceedings.

In the case of children in a situation of social danger (at risk), the guardian *ad litem* usually uses the procedural rights of the represented children in order to achieve the solution the guardian has set out in the framework of their activities as an administrative authority. As mentioned above, this does not change much even if the guardian *ad litem* is a different social protection authority than the one acting as an administrative authority in relation to the child. This occurred, for example, in the case of *B.J. and P.J. v. the Czech Republic*, decided by the CRC Committee.[69] Here, the children were represented by a different child protection authority, which, however, appealed on their behalf in order to achieve a solution which the child protection authority, in its capacity as an administrative authority, also sought and which the children themselves (aged 13 and 16) did not want, namely the placement of the children in institutional care.

An appeal against a decision with which the child disagrees is rarely lodged by the guardian *ad litem*. Sometimes the child protection authority may act in this way because it is a solution that it prefers. For example, the children wish to be in the care of people whom the authority also considers to be safer and more trustworthy.[70]

An exception to the shortcomings described above and an example of good practice is the procedure of the child protection authority in a case that was eventually decided by the Constitutional Court in its decision, No. II. ÚS 2225/23. In this case, an interim measure was ordered on the application of the parents of a 16-year-old boy who was to be placed in a closed educational institution due to "behavioural problems". The boy disagreed with his placement, and the child protection authority, which represented him as a guardian *ad litem*, exercised all available remedies, including ensuring an attorney for the child to file a constitutional complaint, to help the boy overturn the court's decision. However, further court decision-making practice, including that of the Constitutional Court, shows that this is indeed more of an exceptional example of good practice than a systemic change in the concept of the role of the guardian *ad litem*.[71]

3.1.3. Case study – a case of a 14-year-old Roma boy placed in a closed regime institutional facility

Below we illustrate the information described above with the case of a Romani boy who, in 2024, when he was 14 years old, was removed against his will from the foster care of his grandmother and placed in a children's home with a school, which is a regime-based institutional facility for children with "behavioral problems" and children who have breached criminal law. The reasons for his placement related solely to his behavior at school. In the school year in which the

[67] See, for instance, the document called 'Kolizní opatrovnictví – zákonný rámec', issued by the Ministry of Labour and Social Affairs on 31 January 2022. Available in Czech at: https://www.mpsv.cz/kolizni-opatrovnictvi.
[68] See, for instance, Polák, Vladimír, 'Možnosti interdisciplinární spolupráce ve věcech péče soudu o nezletilé děti', *Právo a rodina*, 2018, No. 7, pp. 8–16.
[69] Views of the CRC Committee adopted on a communications procedure, concerning communication No. 139/2021, 18 August 2023, CRC/C/93/D/139/2021.
[70] Information obtained from the interview with a judge (3 March 2025).
[71] See the case study in section 3.1.3.

measures were adopted, the boy had changed schools - he was placed in a school with segregated special classes exclusively for children with special educational needs, from a mainstream school where he was entitled to the assistance of a teaching assistant as a child with special educational needs. The change of school was made as a result of pressure exerted by the original school on the boy's grandparents, who were caring for the boy (the grandmother was formally designated as the boy's foster mother). He then began to display markedly rebellious behavior at the new school, even under the influence of his peers.

After the situation could not be resolved by an educational committee organized by the school or by a case conference organized by the child protection authority, the child protection authority sent the court a notice to consider taking educational measures against the boy's grandmother, such as a reprimand. However, the court initiated proceedings to revoke the foster care and order the boy's institutional placement.

The boy was represented in the proceedings by the child protection authority that had sent the notice to the court. In the proceedings, that authority, as the boy's guardian *ad litem*, expressed the view that foster care should be revoked and the boy placed in a closed regime institution, despite the fact that the boy himself did not agree. The boy himself describes his communication with the official of the child protection authority as being informed by her about what position she would take in the proceedings, rather than her showing any interest in finding out his views and working with them.

The boy was heard directly by the court, during the hearing in the courtroom. The judge asked him about why he behaved in a certain way at school and what he would like. He was then heard on appeal, again in the courtroom. The boy himself described not feeling very safe in the situation. The reasons why his wishes might not be granted were explained to the boy only in general terms, not specifically in relation to the particular circumstances of his case.

The first instance court eventually decided to revoke the foster care and place the boy in a closed regime institution. For the boy, this meant not only a change in his place of residence, but also a change of school. The official of the child protection authority did not help the boy to write an appeal, even though she knew that this was a decision with which the boy disagreed. The boy's appeal, written by the lawyers of a non-profit organization with which the family has long been in contact, was rejected by the Court of Appeal as having been filed by an unauthorized person, since it was not filed by the guardian *ad litem* but by the boy himself. This decision was criticized by the Constitutional Court, which concluded that the boy's appeal should have been accepted as admissible and should have been heard.[72]

This conclusion of the Constitutional Court is certainly important for ensuring children’s access to remedies, but it should not be overestimated. The Constitutional Court did not formulate it here in relation to the duties of the child’s guardian *ad litem*. It concentrated on the reasoning of its conclusion that an appeal brought by a 14-year-old child on his own could not simply be dismissed without further explanation as an appeal brought by an unauthorized person.[73] The Constitutional Court did not address whether a child in such a situation is also entitled to assistance in preparing and filing an appeal. In this case, the boy himself described that he was aware of his right to appeal but did not know how to do so. Therefore, if he had not received the assistance of a non-profit organization, which was rather a matter of chance, he would not have been able to appeal against the judgment, even though he disagreed with it, and even though he was formally represented by a guardian.

The Constitutional Court did not criticize the manner in which the child protection authority performed the role of the boy's guardian *ad litem*. Nor did the Court accept the boy's objection that the authority could not provide him with effective and impartial representation, since it had initiated the proceedings in question. The Constitutional Court noted that the initiative of the child protection authority was aimed at ordering an educational measure against the grandmother, not at revoking foster care and ordering institutional care, which, in its view, did

[72] Decision of the Constitutional Court of 12 March 2025, No. I. ÚS 2891/24, paras. 40–51.
[73] *Ibidem.*

not place the child protection authority in conflict of interest. The Constitutional Court did not comment on the fact that that authority had taken a completely opposite position to the boy's wishes throughout the proceedings.

At the beginning of 2025, the courts decided to extend the boy's stay in the institutional facility. The boy was informed by the official of the child protection authority that he would have to stay in the institution for one more year until he completed his compulsory schooling, rather than about the proceedings. He learned that the court had already made a decision from his grandparents. He had not been directly served with the court decision, although he was already more than 15 years old at the time in question. He had been informed of his right of appeal by the child protection authority, but again found that he did not know how to exercise it himself. He was again helped to prepare the appeal by a non-profit organization, but this time in a situation where its lawyers did not even have the decision against which the appeal was directed.

The boy described his entire experience with the court's decision to revoke his foster care and his stay in the institution in such a way that he does not feel that what he thinks can play any role at all. At the same time, he does not perceive the official of the child protection authority as someone whose activities are aimed at ensuring his rights.[74] It is typical of how the whole family perceives the situation that they refer to it quite naturally in criminal law terminology. For example, they do not understand why the boy was placed in a closed regime institution for a full year (the original decision was made in March 2024; in January 2025 the placement was extended for another year) when children in the neighborhood with far more missed classes did not receive such a severe 'punishment'. The NGO's lawyer was also asked about the possibility of 'parole.'[75]

3.1.4. Family conferences as an example of good practice to ensure the child's participation[76]

In the wake of all the dysfunctions described in the provision of child participation rights, we now focus on an approach that, in our view, is of great benefit in strengthening the effective participation of children in decision-making on matters that affect them, which is family conferences. Family conferences are not so much a method or technique as an approach. They are based on shifting decision-making about the family from the experts back to the family, with the experts becoming more like guides and helpers to the family on the way to finding a solution to its situation. They break down the authoritarian approach to the person and their family and thus empower them. We believe that these principles are very close to what is defined as a rights-based approach in the field of human rights, or as a social model of disability in the field of disability (as opposed to a medical model, which is based on expert assessment and professional intervention).

Children can be a normal part of family conferences as they are a normal part of the family. Of course, it depends on the approach of individual family conference coordinator, but in our interviews we encountered ones that do just that. Naturally, this removes one of the possible limitations that the traditional approach to participation entails, which is related to the level of intellectual and emotional maturity. The child is naturally included in the family conference and participates in a way that corresponds to their current intellectual and emotional maturity, and is not required to reach a certain milestone in this respect. Before the conference, the coordinator discusses even with young children, e.g., three-year-olds, what is expected, who they would like to see at the conference, etc.

Moreover, the experience of using family conferences is that they can often bring solutions that would not have been known without this form of interaction and involvement of the family in solving their situation. This is also very important in relation to the issue of ensuring the child's participation rights in court proceedings. The child's opinion in family law matters is typically not taken on the grounds that it would not be in the child's best interests. However, if we do not have sufficient insight into all the solutions actually available, our determination of what solution

[74] Information obtained from the interview with the boy (20 March 2025).
[75] Information obtained from the interaction of the author of the study with the family.
[76] Written based on the interview with coordinators of family conferences (10 April 2025).

is in the best interests of the child in a particular situation may be flawed. If the child's best interests are then misdetermined in a way that goes against the child's view, it is an unwarranted interference with the child's rights of participation.

Another important dimension of family conferences is that by involving the child in the search for solutions within their family, the child can often gain a better insight into reality and what solutions are realistic. It is very important for them that the information that a certain solution, even if the children would like it, is not possible at the moment, is communicated to them by their relatives and not by the system as such and its representatives. Professional family conference coordinators talk about how attending a family conference can be healing for a child. It is important that they are spoken to and that they are prepared transparently so that unrealistic scenarios are not outlined. Again, family conferences can be an effective approach that can bridge the sharp divide between the best interests of the child and the child's views that arises in the traditional approach of court proceedings and authoritative intervention in the child's family arrangements.

An important link between family conferences and ensuring the child's participation rights in court proceedings is that their organization can ensure the child's participation in the resolution of their situation even in cases where there is otherwise very little room for participation in the court decision. This is particularly the case where the intervention in the child's family, typically the removal of the child from their parents and the child’s placement in alternative care, takes place by way of an interim measure. In the Czech Republic, according to statistics, this is an increasingly prevalent practice - the interim measure is by far the most frequent initial decision on the removal of a child,[77] despite the fact that, according to the law, it should be issued only in exceptional cases.[78] In practice, however, the child protection authorities take this step when they feel that their intervention is failing and that it is necessary to remove the child, and they are not so concerned with the question of whether it is really appropriate to do so by means of an interim (emergency) measure. The child does not need to be represented in the interim measure proceedings.[79] Often in such cases, the child's opinion is not even sought by the court, a practice criticized by the Constitutional Court in its decision, which concluded that even in such cases the court must make an effort to seek the child's opinion.[80] However, a family conference can make a significant contribution to ensuring that the filing of an application for an interim measure, and thus the establishment of a procedural situation in which the child's participation rights are at least limited, does not have to take place at all.

The experience of coordinating family conferences can also be very inspiring for the role of the child's guardian *ad litem*, as the coordinator prepares the child for involvement in the family conference. This is a skill that the child protection authorities have not yet mastered in the role of the procedural guardian, as they relate their interaction with the child to ascertaining the child's views rather than to the child's own participation in the court proceedings. At the same time, in preparation for the family conference, quite practical matters are discussed with the children, such as who the child wishes to sit next to, who will take them out if they need it, who should be their support person. All of these can also be interesting suggestions for the actual conduct of the court hearing and the child's preparation for it, if the child wishes to be present at the hearing.

Last but not least, it should be pointed out that if the official of the child protection authority is able to identify itself with the plan prepared by the family within the family conference, there is a high probability that it will also transfer this attitude to the role of the child's procedural

[77] For instance, according to the statistics of the Ministry of Labour and Social Affairs, in 2023 there were 2 332 children removed based on an interim measure (out of which 2 036 based on a proposal submitted by the child protection authority) compared to 1153 children removed based on the decision on merits. Furthermore, the latter number may also contain children who were initially removed based on an interim measure, but in a different year. See Ministry of Labour and Social Affairs. ‘Roční výkaz o výkonu sociálně-právní ochrany dětí za rok 2023’, table No. V.F. Available at: https://www.mpsv.cz/statistiky-1.
[78] Section 452(1) of the Act No. 292/2013 Coll., on special court proceedings.
[79] Section 455(1) of the Act No. 292/2013 Coll., on special court proceedings.
[80] See, for instance, decision of the Constitutional Court of 1 November 2023, No. II. ÚS 2225/23.

guardian in the court proceedings, whether it performs it itself or whether another child protection authority is entrusted with it.[81]

The family conferencing approach has a wide scope for use and can be applied, for example, in cases of parental conflicts over the arrangement of childcare after the parents' separation. It can thus represent an alternative to the developing interdisciplinary approach (the Cochem model), in which elements of an authoritative-professional approach are nevertheless more evident, even if this approach is formally presented as being based on the assumption that parents are the most competent persons to make decisions for their children. However, the path to awakening this competence is often framed by the necessary 'education' of parents and their professional guidance. After this process, parents subsequently sometimes speak of having felt some pressure to agree or they would be judged as less capable of caring for their children.[82] Furthermore, child involvement within this approach is still an issue that is currently being addressed, in contrast to the family conferencing approach where space for child participation arises naturally.

However, there is currently no systemic support for the family conferencing approach in the Czech Republic. The Ministry of Labor and Social Affairs supported this approach in the first transformation project focusing on the system of care for children at risk.[83] At the end of this project in 2015, 55 coordinating organizations were trained. However, due to the lack of funding for the coordination of family conferences, there has been a gradual decline. Currently, 2-3 organizations in the Czech Republic offer family conferences coordination, so it is rather a specific approach of some regions. None of the systemically anchored funding schemes for services for children and families at risk apply to the coordination of family conferences and project funding is risky, as child protection authorities are not yet widely prepared to demand family conferences and it may be difficult to meet the set indicators within the project.

3.2. Other legal contexts

3.2.1. Children – victims of crime

The adoption of Act No.45/2013 Coll., on Victims of Crimes (hereinafter referred to as the "Victims Act"), and the related amendment to Act No.141/1961 Coll., the Criminal Procedure Code (hereinafter referred to as the "Criminal Procedure Code"), brought a major change in the approach to children who have become victims of crimes. Children are automatically considered particularly vulnerable victims under the Victims of Crime Act.[84]

As regards the issue of ensuring the participation of child victims of crime in criminal proceedings, it is necessary to distinguish, first of all, between the two contexts in which the law enforcement authorities encounter the child. The first context is the approach to the victim as a witness to the crime, and this is primarily the questioning of the child. The second context is the child's position as a party to the criminal proceedings.

The Victims Act and the accompanying amendments to the Criminal Procedure Code formally strengthened the position of the child in both of these contexts. They have introduced a number of instruments aimed at protecting victims, especially particularly vulnerable victims, from secondary victimization. In relation to the interrogation of children, the following measures are the most significant:

- the right to have the interrogation conducted in a particularly sensitive manner and taking into account the circumstances which make the victim particularly vulnerable,[85]

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[81] See above, section 3.1.2.
[82] Own experience of the author of the baseline study.
[83] 'Systémová podpora procesů transformace systému péče o ohrožené děti a rodiny'. Information about the project is available at: https://www.pravonadetstvi.cz/projekty/ukoncene-projekty/systemova-podpora-procesu-transformace-systemu-pece-o-ohrozene-deti/.
[84] Section 2(4)(a) of Victims Act.
[85] Section 20(1) of the Victims Act.

- the right to have the interrogation conducted by a specially trained person, unless it is an urgent matter and a trained person cannot be provided;[86] also, questions of defense may only be put to children by a specially trained person;[87]
- the right to have the interrogation conducted in premises arranged for this purpose;[88] in the Czech Republic, special interrogation rooms are set up for this purpose,[89]
- to conduct the interrogation in such a way that it does not have to be repeated,[90]
- the right to request that contact with the suspected or accused person be prevented,[91]
- the right to be accompanied by a trustee.[92]

The implementation of the described rules may not always be completely smooth in practice. The biggest challenge is to comply with the rule that there should be no repetition of the interrogation of particularly vulnerable victims later in the proceedings. Here, it depends very much on the personality of the judge and, to a large extent, also on their courage to reject, if necessary, the defense motion for a re-interrogation in the courtroom.[93]

In the context of the approach of law enforcement authorities to the child as a party to criminal proceedings, the most significant measure is the right of the child to a free attorney.[94] However, the practical application of this right significantly reduces its expected effectiveness. First of all, the Criminal Procedure Code provides that an attorney for particularly vulnerable victims with the right to free representation by an attorney is appointed by the law enforcement authorities if the victim does not choose an attorney themselves. However, this does not happen in practice.[95] Access to the use of this right remains dependent on the victim's activity in finding an attorney. Alternatively, some police officers, who have, for example, received training on victims' rights and have good experience with an attorney, put the victim in touch with that attorney when they see that the victim might need one.[96] However, this is largely a question of the particular personalities of the police officers and their helpfulness to the victim.

The second big problem is then the remuneration of the attorneys. There are still problems in the judicial decision-making on victim’s representatives remuneration, which takes place after the end of the proceedings. Recently, the Constitutional Court issued an important ruling in which it held that lawyers must be paid the same fee for representing an injured party in criminal proceedings as in civil proceedings.[97] However, the question still remains open as to the acts that the court will find the attorney to be expedient and therefore reimbursable.[98] The situation in the remuneration of commissioners may be caused either by lawyers who specialize in victims' rights refusing to represent victims ex officio[99] or by lawyers who ask for an advance payment from the victim for the representation.[100]

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[86] Section 20(2) of the Victims Act.
[87] Information got from representatives of the Police and the Ministry of Interior when compiling a study on victims of crime with mental disabilities (2021).
[88] Section 20(2) of the Victims Act.
[89] According to the list of 2022, there were 77 special interrogation rooms in Czechia at the end of January 2022. The information about special interrogation rooms is available at: https://prevencekriminality.cz/dobra-praxe/specialni-vyslechove-mistnosti/.
[90] Section 20(3) of the Victims Act.
[91] Section 20(4) of the Victims Act.
[92] Section 21 of the Victims Act.
[93] Forum for Human Rights, ‘Victims of Crime with Disabilities in Czechia’ [online]. Prague, 2022, p. 57–58 [accessed 24 April 2025]. Available at: https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-CZ-en-2-220422.pdf.
[94] Section 51a(2) of the Criminal Procedure Code.
[95] Forum for Human Rights, ‘Victims of Crime with Disabilities in Czechia’ [online]. Prague, 2022, p. 41, 47–49 [accessed 24 April 2025]. Available at: https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-CZ-en-2-220422.pdf. See also Gavriněv, Vojtěch. ‘Advokáti ex offo přestávají hájit zranitelné oběti zločinů. Stát jim neplatí’ [online]. *seznamzpravy.cz*, 29 January 2024 [accessed 24 April 2025]. Available at: https://www.seznamzpravy.cz/clanek/domaci-zivot-v-cesku-advokati-ex-offo-prestavaji-hajit-zranitelne-obeti-zlocinu-stat-jim-neplati-244419.
[96] *Ibidem*, p. 41.
[97] Decision of the Constitutional Court of 5 December 2023, No. IV. ÚS 2137/23.
[98] Gavriněv, Vojtěch. ‘Advokáti ex offo přestávají hájit zranitelné oběti zločinů. Stát jim neplatí’ [online]. *seznamzpravy.cz*, 29 January 2024 [accessed 24 April 2025]. Available at: https://www.seznamzpravy.cz/clanek/domaci-zivot-v-cesku-advokati-ex-offo-prestavaji-hajit-zranitelne-obeti-zlocinu-stat-jim-neplati-244419.
[99] *Ibidem.*
[100] Information obtained from the baseline study author’s own experience.

3.2.2. Children in conflict with the law

The Czech legislation on access to legal aid for children in conflict with the law is now very favorable. The Czech legal order grants children in conflict with the law the right to mandatory representation by an attorney from the first contact with the police as a suspect or from the first acts of criminal proceedings against the child. The same rule applies to both criminally responsible juveniles[101] and children below the age of criminal responsibility.[102]

The problem is that this representation is not necessarily free of charge. For children below the age of criminal responsibility, the law at least ties the obligation to reimburse the costs of representation by an attorney to the fact that the child must first be found responsible for the offence and measures must be imposed, and also that the costs of legal representation can be fairly demanded from the child or their carers.[103] However, in the case of criminally responsible juveniles, the right to a free defense must be decided during the criminal proceedings.[104] The juvenile does not necessarily have to apply for such a defense,[105] but it is not common practice for law enforcement authorities to decide to grant a free defense without an application, even for children from families facing social exclusion.[106] The juvenile is often not informed, even by their attorney, that they should apply for a free defense.[107]

This is related to the second problematic point, which may be as much about the formal approach of attorneys to the representation of children and juveniles. Professionals from organizations that provide social services to children in conflict with the law or at risk, or implement prevention or probation programmes for them, confirm that children have both good and bad experiences with their attorneys. The bad experiences then translate into the attorney's failure to draw the child into the proceedings so that the child truly understands what is happening and understands that their active involvement can make a difference. In particular, children who face some form of social exclusion in their lives may find it difficult to adapt to the formal language of these proceedings and the formal procedures that apply. This is because these are not children who come from backgrounds where it would be usual to actively defend themselves before institutions and claim their rights through formal procedures. These children may then come to the organizations that work with them in the long term only at the end of the process with judgements that they do not know how to deal with.[108]

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[101] Section 42a(1)(a) of the Act No. 218/2003 Coll., Juvenile Justice Act (hereinafter referred to as "Juvenile Justice Act").

[102] Section 89c(1) of the Juvenile Justice Act.

[103] Section 89h (3) of the Juvenile Justice Act.

[104] Section 33(2) of the Criminal Procedure Code.

[105] *Ibidem.*

[106] This was the case of a young man addressed in the decision of the Constitutional Court of 1 September 2020, No. II. ÚS 1411/2020, who even submit a request for free legal aid. The courts rejected the request, among other reasons, by stating that "although his financial situation is below the commonly recognized standard of society, it is necessary to take into account the potential income and his approach to securing a sufficient income" (quoted from Paragraph 1 of the decision). The Constitutional Court disagreed with this reasoning and concluded that the petitioner should have been granted the right to free legal aid. Interestingly, the petitioner was involved in two proceedings and thus filed two requests for free legal aid. His case therefore reached the Constitutional Court twice, with his complaint being rejected in the decision of May 19, 2020. In that decision, the Constitutional Court acknowledged that "the petitioner undoubtedly comes from a disadvantaged social background, had been placed in institutional care where he stayed until reaching adulthood"; "[he] has only basic education, is dependent on methamphetamine, and consumes alcohol" and is currently in pretrial detention. However, it concluded that there was nothing preventing the petitioner from earning money in the future through work, and thus covering the costs of his defence (Paragraph 12 of the decision). The Constitutional Court's approach is therefore also ambiguous.

[107] In a study by the Institute for Criminology and Social Prevention, a child protection authority official criticised lawyers for failing to inform juveniles about the possibility of applying for free legal aid. – Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, p. 79. Available at: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [accessed 24 April 2025].

[108] Information got for the ACCESS project by a focus group with social workers and psychologists working for a non-governmental organisation providing children at risk and in conflict with the law with social services and preventive and probation programmes (7 November 2024).

3.2.3. Children in a situation of migration[109]

For children in a situation of migration, we will focus primarily on their access to the possibility of applying for international protection and securing a legal title for residence in the Czech Republic.

The Czech Asylum Act is based on the fact that minor children are not entitled to make an independent declaration of asylum. Thus, they must be represented by their parents or by another person authorized to act on their behalf (guardian). In the case of unaccompanied foreign minors, the application for international protection must be countersigned by the child protection authority. Therefore, children cannot apply for international protection on their own.

In proceedings under the Act No. 326/1999 Coll., on residence of foreigners, children are recognized as procedurally eligible from the age of 15.

Generally speaking, if children are in the Czech Republic with their caregivers or are entrusted to the care of their relatives, and are not placed in an alternative care facility, they are primarily dependent on the assistance of non-profit organizations that provide legal assistance to people in a migration situation in terms of effective access to participation in asylum or residence proceedings. This is because the system relies on the parent or other relative who has been appointed as the child's guardian, for example, to effectively represent the child, without taking into account, for example, the language and cultural barriers that carers may face in this regard.

In the case of unaccompanied minors, the legal regulation is based on the fact that if such a minor is found to be in the territory of the Czech Republic, typically by the police, the social and legal protection of children must be notified. The latter subsequently submits an interim order, which places the child in alternative care - either in the care of a relative already residing in the Czech Republic or in institutional care. Children with different linguistic and cultural backgrounds usually end up in the Radlická diagnostic institution. This can have a number of disadvantages, e.g., in terms of not creating sufficient space for working with different alternatives for the stay of the minor. The advantage, however, is that this concentration has enabled the establishment of an effective cooperation with a non-governmental organization providing legal assistance and other forms of support to persons in a situation of migration which is able to provide the children with adequate legal assistance in migration cases (asylum and residence proceedings), for which the child welfare authorities do not have sufficient expertise. The experience is that the child social protection authority itself will not appeal without assistance, will not file a lawsuit etc.

The system was set up in such a way that everyone met with the new minor on the same day, i.e., representatives of the facility, the child protection authority, and the non-profit organization providing legal assistance to foreigners in a migration situation. Interpretation was also provided by the facility. This was an example of good practice, but it was not set up in a systemic way, but on the basis of personal ties. Moreover, it was conditional on the above-mentioned placement of the child in one particular facility.

Problematically, however, if children find themselves outside of this facility, it may be difficult for them to secure adequate representation and therefore access to necessary proceedings. Workers of NGOs assisting people in migration situations have the experience that child protection authorities other than the authority responsible for the Radlická facility might refuse to address the situation of unaccompanied foreign minors because they considered that it was none of their business.

The change in the more or less automatic placement of unaccompanied children in alternative care was brought about by the influx of refugees from Ukraine at the beginning of the war with Russia in 2022. The Ministry of Labor and Social Affairs issued a methodological guidance that if these minors are able to take care of themselves, they do not need to be placed in alternative

[109] Prepared mainly based on an interview with a lawyer with experience from a non-governmental organisation providing legal assistance to people in a migration situation (9 April 2025).

care.[110] This was intended to strengthen children's autonomy, but the problem was that some child protection authorities took a very formal approach to assessing children's ability to look after themselves, using forms and being satisfied that the child had completed the form.

This approach may also have led in some cases to the fact that the child, for example, did not have the necessary health care or other entitlements to public services in the Czech Republic. These are linked to a certain residence status. Minor Ukrainians were granted subsidiary protection, which should have ensured them the necessary entitlements. However, there was a problem for those who had already applied for subsidiary protection in another state, as the Ministry of the Interior assumed that in such a case it was no longer possible to apply for subsidiary protection in the Czech Republic. These children, often aged around 17, were thus left completely outside the system.

3.3. Approach to children with intellectual and/or psychosocial disabilities

The approach to children with disabilities is strongly marked by the medical model of disability, which, despite some shifts in recent years, can still be described as dominant in the Czech Republic. The application of the medical approach to disability can lead to children with disabilities, especially those with mental and/or psychosocial disabilities, being perceived as unable to participate in legal proceedings affecting them, or not directly. It will be children with intellectual and/or psychosocial disabilities who will be affected,

The approach to children with disabilities is strongly influenced by the medical model of disability, which, despite certain shifts in recent years, can still be described as dominant in the Czech Republic. The application of the medical approach to disability can lead to children with disabilities, especially those with intellectual and/or psychosocial disabilities, being perceived as unable to participate in legal proceedings that affect them, or not directly. It will be precisely children with intellectual and/or psychosocial disabilities for whom it will be perceived as a legitimate replacement for direct contact with the court by mediated ascertainment of their opinion, regardless of their intellectual and emotional maturity and their age. The mediator of the ascertainment may often not be a representative of these children or a child protection authority, but an expert. It may therefore happen that these children, instead of being heard, may be expertly assessed and diagnosed. However, in an expert examination, the authenticity of the child's voice may be lost, which is also one of the important aspects of the dichotomy between the medical and social models of disability. An expert examination of the child's opinion corresponds to the medical model. On the contrary, the social model would correspond to looking for such ways - supportive, or more precisely, procedural accommodations that allow the child to express their opinion authentically, including alternative methods of communication (augmentative and alternative communication) and assistance not only from professionals, but also from support persons for a child with a disability.

In the issue of child representation, the prevailing medical approach to disability may be reflected in the fact that the idea of involving the child in proceedings that concern them as a participant is not being worked on at all, and that the child's participation is rather replaced with substitute decision-making. It will therefore be assumed that the child is represented by either a legal representative or a guardian, while again no procedural accommodations will be sought that would allow the child to directly participate in the proceedings and be involved in the exercise of their procedural rights, with the necessary support.[111]

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[110] Available at: https://www.mpsv.cz/cms/documents/c610ae98-d23f-69df-9a62-889df5327502/Informace+o+zajis%CC%8Cte%CC%8Cni%CC%81+pe%CC%81c%CC%8Ce_3.pdf [accessed 24 April 2025].

[111] This finding was reached, for example, by the Forum for Human Rights in its study focusing on the rights of victims with intellectual and/or psychosocial disabilities in criminal proceedings. – Forum for Human Rights, 'Victims of Crime with Disabilities in Czechia' [online]. Prague, 2022, p. 4, 24 [accessed 24 April 2025]. Available at: https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-CZ-en-2-220422.pdf. There is no reason to assume that the fact that a person with intellectual and/or psychosocial disabilities is a child changes this approach. On the contrary, the reliance on substitute decision-making mechanisms will be even stronger.

An eloquent example of the impact of applying the medical approach to disability on access to participation rights is the case of a child with a disability (Asperger syndrome), which concerned the issue of discrimination of a child in education (the right of a child with a disability to receive appropriate reasonable accommodation) and which was also decided by the ECtHR.[112] The boy, who was already 15 years old at the time of the proceedings, repeatedly asked the court through his attorney to be heard directly. However, the court required the boy and his mother to provide a medical report confirming that questioning the boy was medically possible. It was not possible to obtain such a report from the boy's general practitioner and the court therefore did not proceed with questioning the boy. As a result, the boy at least sent a letter to the court. The court's argument in terms of ensuring the participation of the minor was, among other things, that it was based on this letter. The Court of Appeal then argued that the boy had sufficiently exercised his procedural rights through a lawyer and had also expressed himself in writing. Thus, contrary to the case law of the Constitutional Court,[113] the courts approached the child's right to be heard only as a means of evidence rather than as part of the child's participatory rights. In the proceedings before the ECtHR, the government framed the failure to hear the boy by the best interests of the child. In other words, according to the government, it was not in the best interests of the boy to be heard directly by the court, even though the boy wished so.[114] We believe that this is an example of a markedly medical and paternalistic interpretation of the best interests of the child, contrary to the understanding of this principle and right by the CRC Committee[115] and contrary to the concept of inclusive equality, which is at the heart of the UN Convention on the Rights of Persons with Disabilities (CRPD).[116]

It should be added, however, that the ECtHR did not find a violation of the child's rights in this case. Its argument was based on the fact that the proceedings were more of a technical issue, which made these proceedings different from proceedings in which the children's broad participation rights were stated and which were related to the child's family arrangement. It further agreed that it was legitimate to request a statement from a doctor or psychologist on the boy's ability to testify in court, taking into account the fact that he was a child on the autism spectrum and that the boy himself expressed concerns about reliving negative memories. The ECtHR also referred to the meaning of the letter that he eventually sent to the court in order to ensure the boy's participation rights.[117]

However, we think that this approach of the ECtHR is not in line with the requirement of the prohibition of discrimination on the grounds of disability under the CRPD. Simply put, the CRPD is based on the rule that disability can never be a legitimate reason for a narrower opportunity of realizing one's rights. Thus, in connection with disability, the question should always be asked not *whether* a right of a person with a disability can be realized, but *how* it can be realized. In our opinion, it was the court's duty to find, in cooperation with the boy and his mother, a way of ensuring the establishment of the minor's opinion (procedural accommodations) that would allow him the opportunity to be heard directly by the court.

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[112] *S. v. the Czech Republic*, judgment of the ECtHR of 7 November 2024, application No. 37614/22.
[113] Decision of the Constitutional Court of 28 February 2014, No. II. ÚS 2866/17.
[114] *S. v. the Czech Republic*, judgment of the ECtHR of 7 November 2024, application No. 37614/22, § 60.
[115] Article 3(1) General Comment of the CRC Committee No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, available at: https://digitallibrary.un.org/record/778523?ln=en.
[116] General Comment of the UN Committee on the Rights of Persons with Disabilities No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, para. 11. Available at: https://digitallibrary.un.org/record/1626976?ln=en.
[117] *S. v. the Czech Republic*, judgment of the ECtHR of 7 November 2024, application No. 37614/22, § 62

4. The Netherlands[118]

According to Article 12 of the CRC, children have the right to express their views on decisions affecting them. The CRC describes five steps leading to meaningful participation:[119] (1) child-friendly preparation, (2) serious and child-friendly listening (*hearing*), (3) assessing children's capacity to express their views in a "reasonable and independent" manner (3, *child capacity assessment*).[120] In addition, (4) the views of the child should be given due weight, taking into account the child's age, developmental level (maturity) and the impact of the proposed decision. The extent to which the child's views have been considered should also be explained (*feedback*). Finally, (5) the child should have the opportunity to complain or appeal if he or she has not been heard or his or her views have not been taken seriously (*complaints, remedies and redress*).

Furthermore, children also have the right to be heard (in a child-friendly manner) in legal proceedings affecting their lives and rights.[121] This can be done directly or indirectly, by someone who can properly represent the child(‘s views).[122] In addition, children are entitled to access to justice through judicial mechanisms in the event of (alleged) violations of their rights.[123] However, in most countries, children lack legal standing: they need to rely on adults, usually a parent or legal guardian, to exercise their procedural rights.[124] In order for children to effectively participate or be heard in legal proceedings, it is important that they feel comfortable and safe. This means that proceedings need to be adapted to the age and needs of children, and professionals need to be trained to deal with children in a child-friendly and age-appropriate manner.[125]

In this baseline study, we focus on the right to be heard and the procedural position of children in the Netherlands, particularly in civil and asylum proceedings, but also in other administrative proceedings and in criminal law. By children we mean persons under the age of eighteen.[126]

4.1. General legal framework for procedural safeguards

In the Netherlands, the right of children to be heard (in)directly in court proceedings is only partially implemented. Moreover, the law sometimes allows children to claim their rights before courts independently from their parent(s) or legal guardian(s) and sometimes not. In criminal and administrative proceedings, they are in principle legally competent. In civil law, on the other hand, it is assumed that children are incapable of representing themselves. However, this system is a jumble of rules, with the law making several exceptions to the main rule.[127] Partly for this reason, a recent Dutch study recommends better involving children and giving them a greater say in decisions that affect them, rather than only deciding about children during court proceedings. As an ambition for the future, the study suggests reassessing - in an integrated way - their procedural position in all areas of law.[128]

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[118] The baseline study on the Netherlands was supplemented by 4 interviews:
- Interview civil procedure, 17 April 2025
- Interview civil procedure, 23 April 2025
- Interview asylum procedure, 24 April 2025
- Interview administrative and asylum procedure, 24 April 2025

[119] CRC Committee, General Comment 12 (2009), The right of the child to be heard, para. 133-134. See also: S. E. Rap, Het recht om gehoord te worden: General Comment No. 12 nader beschouwd, Tijdschrift Jeugdrecht in de praktijk, nummer 2 mei 2017/Sdu.

[120] Children's evolving capacities should be seen as a positive and stimulating process, Statement of the CRC Committee on article 5 of the CRC, 11 October 2023, www.ohchr.org/sites/default/files/documents/hrbodies/crc/statements/CRC-Article-5-statement.pdf.

[121] Article 12 (2) CRC.

[122] CRC Committee, General Comment 12, para. 35-37.

[123] CRC Committee, draft General Comment 27 (202X), Children’s right to access to justice and to an effective remedy, para. 9-14.

[124] CRC Committee, draft General Comment 27 (202X), para. 29.

[125] European Commission, EU Strategy on the Rights of the Child, 2021, p. 14-16.

[126] Article 1:233 of the Civil Code. A mother aged 16 or over can be declared an adult by the court.

[127] E. Jansen, De eigen(aardige) procesbevoegdheid van de minderjarige, Nederlands Juristenblad (sept. 2016), afl. 30, p.217.

[128] ‘Child in Process’ report: M.R. Bruning e.a., Kind in proces: van communicatie naar effectieve participatie, Meijers-reeks nr. 335. Nijmegen: Wolf Legal Publishers 2020; https://www.njb.nl/nieuws/het-hoorrecht-en-de-procespositie-van-minderjarigen-in-familie-en-jeugdzaken/.

4.1.1. Civil proceedings

Children in the Netherlands are under the authority of their parent(s) or legal guardian(s).[129] Those who have custody are also the child's legal representatives and can act on behalf of the child in courts of law. [130] The starting point is that children do not have the legal capacity to commence legal proceedings on their own behalf or to formally approach a court of law to vindicate their rights, independently from their parents. Over the years, however, several exceptions have been created to this: the current Civil Code opens up the formal legal procedure in various cases to children from the age of twelve or sixteen. In addition, in several 'family cases' children can apply to the court by letter or e-mail. This informal legal procedure is also open to children under the age of twelve, provided they are considered capable of representing their interests in a reasonable manner. The children's judge is free to decide whether or not to consider the request made. The right to be heard directly, is enshrined in the Civil Code for contact arrangements, custody and child protection proceedings. In principle, the court may only decide after inviting the child of twelve years or older for the direct hearing (*kindgesprek*).[131]

The draft legislative proposal (Civil Code) 'Strengthening legal protection in youth protection', expands the right of children to have (in)formal access to justice, but only in cases of contact arrangements, custody and child protection.[132] The draft proposal also lowers the age limit for the direct hearing of children to eight years of age.[133] The setting of age limits deviates from the provisions of General Comment 12, paragraph 21. Although the Committee on the Rights of the Child has pointed this out to the Dutch State on several occasions, the government chooses to maintain them.[134]

4.1.2. Asylum proceedings

Accompanied refugee and migrant children aged fifteen and over must submit their own asylum application. Accompanied children under the age of fifteen are included in their parent's application and are not routinely heard by the Immigration and Naturalisation Service (IND). As a result, their experiences and interests often remain under-represented. If a child has their own reasons for seeking asylum (such as violence, child abuse, circumcision, LGBTQI+, etc.) and the IND, the parent(s) or the child explicitly request it, they can be heard. Unaccompanied children may be heard from the age of six. From the age of twelve, they must apply for asylum independently and are heard separately. The purpose of hearing children in asylum proceedings is mainly aimed at establishing the truth, assessing the credibility of the story and the asylum motives of the parent(s) and/or the child. [135] It has less to do with taking their views into account in the decision to be made. Therefore, meaningful participation of children is the exception rather than the rule.[136]

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[129] Article1:245 of the Civil Code. For the sake of readability, from now on we will just write parent(s).
[130] Article 1:245 lid 4 and 1:247 of the Civil Code.
[131] Article 809 of the Code of Civil Procedure. A child may also choose to write a letter to the children's judge.
[132] Juridisch en pedagogisch advies van de Universiteit Leiden naar aanleiding van het Wetsvoorstel Versterking rechtsbescherming in de jeugdbescherming, maart 2025, https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-privaatrecht/jeugdrecht/def_adviesrapport-incl.-bijlagen.pdf.
[133] See https://www.rijksoverheid.nl/documenten/kamerstukken/2024/11/18/tk-contouren-wetsvoorstel-ter-versterking-van-de-rechtsbescherming-in-de-jeugdbescherming. The 'Child in Process' report also recommends exploring the possibility of hearing in children as young as four years.
[134] CRC Committee, Concluding Observations Netherlands, 16 February 2022, para. 17.
[135] Onderzoek Universiteit Leiden: Kwetsbaar en niet gehoord: Vluchtelingenkinderen en hun recht op effectieve participatie in de asielprocedure (2018-2021). S.E. Rap, Betekenisvolle participatie van vluchtelingenkinderen in de asielprocedure. Het doel van de asielprocedure, het recht om gehoord te worden en de rol van het kind, FJR 2021/57; Factsheet Kindgericht horen in het straf- en vreemdelingenrecht: www.defenceforchildren.nl/media/5192/factsheet-kindgericht-horen-in-het-straf-en-vreemdelingenrecht.pdf.
[136] Regional court The Hague, 1 April 2025, see https://www.defenceforchildren.nl/actueel/nieuws/migratie/2025/rechter-stelt-kindvriendelijke-justitie-voorop-in-gerechtelijke-procedure-van-een-geworteld-kind/.

4.1.3. Other administrative proceedings

In other administrative procedures, which includes the Youth Act, children are in principle represented by their legal representative(s). However, provided that they are capable of adequately representing their interests, children have independent access to justice: they may act as interested parties, file objections and appeals against, for example, youth care decisions, and be heard in oral proceedings. The judge assesses their procedural capacity on a case-by-case basis.[137]

4.1.4. Youth justice

Child victims[138] and child suspects are competent to stand trial and are entitled to an individual assessment, taking into account their age. Victims aged twelve years and over have the right to speak, but younger victims may also speak at the court hearing if they are deemed capable of adequately representing their interests.[139] Children from the age of twelve are criminally responsible. They are being heard by the judge and have the last word at the hearing.

4.1.5. Evolving capacities and age limits

We have no insight into the weight judges in the Netherlands give to children's views and the extent to which their age and maturity play a role therein. However, judges do take children's (evolving) capacities into account to some extent in civil and administrative proceedings. In contact arrangements, custody and child protection cases, the law distinguishes between ages in terms of access to justice. This also happens in the context of an employment contract, medical treatment[140] and the provision of youth care. There also seems to be more room for children capable of adequately representing their interests in other types of civil litigation, however, without having any balancing framework.[141] In asylum procedures, apart from the age limits mentioned in 4.1.2 above, there are virtually no mechanisms taking account of children's evolving capacities.

In criminal law, the right to an individual assessment can ensure that the age of child victims and suspects is taken into account and that they have access to procedural safeguards. At ages sixteen and seventeen, there is increased criminal responsibility[142] and higher sentences may be imposed. In principle, every criminal case involving children should consider whether it is suitable for a restorative justice modality.[143] This gives children the opportunity to engage with other parties, learn from what happened and participate in a solution. As part of a pedagogically

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[137] Article 1:2, 1:3 en 8:21(2) of the General Administrative Act; M.R. Bruning e.a., Kind in proces: van communicatie naar effectieve participatie, Meijers-reeks nr. 335. Nijmegen: Wolf Legal Publishers 2020, para 2.3.3.1.

[138] Minor victims can report or report a criminal offence. Under twelve years of age, information is given to the legal representative(s). From the age of twelve, children themselves may indicate who should be informed. If a sexual offence is involved, the public prosecutor shall give minor victims aged twelve and above the opportunity to express their opinion about the offence committed, if possible, see article 167 of the Code of Criminal Procedure.

[139] See Article 51e section 6 of the Code of Criminal Procedure. The right to speak is not formalised, guidance can be arranged for minors, but there is no child-friendly procedure. Sondorp, J.E., Hoogeveen C.E. (2020), De bescherming van minderjarige slachtoffers, Den Haag/Woerden: WODC/ VanMontfoort B.V., p. 7-8, https://www.wodc.nl/actueel/nieuws/2020/09/02/meer-aandacht-nodig-voor-minderjarig-slachtoffer-in-strafproces.

[140] Children from the age of sixteen are competent to carry out any legal act relating to medical treatment or the provision of youth care, and have the same rights as adults, see article 7:447 lid 3 of the Civil Code and 7.3.5 lid 1 of the Youth Act: https://bestuursopleidingen.nl/jeugdwet/de-jeugdwet-de-ouder-16-er-en-de-algemene-wet-bestuursrecht/. For children under the age of twelve, the consent of a parent or legal guardian is required. For competent children between the ages of twelve and sixteen, double consent is required. In addition to the child's own consent, the consent of the guardian(s) is required for medical treatment. However, in twelve year-old David's court case about his medical treatment, the interim judge of the North Holland Regional Court respected his position that he did not want chemotherapy after cancer treatment, with the consent of his guardian, see ECLI:NL:RBNHO:2017:3955; www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Noord-Holland/Nieuws/Paginas/12-jarige-David-mag-zelf-beslissen-over-zijn-medische-behandeling.aspx.

[141] The draft legislative proposal 'Strengthening legal protection in child protection cases' states that informal access to justice will be opened in more cases for children who are under twelve years of age, but are considered capable of adequately representing their views.

[142] Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten, Halt, ministerie van Justitie en Veiligheid (2021R001).

[143] Beleidskader herstelrechtvoorzieningen gedurende het strafproces, januari 2020, ministerie van Justitie en Veiligheid.

designed system, restorative justice contributes to children's developing abilities and participation in criminal proceedings.[144]

4.2. Practical implementation of the right to be heard

Child-friendly justice and the participation of children in legal proceedings have received increased attention in the Netherlands in recent years. Steps have certainly been taken in civil and juvenile criminal law, both in terms of awareness and child-friendly procedures.[145] However, there are several bottlenecks in the implementation of children's right to be heard and the related obligation to give due weight to the child's views when assessing and determining the best interests of the child.[146]

A first bottleneck is the lack of awareness and knowledge of children's rights among children, parents and professionals.[147] More attention should be paid to this in relevant education and training courses.[148] Based on their own experiences, young people with a history in youth care and youth justice, provide advice and training to the government and professionals in the field. To this end, they have joined forces in youth organisations such as Experienced Experts (ExpEx), Platform HOPE and Young Perspectives (YOPE). Young people who once were in the asylum procedure themselves, are working together with Defence for Children the Netherlands as youth ambassadors.

A second stumbling block is the still widespread belief that children are not capable of assessing their own interests and that parents and professionals are much more capable to determine the best interests of the child. There is a lack of awareness that children are subjects of law instead of objects of law. A third bottleneck in the implementation of the right to be heard, is that the five steps for meaningful participation are often insufficiently followed, which has a negative impact on children's ability and willingness to express their views: child-friendly information is often lacking and feedback is far from always provided.

Finally, there is often a lack of comprehensive and disaggregated data on children's participation in legal proceedings. For example, it is not known how many children under the age of twelve have been invited to the child interview by regional courts and courts of appeal, in anticipation of the draft legislative proposal 'Strengthening the legal protection of minors'.[149]

4.2.1. Civil proceedings

Research shows that despite the perceived stress and strain, children find it important to speak to the judge themselves. [150] A survey of divorce cases conducted by an advocacy group in 2024 shows that 55 percent of children chose to attend the child interview (the direct hearing), while 27 percent wrote a letter to the children's judge and 18 percent did nothing.[151] The interview by

[144] M. Berger, A. Wolthuis, Tijdschrift voor Conflicthantering, no 2 (2021), p 27, www.defenceforchildren.nl/media/5468/tc-2021-nr-2-berger-en-wolthuis-pdf.pdf.
[145] Defence for Children Nederland, kindvriendelijke rechtspraak, wat is dat eigenlijk? https://defenceforchildren.nl/actueel/nieuws/algemeen/2023/kindvriendelijke-rechtspraak-wat-is-dat-eigenlijk/. See also: S.E. Rap, D.S. Verkroost en M.R. Bruning (2018), Children's participation in Dutch youth care practice: an exploratory study into the opportunities for child participation in youth care from professionals' perspective, Child Care in Practice, 25:1, 37-50 en
E.J. Vrieling en S.E. Rap, Participatie van jongeren in het jeugdstrafrecht en een kindvriendelijke rechtspraak, TvJr 2025 | nr. 1 (2025).
[146] Article 3 (1) CRC.
[147] CRC Committee, Concluding Observations Netherlands, 16 February 2022, para 12.
[148] Guidelines for youth care and youth protection have been developed on behalf of the Netherlands Youth Institute. These emphasise that youth workers should receive adequate training on children's right to be heard and that their views and age should be taken into account.
[149] This is according to the response of the Secretary of State for Justice and Security, published on 28 April 2025, to a motion adopted by the House of Representatives. The motion asked the government to investigate how often children under the age of twelve are being heard by the courts, what the experience has been, and how this can be promoted so that all children who are able to do so, can express their views, see https://zoek.officielebekendmakingen.nl/kst-36364-C.html. See also CRC Committee, Concluding Observations Nederland, 16 February 2022, para. 10.
[150] Bruning M.R. e.a., Kind in proces: van communicatie naar effectieve participatie, Meijers-reeks nr. 335. Nijmegen: Wolf Legal Publishers 2020.
[151] Villa Pinedo, Zie mij en hoor(r)echt, 13 september 2024.

the judge received an average rating of 5.1. In terms of child-friendliness, there is certainly room for improving the implementation of the direct hearing of children, although there are several positive developments, such as banning the gown, more child-friendly consulting rooms and the presence of a children's coach.[152] In recent years, criticism has been expressed about, among other things, the length of the child interview, because too little time is allegedly allocated.[153] The Professional Child Interview Standard, adopted by the Dutch courts of appeal in 2015,[154] states that approximately 20 minutes per interview should be taken into account, but that it is up to the judge concerned to decide what time frame is appropriate.[155] Utrecht University is currently researching children's experiences of child interviews, which may contribute to further improvements.[156]

4.2.2. Asylum proceedings

There are no special child-friendly facilities for accompanied children. Unaccompanied children aged six to twelve years will be interviewed in a child-friendly interview room by trained IND staff.[157] In general, children experience their involvement in the asylum procedure as difficult and stressful.[158] Despite the information they receive at the beginning of the process, they do not know exactly what to expect and do not fully understand the background and reasons for asking certain questions.[159] Asylum procedures are mainly designed for adults and are not adapted to children's capacities and level of development. Children themselves report experiencing hostile interrogation methods, feeling attacked and intimidated, and being asked questions designed to expose inconsistencies and test the credibility of their story.

An interview with Rania, a student who spent ten years in the asylum procedure with her family, reveals that she received little information as a child. Her parents were invited to the interview. There was no information about what to expect in the process. There were no specialized child psychologists. There were interpreters, but "if your Dutch is a bit good, you don't get one." The CRC Committee raised concerns about the participation of children in the Dutch asylum procedure and called on the government to ensure that procedures are brought into line with the CRC.[160]

"Nothing friendly, a bare room, a table and chairs, nothing more. The same person who interviewed the parents also interviewed the children. There was no expert in questioning children. Even if someone was crying, no one asked, "Are you all right, or do you want to go out for a while?"[161]

"They weren't going to explain anything, you really wait for hours, you don't know why. You go in, they talk and talk. When you come out, the lawyer says whether it went well or badly. And that's it."[162]

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[152] See: https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Limburg/Nieuws/Paginas/Kinderen-welkom-bij-kindercoach-in-de-rechtbank-Limburg.aspx#:~:text=Een%20plek%20waar%20kinderen%20zich,Adiona%2C%20de%20beroepsorganisatie%20voor%20kindercoaches.

[153] Bruning M.R. e.a., Kind in proces: van communicatie naar effectieve participatie, Meijers-reeks nr. 335. Nijmegen: Wolf Legal Publishers 2020. Also: Bruning, M.R., De rechtsbescherming en procespositie van het kind: ontwikkelingen en belemmeringen, Congresbundel J.f.v. Grotius, 20 November 2023 en Tromp B., De kinderrechter heeft tien minuten om het kind van ouders in een scheidingszaak aan te horen, NRC, 16 juli 2024.

[154] See: https://www.rechtspraak.nl/SiteCollectionDocuments/professionele-standaard-kindgesprekken.pdf. The report of the Reflection Committee on Family and Youth Judges of the Courts and Tribunals, 'Doing justice to children and parents' (2 February 2023), recommends all regional courts to apply the Professional Child Interview Standard.

[155] Answers to parliamentary questions by the Secretary of State for Justice and Security, 30 August 2024, https://zoek.officielebekendmakingen.nl/ah-tk-20232024-2396.pdf.

[156] Universiteit Utrecht, Luister!, onderzoek naar de participatie van kinderen na scheiding (2023-2026).

[157] Brief ministerie van Volksgezondheid, Welzijn en Sport over de opvolging van de aanbevelingen van het VN-Kinderrechtencomité, 7 april 2022.

[158] S.E. Rap, Betekenisvolle participatie van vluchtelingenkinderen in de asielprocedure, Het doel van de asielprocedure, het recht om gehoord te worden en de rol van het kind, FJR 2021/57.

[159] Ibid.

[160] Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of the Kingdom of the Netherlands, CRC/C/NLD/CO/5-6, par 37a-b.

[161] Quote from an interview conducted for the baseline study.

[162] Quote from an interview conducted for the baseline study.

4.2.3. Other administrative proceedings

Little is known about how often children challenge decisions, file appeals or are heard as interested parties in other administrative procedures. Unlike in family and youth law, administrative judges are not specifically trained in interviewing children. However, this is being considered with a view to upcoming legislation. Some individual judges have also started to conduct child-friendly hearings. In youth care decisions, research shows that children still have insufficient understanding of the process and feel they are not adequately heard, while professionals experience too little time and lack the skills to enable children to participate effectively.[163]

4.2.4. Youth justice

The participation of child victims in criminal proceedings is limited. Although they are entitled to clear information about their rights, this is often only provided in writing. Essential matters, such as explanations about the reporting process, their rights and what they can expect, are insufficiently explained.[164] The interrogation of child victims and suspects under twelve years of age takes place in a child-friendly studio. Older children or people with mental disabilities are also eligible for this, if the police deem it necessary.

The individual assessment of minor suspects, unlike that of minor victims, is usually comprehensive and child centred. In principle, the court hearing takes place behind closed doors and is conducted by specialised professionals: the youth prosecutor and the children’s judge or multiple children’s judges. Research among young people in young offenders’ institutions showed that they perceived a low level of procedural justice during the hearing. The atmosphere in the courtroom was perceived as tense, hostile and harsh. Improvements are needed in the provision of information and in the interaction between the various participants in the proceedings.[165]

Meanwhile, the Amsterdam court has set up a child-friendly courtroom with a large round table in the middle.[166] In addition, the courts will send a video, made by young people with lived experience and some child-friendly information material about the day of the hearing, with the summons.[167] Finally, the draft law on the modernisation of the Code of Criminal Procedure, which is being discussed in the House of Representatives, contains proposals to strengthen the procedural position of vulnerable persons, including children.[168]

4.3. Representation and legal support for children

4.3.1. Civil proceedings

In the Netherlands, children are legally represented by their parents, unless the law grants them independent (in)formal access to the courts. This means that parents can not only initiate civil proceedings on behalf of their child, but also that, in (ongoing) proceedings involving children, they represent the voice of their child (indirect hearing). If parents remain passive, or if there is

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[163] S.E. Rap, D.S. Verkroost en M.R. Bruning, Kansen en momenten voor participatie in het jeugdhulptraject in de praktijk. Tweede deel van een onderzoek naar de participatie van kinderen in de jeugdhulpverlening (2018), p. 16-17.

[164] Police's own research shows that child victims often do not know whether their case is being prosecuted, how it is being prosecuted, why it is being prosecuted and what the outcome will be. Even when they ask for information, they sometimes do not get it. Two thirds of underage victims say they do nothing themselves after a serious crime, hoping it will go away. The most cited reason is that they do not know enough about what they can do after being a victim of a serious crime. Shame and fear of the consequences were also frequently mentioned. It also appears that while twelve-year-olds are interviewed by trained and certified staff, this is not the case for older children. Although there is investment in training and skills of police and prosecution services, more attention needs to be paid to dealing with child victims in the basic training of professionals and specialists in the criminal justice chain. See: Defence for Children Nederland, Wachten tot het overgaat, Wat jongeren doen én nodig hebben bij een delict dat schaamte of angst oproept FOCUS - Child Advisory Board (2022); E. Huls, W. Abdelhadi, Startnotitie De Individuele beoordeling van minderjarigen in het strafrecht, Defence for Children – ECPAT (2025). p. 45.

[165] In this context: in 2017 the training course 'Get under the skin' started, where young people with experience from YOPE and youth justice professionals share their experiences and reflections. The training is part of several training courses for youth prosecutors and children’s judges.

[166] See https://magazines.openbaarministerie.nl/opportuun/2022/06/backspace.

[167] See https://vimeo.com/974001077?share=copy.

[168] Draft law on the modernization of the Code of Criminal Procedure, book 3-6.

a (potential) conflict of interest between the parents and the child (or between the parents themselves), representation by an independent, impartial third party is often in the child's best interest.[169] Therefore, in parentage cases where a child acts as applicant or interested party, the court will always appoint a guardian ad litem to represent the child in legal proceedings.[170]

In cases concerning the care and upbringing or assets of the child, the court may either on its own initiative or at the request of an interested party, including the child, appoint a guardian ad litem.[171] The children's judge is not obliged to do so and requests are regularly denied.[172] Both lawyers and behavioral scientists can be appointed as a guardian ad litem after passing an exam. There is considerable confusion about the role of the guardian ad litem as the legal representative of the child: according to the CRC Committee,[173] a representative should transmit the views of the child correctly and act solely in the child's best interests.[174] However, according to the Dutch government, the guardian's role is to advise the children's judge on the best interests of the child.[175]

Children in the Netherlands are generally not entitled to free or subsidised legal aid and often have no financial resources of their own.[176] This means that they either have to rely on their parents to pay for their lawyer, which conflicts with the independent position of a lawyer, or have to waive legal aid, which conflicts with the principle of equality of arms.[177]

4.3.2. Asylum proceedings

Children who apply for asylum on their own are entitled to a free lawyer to assist them in the asylum procedure. For unaccompanied children under the age of 12, the Nidos guardianship agency must sign the asylum application.

4.3.3. Other administrative proceedings

In other administrative procedures, the use of a lawyer is not compulsory, except in the case of administrative fines.[178] In all other matters, a child can be represented by someone of their choice. This could be a lawyer, a legal professional or a family member.

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[169] M.R. Bruning & K.G.A. Bolscher, Juridische analyse van de procespositie en het hoorrecht van minderjarigen, in: M.R. Bruning e.a., Kind in proces: van communicatie naar effectieve participatie, Meijers-reeks nr. 335. Nijmegen: Wolf Legal Publishers 2020, p. 42.

[170] Article 1:212 of the Civil Code.

[171] Article 1:250 of the Civil Code.

[172] M.R. Bruning & K.G.A. Bolscher, Juridische analyse van de procespositie en het hoorrecht van minderjarigen, in: M.R. Bruning e.a., Kind in proces: van communicatie naar effectieve participatie, Meijers-reeks nr. 335. Nijmegen: Wolf Legal Publishers 2020, para. 2.2.5.

[173] Committee on the Rights of the Child, General Comment 12, para. 35-37. See also Committee on the Rights of the Child, Views adopted under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 139/2021, B.J. and P.J. v. Czechia, 18 August 2023, para. 8.14 and Committee on the Rights of the Child, General Comment 14 (2013) on the right the child to have his or her best interests taken as a primary consideration (art.3, para.1), para. 90.

[174] Provided that the child is willing and able to share his or her views. It should be noted that in the Netherlands, according to the current Leidraad werkwijze en verslag bijzondere curators ex. 1:250 BW, a guardian ad litem only has to speak to children over the age of eight. This is contrary to the provisions of General Comment 12, particularly in view of the role of the guardian ad litem as the child's representative: there is no age limit for the right of the child to be heard.

[175] The NJCM advocates for correctly transmitting the child's views and advising the children's judge on the due weight that, given the child's age and maturity, should be attached to those views.

[176] However, according to the UN Committee on the Rights of the Child (General Comment 14, para. 96), the Guidelines on Child Friendly Justice (para. 38 and 102) and the Guidelines on Children in Contact with the Justice System, para. 3.3.1-3.3.6, children require adequate legal assistance when their interests are to be formally assessed and determined by a court.

[177] The NJCM is therefore of the opinion that a youth lawyer should always be appointed as a guardian ad litem in cases involving children: the costs are borne by the State, the guardian ad litem can take procedural steps, represent the child's opinion and is a support figure before, during and after the proceedings. See: The NJCM has reservations about the legislative proposal 'Strengthen legal protection in youth protection', 20 March 2025, https://njcm.nl/actueel/het-njcm-heeft-bedenkingen-bij-het-wetsvoorstel-ter-versterking-van-de-rechtsbescherming-in-de-jeugdbescherming/ and the NJCM contribution to the draft General Comment 27 of the UN Committee on the Rights of the Child: https://njcm.nl/wp-content/uploads/2024/08/GC27-Final-with-footnotes.pdf.

[178] The Supreme Court ruled in September 2024 that the right to legal assistance and to be informed promptly also applies to administrative fines. (ECLI:NL:HR:2024:1135). As such, this so-called Salduz law rules - derived from the

4.3.4. Youth justice[179]

Legal aid in the Netherlands is provided through a subsidized system.[180] Child victims may be assisted by a lawyer, their legal representative or a person of their choice.[181] Both detained and non-detained children are entitled to free legal assistance from a lawyer.[182] A child suspect cannot be interrogated without a lawyer and cannot waive their right to (free) legal assistance.[183] Legal aid lawyers working in the area of child justice receive a specific training. This is reflected in the membership requirements of the Dutch Bar Association and the disciplinary law for lawyers, and the registration requirements of the Legal Aid Board.[184] Children can choose their lawyer if they want to do so.[185]

4.4. Specific considerations for vulnerable children

4.4.1. Civil proceedings

Although children often indicate that they want to be heard or express their opinions, this does not always happen. Hearing would be (too) stressful or exhausting and (young) children would not be resilient enough. However, hearing a child in a child-friendly manner can ensure that (disabling) tension and stress are reduced.[186] The Dutch government (thankfully) recognises the need for improvements relating to child support and counselling before, during and after legal proceedings. For example, a study has now been initiated into the possibilities of having a support figure during the child interview, such as the presence of an impartial person.[187]

Moreover, Dutch practice shows that children's participation is still not a given, even when the law or policy states that children's voices should be heard. An example thereof is the Dutch Benefit Affair (Toeslagenaffaire), where many families fell into debt as a result of unjustified claims for childcare benefits, and thousands of children were placed out of home. Children's voices were not sufficiently heard during and after the affair. Many children still do not know why they were placed out of their homes at the time.[188] The Special Committee on this issue is

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Salduz judgment of the ECtHR of 27 November 2008 (nr. 36391/02, *Salduz t. Turkije*) - also applies to administrative law.

[179] Zie: *Baseline study the Netherlands* - Toegang tot het recht voor minderjarige verdachten en veroordeelden in Nederland - *Access to Justice for Children Accused and Suspect in criminal proceedings.* ACCESS - 101160501 – JUST-2023-JACC-EJUSTICE.

[180] For a detailed description of the Dutch legal aid system, we refer to the European review prepared by the EU Clear Rights project. The report is available in Dutch and English on the website of Defence for Children the Netherlands https://www.defenceforchildren.nl/wat-doen-we/projecten/clear-rights/

[181] Article 51c Code of Criminal Procedure.

[182] See Council of State, 31 July 2024, ECLI:NL:RVS:2024:3083 and Supreme Court, 9 April 2024 , ECLI:NL:HR:2024:555.

[183] Also: Article 489 lid 2 and 502-503 of the Code of Criminal Procedure. Legal aid for children is free of charge (article 43.1 Wet op de rechtsbijstand).

[184] See para. 6b and Annex 5 van de Inschrijvingsvoorwaarden advocatuur 2021 op wetten.nl - Regeling - Inschrijvingsvoorwaarden advocatuur 2021, versie 1.0 - BWBR0044503 (overheid.nl): i) lawyers need to have a minimum of three years of relevant professional experience, (ii) have completed Dutch Bar Association vocational education training with a specialisation in criminal law, (iii) have attended a child justice court hearing three times, accompanying another specialised lawyer who has already been registered for three years, (iv) have attended a court hearing on an out-of-home placement in a closed youth care institution one time, accompanying another specialised lawyer in civil youth law who has already been registered for three years, (v) have achieved, in the course of the three years prior to their request for registration, a minimum of eight training points in the area of child justice and a minimum of four training points in the area of civil youth law.

[185] However, they have to pay for the services provided by the lawyer if the lawyer is not part of the legal aid system. This can be an issue for children who are not entitled to free legal assistance, e.g. children who are summoned to appear before the sub-regional judge under the Compulsory Education Act (truancy) or the Mulder Act (minor traffic violations); or in cases where the public prosecutor wants to impose a settlement of community service (up to 60 hours). Another concern is that it is difficult to motivate new lawyers to work in the legal aid sector when there is no prospect of a reasonable income. Lawyer's availability is becoming an issue in the Netherlands, including the number of lawyers working in the area of child justice.

[186] M.R. Bruning e.a., Kind in proces: van communicatie naar effectieve participatie, Meijers-reeks nr. 335. Nijmegen: Wolf Legal Publishers 2020.

[187] Nota staatssecretaris van Justitie en Veiligheid, gepubliceerd 28 april 2025, https://zoek.officielebekendmakingen.nl/kst-36364-C.html.

[188] Video: interview with young victim Steven: https://nos.nl/nieuwsuur/video/2561321-steven-werd-op-9-jarige-leeftijd-uit-huis-geplaatst-vanwege-de-toeslagenaffaire.

of the opinion that independent recognition of the child victims is necessary and that their individual damages should be compensated as much as possible (*redress*).[189]

4.4.2. Youth justice

Although research on inequalities in decision-making within the youth justice system is generally limited and fragmented, there is a growing body of empirical evidence in this area. Children from non-Western immigrant backgrounds, low socio-economic status, mild intellectual disabilities and/or language difficulties appear to be disadvantaged.[190] In order to combat discrimination, promote equality and prevent inequalities, it is essential that children's voices are heard and taken seriously, in addition to awareness raising, training and diversity of professionals.[191]

4.5. Access to remedies

If children have not been heard (properly), there is often the possibility of submitting a complaint to the authority that is said to have failed to hear them.[192] After that, there is the possibility to complain to a municipal (The Hague, Rotterdam, Amsterdam) or national children's ombudsman. However, children are mostly unfamiliar with complaint mechanisms and remedies.[193] Complaints committees in youth care do not seem to be sufficiently approachable and accessible to children, who therefore rarely submit complaints. Looking at the complaints mechanisms in voluntary youth care, young people indicate that they do not always feel confident to express themselves when they are dissatisfied with the help they receive and that they prefer to discuss complaints verbally rather than in writing.[194]

In light of the direct effect of Article 12(2) of the CRC, children who have not been heard, have only been heard indirectly in legal proceedings involving a conflict of interests conflicted with their legal representative(s), or whose views have not been given due consideration, may be able to file appeals, although their lack of legal standing can pose an obstacle. If all available domestic remedies are exhausted, or where the application of such remedies is unreasonably prolonged or unlikely to bring effective relief, there may be recourse to the ECtHR or a UN treaty committee. The Netherlands has ratified the complaints protocol to the ICCPR, is taking the first steps towards ratification of the Optional Protocol to the CRPD on a communications procedure and intends to ratify the Optional Protocol to the CRC on a communications procedure.[195]

"It's hard to complain because you don't want to do anything wrong and you're afraid it will have a negative effect on the procedure.''[196]

5. Malta

5.1. Legal provisions explicitly referring to child participation

Although Malta is a State Party to the CRC, inclusion and implementation of the right to be heard within Maltese law has been critiqued. While efforts have been made to incorporate the child's

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[189] Rapportage Commissie Toeslagen en Uithuisplaatsingen (CTU), Erfenis van onrecht, 27 maart 2025, p. 52 en 59.
[190] Y.N. van den Brink, Ongelijkheid ontrafeld. Een empirische verkenning van mogelijke katalysatoren van ongelijkheid in het besluitvormingsproces over voorlopige hechtenis van jeugdige verdachten, *Strafblad* 2023, nr. 5.
[191] Y.N. van den Brink, Different but Equal? Exploring potential catalysts of disparity in remand decision-making in the youth court, Social & Legal Studies (31) 2022, afl. 3, p. 477-500; Y.N. van den Brink, M. Slotboom, Girls in the youth justice system: a special status?: On the principle of equality and the treatment of girls in the Dutch youth justice system, p. 201-226*,* Tijdschrift voor Criminologie, juni 2023; R. van der Burgh, E. Heilbron en A. Kootstra (Investico), Lager op de ladder, zwaarder gestraft, Klassenjustitie in Nederland (2024).
[192] If there is a dispute about the execution of an ots, a child over the age of twelve can also appeal to the children's judge, for example, according to Article 1:262b of the Civil Code. In asylum proceedings, children themselves can file a complaint with the IND if they have not been heard or if they feel that the hearing was negligent. This can be done via the complaints procedure of the IND.
[193] CRC Committee, draft General Comment 27, para. 9.
[194] Children's ombudsman, Participatie vanaf de zijlijn, 024/121 en KOM006/2024, 6 november 2024 (samenvatting).
[195] Ratification of the complaints protocol to the ICESCR is, for the time being, out of the question.
[196] Citation from an interview conducted for the baseline study.

right to be heard into Maltese law, much remains to be accomplished to fully align with the standards set out in Article 12 of the Convention.

This is evident in the absence of explicit provisions granting children the right to be heard or to participate directly in civil judicial proceedings – although representation is possible.

1. *Code of Organisation and Civil Procedure*[197]
    a. Article 564: *"whatever may be the age of a witness whom it is intended to produce, he is admissible as such, provided he understands that it is wrong to give false testimony."*
    b. Articles 960 – 962 relate to the intervention and joinder of parties – however the right to intervene in or join a case would need to be exercised by the parents or other legal representative of the child.
    c. Article 781(a): children cannot sue or be sued, except in the person of the parent exercising parental authority, or, in the absence of such parent, of a tutor or a curator.

2. *Civil Code*[198]
    a. Article 56 stipulates that in cases of personal separation, the court must decide which parent will be granted custody of the children. In making this decision, the court considers various factors, including the preferences of both parents and the child, the child's relationships and interactions at home etc.
    b. Article 66I(2) – "*where a demand for divorce is made to the competent civil court by either of the spouses […] the court may, where it considers it necessary to do so, either on its own initiative or upon the request of the mediator or of one of the spouses:*
        i. *appoint a children's advocate to represent the interests of the minor children of the parties, or of any of them; and*
        ii. *hear the minor children of the parties, or any of them, where it considers it to be in their best interest to do so…*"

3. *Criminal Code*[199]
    a. Title VII of the Criminal Code largely transposes into Maltese law the provisions of EU Directive 2016/800. Further details below on the implementation of the provisions.

4. *Commissioner for Children Act*[200]
    a. Article 11 deals with promoting the best interests of children.
    b. Article 12 Council for Children.
    c. Article 18 Child Impact Statement.

5. *Victims of Crime Act*[201]
    a. Article 14 – Assistance, support and protection to victims who are minors.
    b. Article 14A – the figure of the *"support person"* for victims who are minors.

6. *Children's House Regulations*[202]
    a. Creation of a safe space for children who are victims or witnesses of crimes, including Article 24 on the right of the child to refuse to participate in forensic interviews and/or to change the professionals involved in the process.

[197] CAP. 12 of the Laws of Malta, https://legislation.mt/eli/cap/12/eng.
[198] CAP. 16 of the Laws of Malta, https://legislation.mt/eli/cap/16/eng.
[199] CAP. 9 of the Laws of Malta, https://legislation.mt/eli/cap/9/eng.
[200] CAP. 462 of the Laws of Malta, https://legislation.mt/eli/cap/462/eng.
[201] CAP. 539 of the Laws of Malta, https://legislation.mt/eli/cap/539/eng.
[202] Subsidiary Legislation 602.01, 2022, https://legislation.mt/eli/sl/602.1/eng.

7. *Minor Protection (Alternative Care) Act[203]*
    a. Children in need of care and protection, Children's Advocate, several instances where the views of the child must be established and taken account of.

The **Administrative Justice Act**[204], regulating procedure before Malta's quasi-judicial tribunals, makes no mention of children.

5.2. FRA National Report

The FRA research[205] looked into the implementation of the Directive on children as suspects or accused persons. Malta transposed Directive (EU) 2016/800 through **Act XVIII of 2020**, which introduced Title VII into the **Criminal Code** (Articles 534AGA to 534AGQ), specifically concerning children who are suspects or accused persons.

Article 534AGO(1) explicitly states that children must have an opportunity to be heard during proceedings and to express their views freely. This is supported by the principle of effective participation, which includes adjusting courtroom procedures and settings to be child-friendly.

5.2.1. Practical implementation of the right to be heard

According to the national research, magistrates are reported to interact directly with children during hearings, taking into account their age and maturity. The child is allowed to express their feelings, views, and preferences, including the right to remain silent.

The Juvenile Court is described as more informal and child-friendly than standard courts, which helps foster meaningful participation. However, this informality has been critiqued by some professionals for lacking authority.

5.2.2. Challenges in practice

The FRA research notes that there is no consistent approach to ensuring children understand their right to be heard. The right to be heard is not uniformly implemented when children are co-accused with adults: in such cases, children may be tried in adult courts, potentially without adequate accommodations for effective participation. Some professionals observed that time constraints, lack of training, or inadequate understanding by lawyers or support workers limit meaningful child participation.

5.2.3. Support during hearings

Children have the right to be accompanied by a parent, guardian, or nominated adult, as per Article 534AGN. Legal professionals and social workers also play a role in helping children understand and exercise their right to be heard. Nevertheless, the report notes variable quality in how these roles are performed.

5.2.4. Recommendations from the fieldwork

- Professionals highlighted the need for more targeted training on child-friendly communication and procedures to facilitate effective participation.
- Several interviewees suggested that judicial and legal actors should be better equipped to engage with children meaningfully during hearings.

[203] Minor Protection (Alternative Care) Act CAP. 602 of the Laws of Malta, 2022, https://legislation.mt/eli/cap/602/eng.
[204] CAP. 490of the Laws of Malta, https://legislation.mt/eli/cap/490/eng.
[205] https://fra.europa.eu/en/publication/2022/children-criminal-proceedings.

5.3. CPAT – Child Participation Assessment Tool[206]

The 'Child Participation Assessment Tool (CPAT) Country Report for Malta' evaluates the state of child participation using Council of Europe indicators, based on consultations with children, professionals, NGOs, and institutions across Malta and Gozo. The report identifies both structural strengths and significant challenges in implementing children's right to be heard.

The assessment process involved a series of focus groups between 2018 and 2019, covering a broad spectrum of sectors including the judiciary, education, health, media, and social services. The report finds that while there is strong commitment from individuals working with children, systemic shortcomings hinder meaningful participation.

The legal system does not explicitly and consistently recognize the child's right to participate. The **Child Protection (Alternative Care) Act** is seen as a major step forward. However, its effective implementation is hampered by lack of resources, training, and clarity. There is also a call for legislation to be translated into child-friendly language.

Judges and magistrates generally try to create informal settings for children to express themselves. However, limitations such as lack of training, inconsistent use of child advocates, and inadequate facilities reduce the effectiveness of participation. Parental alienation and manipulation are common concerns, with professionals calling for psychological support and trauma-informed practices in court settings.

In relation to out of home care, professionals raised concerns over political interference, lack of adequately trained personnel, and unregulated children's homes. The Child and Young Persons Advisory Board is widely viewed as ineffective, with decisions sometimes not reflecting children's best interests. A recommendation was made for merit-based selection of board members and consistent psychological support for children in care.

Re. the education system, student councils exist but often function in a tokenistic manner, with minimal real influence. Children report being dismissed or unheard when raising concerns. Teachers managing student councils do so voluntarily and without formal incentives, undermining their effectiveness.

Children reported feeling used for political gain and expressed concerns about tokenism in media representation. They emphasized the need for genuine consultation rather than symbolic inclusion. The report recommends balancing children's right to participate publicly with safeguards against exploitation.

Only one Local Council in Malta had a functioning children's council. Most councils did not involve children in planning or decision-making. The report presents a strong call for more safe, inclusive public spaces and structured local-level mechanisms to incorporate children's voices.

By way of recommendations, the report calls for a national child participation strategy, better legal clarity, enhanced training for professionals, child-friendly environments in institutional settings, and improved inter-agency coordination. It stresses the need for cultural change, moving away from adult-centric, top-down models toward more inclusive, empowering systems that treat children as active rights holders.

5.4. Children's Policy Framework 2024-2030[207]

One of the National Priorities of the Children's Policy Framework 2024-2030 is that of strengthening child participation. Children are to be supported to freely express their views on all matters and decisions that affect them, and to have those views taken into account at all levels of society.

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[206] https://mfws.org.mt/wp-content/uploads/2022/04/CPAT-Country-Report-Malta-Final.pdf.
[207] https://socialsecurity.gov.mt/wp-content/uploads/2023/11/Childrens-_Policy_Framework_2024-2030_EN.pdf.

The Policy Framework also adopted an innovative approach to engaging children directly through the Empowering Children App[208]. By actively involving children in the decision-making process, Government has gained invaluable insights into children's needs, allowing to tailor efforts more accurately and effectively to ensure no child is overlooked or marginalised.

5.5. 'A child's right to be heard under Maltese law: Children's Policy'[209]

While Maltese law has made notable progress in implementing UNCRC Article 12, further legislative and administrative reforms are necessary to fully meet the minimum standards required under international law.

Suggested reforms include:

1. *Legal Reforms*
   a. The child's right to be heard is fragmented across multiple statutes without a consistent or comprehensive legislative framework.
   b. Certain age thresholds in Maltese legislation, such as the requirement for children to be at least 11 to consent to adoption, are inconsistent with Article 12 UNCRC which discourages fixed age limits and emphasizes capacity and maturity.
   c. The role of the Child Advocate needs clearer statutory regulation, especially in defining their responsibilities and ensuring that they truly represent the child's views and do not merely act as court experts.
   d. The oath requirement for children to testify should be reformed to reflect child-friendly practices, such as substituting the oath with a more understandable promise.

2. *Administrative Reforms Suggested:*
   a. The creation of child-friendly environments in judicial settings is essential for children to express themselves freely.
   b. Ongoing training for professionals – including the judiciary, legal professionals and non-legal professionals such as social workers – on how to engage with children effectively and respectfully.
   c. The need to raise awareness among children of their right to participate in proceedings affecting them.

3. *Positive Developments Acknowledged:*
   a. The **Minor Protection (Alternative Care) Act** is highlighted as a promising step, particularly for its presumption of a child's capacity and its incorporation of the "*evolving capacities*" principle.
   b. Increasing judicial willingness to hear children directly or through appropriate representatives (social workers or Children's Advocates) demonstrates growing adherence to Article 12 UNCRC in practice.

5.6. Malta Foundation for the Wellbeing of Society

The foundation acknowledges there are differences in the quality of life and wellbeing enjoyed by members of society in Malta and this is reflected in various areas such as employment, family etc. The foundation aims to work through advocacy, safe spaces, community-based projects, research, amongst others.

In 2024 the foundation also launched a national child participation guide[210] for both parents and stakeholders. The toolkit is designed to be a practical, supporting document that can guide

[208] https://empoweringchildren.gov.mt/
[209] Genovese, K. (2021). A child's right to be heard under Maltese law (Bachelor's dissertation), https://www.um.edu.mt/library/oar/handle/123456789/88640.
[210] https://mfws.org.mt/child-participation-toolkit/

adults, organisations, and authorities to engage with children in effective decision-making and address potential challenges.

5.7. The Children's Advocate

Malta does not have a standalone 'Child Advocates Act'. However, the role and functions of the Children's Advocate are delineated within the **Minor Protection (Alternative Care) Act**. This Act establishes the legal framework for child protection and alternative care, including provisions for appointing Children's Advocates.

A Children's Advocate is a lawyer appointed to represent the interests of minors in legal proceedings. The primary responsibilities of a Children's Advocate include (Article 25):

- Representation: Ensuring that the child's views and preferences are effectively communicated during court proceedings.
- Best Interests Advocacy: Focusing on promoting outcomes that serve the child's overall well-being and development.
- Legal Guidance: Providing the child with appropriate legal counsel and explaining the implications of various proceedings in an age-appropriate manner.

The Advocate's role is to act independently, ensuring that the child's rights are upheld and that their voice is heard within the judicial system.

Currently, there isn't a publicly accessible, specific list of approved Children's Advocates. Up until February 22, 2024, the number of children's advocates who provide services to the children at the Family Court and the Juvenile Court had gone up to 10.[211]

5.8. Migration and Asylum

5.8.1. General

All children seeking asylum, whether accompanied or unaccompanied are included within the definition of 'vulnerable', as per the **Procedural Standards For Granting And Withdrawing International Protection Regulations**[212].

When conducting a personal interview with children, the IPA must ensure that this is conducted in a "*child-appropriate manner*", within the broader aim of the interview to "*allow the applicant to present the grounds for his application in a comprehensive manner.*"

5.8.2. Accompanied children

The Advocate's role is to act independently, ensuring that the child's rights are upheld and that their voice is heard within the judicial system.

The **Procedural Regulations**, in Regulation 5(7), state that "*a minor has the right to make an application for international protection either on his own behalf if he has legal capacity, or through his parents or other adult family members, or an adult responsible for him in accordance with national law, or through a representative.*"

5.8.3. Unaccompanied children

In terms of the **Minor Protection (Alternative Care) Act**, unaccompanied children are treated as child in need of care and protection. To this effect, the Directorate for Child Protection should be immediately alerted to any unaccompanied child in order to trigger the Court proceedings that will appoint a temporary legal guardian and order any other measures the Court thinks necessary for the child's protection.

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[211] https://tvmnews.mt/en/news/number-of-childrens-advocates-is-increased/.
[212] S.L. 420.07, https://legislation.mt/eli/sl/420.7/eng.

There seems to be a degree of legal confusion between asylum and child protection legislation: the former retains the approach whereby the Agency for the Welfare of Asylum-Seekers (AWAS) appoints the child's representative[213] - a key figure for the child's asylum procedure – and the latter regime directing the Courts to appoint the child's guardian and person's entity for the child's care and custody.

Practice reveals that, whichever regime is actually applied, AWAS employees are always appointed as the child's legal guardians and/or representatives. It is also noted that, following the aforementioned Court application, no hearing is held and the child's views are not sought, obtained or presented to the Court.

For the asylum procedure, the **Procedural Regulations** do not mention legal guardians but rather the role of the child's "***'representative'*** *means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in asylum procedures with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of a representative in respect of the unaccompanied minor."* Regulation 5(4) further specifies that it is the representative that will decide to trigger the asylum procedure *"if on the basis of an individual assessment of the minor's personal situation, the appointed representative is of the opinion that the minor may be in need of protection."*

Medical examinations for the purpose of ascertaining whether the child is indeed a child may be conducted only if the child consents, after being given full information.

In relation to the accommodation of unaccompanied children, the Regulation 18(3) in the **Procedural Regulations** state that *"unaccompanied minors shall be accommodated in centres specialised in accommodation for minors or in any other accommodation suitable for the minor or entrusted either to his adult relatives or a foster family: Provided that in determining who will be entitled to assume the custody of the minor,* ***regard shall be had to the views of the minor, taking into account the age and degree of maturity of such minor.****"*

Furthermore, Regulation 14 of the **Reception Regulations**[214] confirms that *"in the implementation of the provisions of these regulations, where these refer to minors, the best interests of the child shall constitute a primary consideration. When considering the best interest of the child due regard shall be taken to the possibilities of family reunification, the minor's general well-being and social development, safety and security considerations,* ***and the views of the minor in accordance with his age and maturity****."*

Summarily, the 2023 **AIDA report**[215] flags the followings issues relevant to child participation:

- At disembarkation AWAS teams conduct *prima facie* assessments of age and vulnerability. Following disembarkation all persons are detained for health reasons, including children, with no possibility to challenge or appeal. No BiDs are conducted at that stage. Persons confirmed by the AWAS team to be children or vulnerable at that stage are not detained after this initial health-based detention whilst all others are detained at Safi Barracks. Persons claiming to be children are placed in a 'child zone' in detention and they remain there pending their age assessment, that could last for months. During this time, they have no access to education or any child-appropriate activities and live in conditions repeatedly condemned by the ECtHR.
- The legal guardians appointed by the Court are AWAS employees, being public servants within the Home Affairs Ministry. There are documented incidents of conflict of interest where decisions were not taken in the child's best interests but in the interests of the Government.

[213] Article 13(3), International Protection Act, CAP. 420 of the Laws of Malta, https://legislation.mt/eli/cap/420/eng.
[214] Reception of Asylum-Seekers Regulations, S.L. 420.06, 2005, https://legislation.mt/eli/sl/420.6/eng.
[215] European Council for Refugees and Exiles, County Report: Malta, September 2024, https://asylumineurope.org/wp-content/uploads/2024/09/AIDA-MT_2023-Update.pdf.

- Migrant and asylum-seeking children are not involved in key procedures affecting them: the guardianship appointment, guardian duties/activities, review of the Care Plan before the competent authorities. The latter point is particularly important since it is the Care Plan that determines the child's pathway, e.g. family reunification, education, employment, etc.

6. Slovakia[216]

6.1. Family law proceedings with emphasis put on proceedings on the removal of the child from their family or on other coercive interventions against the child and their families

The question of the legal framework for procedural guarantees for children's participation rights in the area of family law should be divided primarily into two parts, namely 1) the part that relates generally to the provision of information to the child and the ascertainment of the child's opinion, and then 2) the part that relates to the representation of the child in family law proceedings.

6.1.1. The right of the child to information and to have their views sought in family law proceedings

a. Legal Framework

As far as the legal regulation of providing information to the child and ascertaining their opinion is concerned, the Slovak legislation can certainly be described as progressive. In 2015, an amendment to Act No. 36/2005 Coll.[217] on the Family (hereinafter referred to as "the Family Act") was adopted in order to, *inter alia*, reflect in the Slovak legal system the conclusions of the CRC Committee's General Comment No. 14 (2013) on the right of the child to have his or her best interests taken into account as a primary consideration.[218] This has led to the adoption of a new Article 5 of the Family Act, which on the one hand establishes the principle that the best interests of the child are the primary consideration in decision-making in all matters concerning the child, and on the other hand establishes a demonstrative list of considerations to be ascertained in determining the best interests of the child. Among those criteria is also the child's opinion.

This aspect is at the same time linked to the possible exposure of the child to a conflict of loyalty and subsequent feelings of guilt. This addendum is explained in the Explanatory Memorandum in a way that does not give much further explanation of how to deal with it. The Explanatory Memorandum merely states that "since the safeguarding of this right is closely related to the child's interest, the legislator wishes to highlight that it is a negative situation for the child to be exposed to a conflict of loyalty and for this conflict of loyalty to trigger a feeling of guilt. Of course, guilt can arise even without the child being in a conflict of loyalty."[219] Whatever the good intentions of the legislator may be understood, it cannot be ruled out that the addendum may in practice also act as a tool to challenge the expressed opinion of the child with reference to the conflict of loyalty and guilt on the part of the child. It is therefore a provision with an ambiguous meaning.

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[216] The baseline study on Slovakia was prepared using desk-based research and supplemented by 2 interviews:
- with an attorney having experience with cases of children who were placed outside their families, especially in institutional care (21 March 2025)
- with an attorney having experience with family law proceedings and criminal proceedings where the child is the victim (3 April 2025)

[217] Act No. 175/2025 Coll.

[218] General Comment of the CRC Committee No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, para. 1), CRC/C/GC/14. Available in English at: https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf.

[219] The explanatory memorandum is available at: https://www.najpravo.sk/dovodove-spravy/rok-2015/175-2015-z-z-zr.html [accessed 16 April 2025].

The 2015 amendment to the Family Act also removed the age limit from Section 43(1) of the Family Act, which, according to the guidelines issued under the Ministry of Justice, is the national transposition of Article 12 of the CRC.[220] The explanatory memorandum pointed out that "the current wording of Section 43 ties the criterion of the age and intellectual maturity of the child already to the right to express an opinion for this reason it is proposed to change the first sentence and thus bring the Act into full compliance with the CRC."[221] With effect from 1 July 2016, Section 43(1) of the Family Act reads as follows:

> "A minor child has the right to express their opinion independently and freely in all matters concerning them. In proceedings in which matters concerning a minor child are decided, the minor child shall have the right to be heard. The views of the minor child shall be given due weight appropriate to his age and maturity of mind."

This substantive regulation is then supplemented by a procedural regulation, which primarily establishes the responsibility of the court for the fulfilment of this right of the child in court proceedings. In this respect, Article 4 and section 116 of Act No. 161/2015 Coll. on Civil Non-Dispute Procedure Code (hereinafter referred to as "Civil Non-Dispute Procedure Code") are of central importance. Article 4 of the Civil Non-Dispute Procedure Code reads, *inter alia*, as follows:

> "... Where a minor child is a party to the proceedings, the court shall act in the best interests of the minor child and, where appropriate, inform the child of all relevant matters concerning the conduct of the proceedings and the merits of the case."

And Section 116 of the Civil Non-Dispute Procedure Act is worded in a similar vein:

> "Unless it is contrary to the purpose of the proceedings, the court is obliged to inform the minor, who, having regard to their mental and volitional maturity, is capable of understanding the meaning of the proceedings, of the proceedings and to explain to him or her the consequences of the court's decision in the case."

The obligation of the court to ascertain the child's opinion is then regulated in section 38 of the Civil Non-Dispute Procedure Act. This obligation is linked to the condition that the child is capable of expressing their opinion, which the court is obliged to take into account (paragraph 1). Paragraph 2 of the above provision also regulates the process of ascertaining the child's views, albeit in very general terms. It provides that the court is obliged to proceed in a manner appropriate to the age and maturity of the child and that, according to the nature of the case, it may ascertain the child's opinion even in the absence of other persons.

The Explanatory Memorandum to the Civil Non-Dispute Procedure Act to the cited provision states that ascertaining the child's opinion is "a mandatory procedure of the court, and is not conditioned by age or intellectual maturity, but by the child's ability to express it, primarily independently and directly."[222]

An audio recording must be made of the child's court determination, but this need not be made available to the parents unless the child wishes it.[223]

This legislation is then followed by the rule that if the child's opinion is not directly sought, the court is obliged to list the issues to be the subject of the child's opinion.[224] The entity that typically ascertains the child's opinion in such cases is the child protection authority, which also typically acts as the child's guardian *ad litem* in court proceedings. The child protection authority is also required by legislation to record the interview with the child.[225]

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[220] 'Metodika – participačné práva dieťaťa' [online]. The Ministry of Justice of Slovakia, 2024, p. 12 [accessed 16 April 2025]. Available at: https://www.justice.gov.sk/dokumenty/2024/01/Metodika-Participacne-prava.pdf.
[221] The explanatory memorandum is available at: https://www.najpravo.sk/dovodove-spravy/rok-2015/175-2015-z-z-zr.html [accessed 16 April 2025].
[222] 'Metodika – participačné práva dieťaťa' [online]. The Ministry of Justice of Slovakia, 2024, pp. 30 and 33 [accessed 16 April 2025]. Available at: https://www.justice.gov.sk/dokumenty/2024/01/Metodika-Participacne-prava.pdf.
[223] *Ibidem*, pp. 13 and 33.
[224] Section 92 (3) of the Decree of the Ministry of Justice of the Slovak Republic No. 543/2005 Coll. on the Rules of Administration and Registry for District Courts, County Courts, Special Courts and Military Courts.
[225] Section 93c (3b) of the Act No. 305/2005 Coll. on Social and Legal Protection of Children and Social Curatorship.

The Ministry of Justice issued in 2024, as part of the project *Implementation of measures to support the reform of the structure and optimization of processes in the family law agenda,*[226] quite progressive guidelines for the implementation of child participation rights. Therein, it formulated several important rules that correspond to the human rights content of the right of the child to be heard, as formulated, for example, by the CRC Committee. The following rules are the most important:

- ascertaining the child's views is not a means of evidence;[227]
- the more intervention against the child, the more intensively the child's participation rights must be fulfilled;[228]
- the court decision must also address how the court implemented the child's participation rights;[229]
- the court should give priority to implementing the child's participation rights directly,[230] including by providing information[231] and seeking to ensure that the child understands the reasons that are relevant to the court's decision;[232]
- the interview with the child should take place in a different area from the courtroom;[233]
- the interview with the child should take place without the presence of the other parties and their legal representatives.[234]

The guidelines also contain practical recommendations for preparing and conducting the interview with the child and ensuring that the child is informed by the court. It even provides, in an annex, a draft of two types of leaflets that courts can use in ensuring that the child is informed. These are:

- information leaflet according to the section 116 of the Civil Non-Dispute Procedure Act, the so-called "info" leaflet and
- a leaflet containing a basic range of information to familiarize the child with what to expect in court if the court seeks their views directly.[235]

The leaflets are prepared in different versions according to the age of the child, for children from 7 years of age. However, the guidelines point out that the fact that draft leaflets have not been prepared for children under 7 does not mean that the court is not obliged to inform the child. In this regard, the guidelines state that it is for the court to seek another acceptable form of compliance with this obligation.[236] At the same time, the guidelines emphasize that the leaflets must be seen only as supportive tools and not as "an absolute fulfilment of the court's information obligation in relation to the minor child".[237]

However, despite the strong human rights orientation of the guidelines, certain problematic points can be identified. In particular, we consider the most significant to be:

1) The fact that the guidelines link the child's opinion to the court's educational impact on children who are often referred to as having "behavioral problems".[238]

The guidelines specifically mention that in these cases the rule that the child's opinion should be taken outside the courtroom or the rule that judges and magistrates should in principle remove

[226] Project implemented in 2022 and 2023. More information about the project is available at: https://www.justice.gov.sk/agenda-ministerstva/nase-projekty/europske-strukturalne-a-investicne-fondy/implementacia-opatreni-na-podporu-reformy-struktury-a-optimalizacie-procesov-v-rodinnopravnej-agende/ [accessed 16 April 2025].
[227] Metodika – participačné práva dieťaťa' [online]. The Ministry of Justice of Slovakia, 2024, p. 6 [accessed 16 April 2025]. Available at: https://www.justice.gov.sk/dokumenty/2024/01/Metodika-Participacne-prava.pdf.
[228] *Ibidem,* p. 24.
[229] *Ibidem,* p. 7.
[230] *Ibidem,* p. 25.
[231] *Ibidem,* p. 16.
[232] *Ibidem,* p. 16.
[233] *Ibidem,* p. 28.
[234] *Ibidem,* p. 28.
[235] *Ibidem,* p. 35.
[236] *Ibidem,* p. 35.
[237] *Ibidem,* p. 36.
[238] The Guidelines specifically mention the situations when children are being placed in institutional care for reasons "on their side". They cite as a specific example of such reasons "serious behavioural problems, addiction, unlawful activity, etc." – *Ibidem*, p. 29.

their robes for the ascertainment of the child's opinion does not apply. Both of these recommendations are link to the need to act authoritatively on the child and to fulfil the educational role of the court.[239]

We believe that this approach is incompatible with a rights-based approach and that it loses the essence of the child's participatory rights, which is to be based on the child's free expression on all matters affecting them. In these cases, the child's free expression can be extremely important, as it can provide a different perspective on the situation which is the subject-matter of the court proceedings and which is thematized in the court proceedings as their individual 'behavioral problem'. Behavior that is labelled in society as a child's 'behavioral problems' often has important structural implications that can completely change the way we think about the causes of these problems and their solutions. Combining a space for the child to express their views freely with an already authoritative intervention against the child, here in the form of the authoritative action of the court, does not inherently provide a space for a change of perspective on the child's situation. From the outset, the child is seen as the originator of the problem, which is, moreover, used as a reason why their space for free expression should be shaped in a certain way as an authoritative situation in which the child is not treated as an equal subject but already, at least in part, as an object of intervention. In this context, it cannot be overlooked that the practice of placing children outside the family in institutions on the grounds of 'behavioral problems' is contrary to the CRC.[240]

2) Emphasiszing the presence of the guardian *ad litem* in the court's ascertainment of the child's opinion

The guidelines state that "it is desirable that the child's guardian *ad litem* be present during the interview."[241] This rule may not seem at all problematic in general terms. However, in order to ensure the effectiveness of the child's participation rights, it is conditional on the guardian *ad litem* actually acting as the child's procedural representative in the proceedings, who also has the necessary relationship of trust with the child.

However, this does not happen in Slovak conditions, as the guidelines out. In the overwhelming majority of cases, the child's guardian is the child protection authority. The latter may not infrequently be the one who initiated the measure which is the subject-matter of the court proceedings, and with which the child may not agree. The child may thus not feel safe in the guardian's presence or free to express their true opinion.[242]

3) Determining the range of people to participate in the child's opinion survey based on their expertise rather than on the ties to the child

The guidelines also point out that a psychologist may be called in to ascertain the child's views if necessary, if the court has one available.[243] This recommendation is formulated in the context of the above-mentioned rule that it is desirable that the child's guardian *ad litem* should also be involved in the child's assessment. It is clear from this that the guidelines consider the range of persons who should be present at the interview along the lines of expertise, rather than asking who the child, from their subjective point of view, needs to be present in order to feel as supported as possible during the interview. Thus, the question of the range of experts who should be present at the interview is discussed more than the question of presence of the trusted person. The person whom the child can trust is mentioned in the Methodology only in connection with the person of the guardian *ad litem* as a procedural representative[244]. The Slovak legal

[239] *Ibidem*, p. 29, 31.
[240] See, for instance, the Observing Conclusions of the CRC Committee on the combined fifth and sixth periodic reports of Czechia, 2021, CRC/C/CZE/CO/5-6, para. 31 (e). Available at: https://docs.un.org/en/CRC/C/CZE/CO/5-6.
[241] 'Metodika – participačné práva dieťaťa' [online]. The Ministry of Justice of Slovakia, 2024, p. 30 [accessed 16 April 2025]. Available at: https://www.justice.gov.sk/dokumenty/2024/01/Metodika-Participacne-prava.pdf.
[242] See section 6.1.2 on the issue of child representation.
[243] *Ibidem*, p. 30.
[244] *Ibidem*, pp. 53–54. On this see Section 6.1.2.a.

system works with the trusted person only in relation to victims of crimes in criminal proceedings and in relation to the defendant in court hearings.[245]

The guidelines also point out that a psychologist may be called in to ascertain the child's views if necessary, if the court has one available. This recommendation is formulated in the context of the above-mentioned rule that it is desirable that the child's guardian ad litem should also be involved in the child's assessment. It is clear from this that the methodology guides the consideration of the range of persons who should be present at the interview along the lines of expertise, rather than asking who the child, from his or her subjective point of view, needs to be present in order to feel as supported as possible during the interview. Thus, the question of the range of experts who should be present at the interview is discussed more than the question of the confidant. The person whom the child can trust is mentioned in the Methodology only in connection with the person of the conflict guardian as a procedural representative.[246] The Slovak legal system works with the person of a confidant only in relation to victims of crimes in the position of a victim in criminal proceedings and in relation to the defendant in court hearings.

4) Replacement of the child's opinion by an expert assessment in the case of children with disabilities

Another problematic point of the guidelines is its approach to the involvement of experts in the process of determining the child's opinion. The methodology foresees that the child's opinion can also be ascertained through an expert. It points out that the necessity to prepare an expert report must be approached sensitively and that an approach to expert reports which would consider the expert report as a substitute for the court's information obligation and the court's obligation to ascertain the child's opinion must be avoided. It stresses, however, that expert evidence is the preferred method of ascertaining the child's views in cases where an assessment of complex technical issues which fall outside the court's expertise is required. In particular, according to the guidelines, these are cases where it is necessary to carry out "a complex psychological assessment of the minor's personality (for example, whether he shows signs of manipulation/torture, etc.)."[247] The guidelines then mention as an alternative to an expert assessment "merely ascertaining the child's opinion", but with the professional approach of a qualified person, giving as examples children with attention deficit disorder, children on the autistic spectrum, etc.[248]

We are aware that seeking the child's views through an expert is still seen, at least in some cases, as a legitimate way of fulfilling the child's right to be heard.[249] However, we consider it important to point out that this may not be an unproblematic approach, as the guidelines reveal when they combine the elicitation of the child's opinion with a comprehensive psychological assessment in these cases. Thus, the general rule that the ascertainment of the child's views is not a means of evidence is broken. Expert child opinion surveys, when conceived as an expert assessment of the child, can also be seen as a manifestation of the medical model of disability. This model leads to the child being more likely to be the object of expert examination rather than finding ways of encouraging the child to express his or her views in a truly authentic way, including for children with disabilities.[250]

8. Practical implementation of the child's right to information and to express their opinion

However, the limitation of the presented legal regulation of the child's right to information and to have their opinion ascertained in family law proceedings is that it is not very well implemented in court practice. This is pointed out, *inter alia*, by the aforementioned guidelines issued by the Ministry of Justice, which specifically mention that:

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[245] Section 250 (2) of the Criminal Procedure Act which provides the accused person with the right to have their trusted persons present in the courtroom even in case the proceedings are held unpublic.
[246] On this see Section 6.1.2.a.
[247] [247] 'Metodika – participačné práva dieťaťa' [online]. The Ministry of Justice of Slovakia, 2024, p. 28 [accessed 16 April 2025]. Available at: https://www.justice.gov.sk/dokumenty/2024/01/Metodika-Participacne-prava.pdf.
[248] *Ibidem*, p. 28.
[249] See, for instance, *Neves Caratão Pinto v. Portugal*, judgment of the ECtHR of 13 July 2021, application No, 28443/19, § 138.
[250] On this see Section 6.3.

- the courts ascertain the child's opinion indirectly, primarily through the child protection authorities as guardians *ad litem*;[251]
- the courts do not fulfil their information obligation towards children.[252]

As an example of the latter, the guidelines specifically mention the situation of children placed in alternative care facilities. These children, according to the guidelines, "repeatedly verbalize that they do not even know why they are placed in the facility or why they were transferred to another facility, and likewise verbalize that no one (neither the guardian nor the court) was interested in their opinion."[253] This was confirmed by an interview with an attorney who was involved in the analysis of decisions to remove children from the care of their parents/family. The attorney stated that out of 129 cases, in only one case was the child asked about what she thought about it. In this case, the child's opinion was accepted.[254]

These findings were confirmed by an interview with another attorney, who pointed out that the child's opinion is usually ascertained in practice through the child protection authorities. These interviews take place without the presence of other persons, are not recorded, and the questions asked of the child are not recorded. The record produced is rather a re-telling of the specific worker, i.e., an interpretation of what the child said. The attorney has experience that children often reported afterwards that they had said something different, however, the courts rely on the child protection authorities. The courts base their position on the fact that the child must not be stressed by contact with the court. The lawyer has even had the experience of children writing to the court saying that they want to be heard; once a child was even standing in the corridor outside the courtroom, but the judge did not hear the child precisely on the grounds that the child would be unnecessarily stressed.[255]

These findings are confirmed by a quick search of available court decisions. Of the first 17 decisions that appeared on 9 April 2025 within the Ministry of Justice's court decision search system[256] when the keyword "institutional care" was entered, which related to family law proceedings involving children, only one stated that the court had proceeded to interview the children. However, it is clear from the description here that the questioning of the children was largely approached as evidence, rather than with the primary aim of creating space for the children to express themselves freely on matters affecting them. However, the court here decided in accordance with the children's views, despite the opinion of their procedural representative - the guardian *ad litem* (the child protection authority).[257]

In another decision, the court mentions the children's opinion, but not in the sense of ascertaining it, but that it is known to the court in the context of the established facts. In particular, it states, in relation to the two pre-school children, that they are very attached to their mother. However, in its decision entrusting the children to their father's care, the court does not elaborate on the reasons why the children's other rights should be given priority over their inferred wish to remain in their mother's care. The Court gives general reasons why it considers it necessary to place the children in the father's care, but does not place them in the context of an assessment of the best interests of the child, including the necessary consideration of the child's views.[258] In other cases, the opinion of the child is completely disregarded.[259]

However, the vast majority of these decisions, 12 in particular, do not contain a statement of reasons at all, referring to a procedural provision which allows the court not to prepare a statement of reasons in the event that the decision is pronounced in the presence of all parties

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[251] 'Metodika – participačné práva dieťaťa' [online]. The Ministry of Justice of Slovakia, 2024, p. 17[accessed 16 April 2025]. Available at: https://www.justice.gov.sk/dokumenty/2024/01/Metodika-Participacne-prava.pdf.
[252] *Ibidem*, p. 17.
[253] *Ibidem,* p. 17.
[254] Information got through an interview with an attorney (21 March 2025).
[255] Information got through an interview with an attorney (3 April 2025).
[256] Available at: https://www.justice.gov.sk/sudy-a-rozhodnutia/sudy/rozhodnutia/?pageNum=1&size=10&sortProperty=datum_vydania_rozhodnutia&sortDirection=DESC
[257] Judgment of the District Court in Komárno of 7 March 2025, No. 11P/153/2024. See below, Section 6.1.2.
[258] Decision of the District Court in Prešov of 4 March 2025, No. 27P/39/2025.
[259] See, for instance, the judgment of the District Court in Rimavská Sobota of 28 February 2025, No. 16P/5/2025.

who have subsequently waived their right to appeal.[260] The presence of the children is usually taken to be the presence of their guardian *ad litem*. This procedure is also followed in cases where a decision is taken on the placement of a child in a re-education centre, which is a closed or semi-closed regime institutional facility, or on the extension of such placement. It may be assumed that, in view of the conditions prevailing in such establishments,[261] children do not usually accept their placement.

6.1.2. Procedural representation of the child

a. Legal framework

Children may not be represented by their parents in family law proceedings concerning the child's living arrangements, including proceedings for the removal of the child from the care of their parents and their placement in alternative care.[262] In such cases, a guardian *ad litem* is appointed to represent the child in the proceedings. Slovak law establishes the rule that a person close to the child, who is expected to act in the child's best interests, should preferably be appointed as the child's guardian. Otherwise, the court appoints the child protection authority to be the child’s guardian *ad litem*.[263]

The aforementioned guidelines of the Ministry of Justice also lean towards the rule that a person close to the child should preferably be appointed as the child's conflict guardian, putting this rule in the context of the child's participation rights.[264] Moreover, it mentions that, when appointing a person close to the child, the child should also be given the opportunity to comment on the person of the guardian.[265]

However, the guidelines also points out that in practice, the overwhelming majority of cases, it is the child protection authority that is appointed as the guardian *ad litem*.

This legislation and its practical application entails a number of problems, the most serious of which are:

A. the absence of legal aid
B. the possibility of overlapping roles of the guardian *ad litem* (the child’s representative) and the administrative authority providing public protection of children (the representative of the State power)
C. the perception that the role of the guardian *ad litem* is more like an assistant to the court than a representative of the child

A. The absence of legal aid

The Slovak regulation on the appointment of a procedural guardian for a child does not ensure the child's effective access to legal assistance or representation by a lawyer, even in cases where a decision is taken to remove the child from the care of their parents or family and to place the child in alternative care, including institutional care. Such decisions, particularly where the child is placed in an institutional facility, interfere with the child's personal liberty.[266] The CRC guarantees children the right to access to legal or other appropriate assistance in such cases.[267]

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[260] Section 221 (a) of the Act No. 160/2005 Coll., Civil Dispute Procedure Act.

[261] Zhodnotenie Generálnej prokuratúry Slovenskej republiky o stave zákonnosti v reedukačných centrách [online]. General Prosecutor’s Office of the Slovak Republic, 15/1/2024 [accessed 17 April 2025]. The report is available in Slovak at: https://www.genpro.gov.sk/informacie/spravy/detail/generalna-prokuratura-sr-pre-zistenia-o-zavaznom-porusovani-prav-deti-v-reedukacnych-centrach-zvolava-generalny-prokurator-sr-multilateralne-pracovne-stretnutie/

[262] Section 31(2) of the Act No. 36/2005 Coll. on Family

[263] Section 117 of the Civil Non-Dispute Procedure Act.

[264] Specifically, the Guidelines state that "it is precisely in the greater emphasis on the child's participatory rights that it is appropriate for the courts to give preference to a close person over the child protection authority when appointing a guardian for a minor child." – Metodika – participačné práva dieťaťa’ [online]. The Ministry of Justice of Slovakia, 2024, p. 53 [accessed 16 April 2025]. Available at: https://www.justice.gov.sk/dokumenty/2024/01/Metodika-Participacne-prava.pdf.

[265] *Ibidem*, p. 53.

[266] See, for instance, the views adopted by the CRC Committee under the Optional Protocol to the CRC on a communications procedure, concerning communication No. 139/2021, *B.J. and P.J. v. the Czech Republic*, CRC/C/93/D/139/2021, para. 8.15.

[267] Article 37 (d) CRC.

In addition, the CRC Committee, in its General Comment No. 14 on the right of the child to have his or her best interests taken into account as a primary consideration, stated that the child should always be provided with "legal representative" (fr. *un conseil juridique*) when there are administrative or judicial proceedings in which the best interests of the child are being determined, and there is a potential conflict of interest between parties in the decision.[268] This exists in a situation where the child is represented by a child protection authority, in view of the possible overlapping roles of that authority (see section B.) and the definition of its role as a guardian *ad litem* (see section C.).

B. The possibility of overlapping roles of the guardian *ad litem* (the child's representative) and the administrative authority providing public protection of children (the representative of the State power)

The Slovak legislation does not sufficiently distinguish between the role of the child protection authority as an administrative body, whose task is, *inter alia*, to ensure the public law protection of the child, and the role of the guardian *ad litem* of the child, i.e., a procedural representative of the child. The two roles may thus converge in the case of a particular child, which is also supported by the definition of the role of the guardian *ad litem* (see section C).

However, this brings with it several practical problems. The most obvious one is the fact that the Slovak legislation does not exclude that the child is represented in the court proceedings as guardian *ad litem* by the same child protection authority that initiated the proceedings in question, whether by way of a petition or a motion. This practice is currently the subject of criticism,[269] even in light of the Czech experience and the resulting case law of the European Court of Human Rights.[270]

A working group has also been established and is currently looking into this issue. The debate is currently evolving in such a way that a distinction is being made between two types of situations, which for simplicity are referred to as (1) private law proceedings and (2) public law proceedings. Private law proceedings refer to situations of parental conflict where the child is not considered to be at risk, i.e., a child who should be afforded public law protection. In this case, the child protection authorities do not act in the dual role of administrative authority and guardian *ad litem*, they do not initiate the proceedings, and so their representation of the child is not perceived as problematic.[271]

Thus, representation by the child protection authority is problematized only in so-called public law matters, i.e., in matters of children at risk. In this case, if proceedings are initiated on the application of the child protection authority, it is discussed that either an attorney could be appointed as the child's guardian *ad litem* or, more preferably, that the child would be represented by the Legal Aid Centre. However, this solution also entails a number of practical issues, such as training of staff, ensuring the availability of branches throughout Slovakia, etc.[272]

However, only the concurrence of the role of the petitioner and the role of the guardian *ad litem* is really addressed. The guidelines of the Ministry of Justice then points out that the same approach should be taken to situations in which the child protection authority initiates proceedings not by a direct proposal but by a motion.[273] As such, the conflict arising from the coincidence of the roles of the administrative authority providing public protection of the child and the child's procedural representative (guardian *ad litem*) is not yet such a matter of concern. The child protection authorities act in one role as an administrative authority, i.e. as a representative of the State, and in the other as a representative of the child. The implicit

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[268] Article 3(1) General Comment of the CRC Committee No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, para. 96. Available in English at: https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf.

[269] 'Metodika – participačné práva dieťaťa' [online]. The Ministry of Justice of Slovakia, 2024, pp. 54–55 [accessed 16 April 2025]. Available at: https://www.justice.gov.sk/dokumenty/2024/01/Metodika-Participacne-prava.pdf.

[270] See especially *Havelka and Others v. the Czech Republic*, judgment of the ECtHR of 21 June 2007, Application No. 23499/06, para. 62.

[271] Information got through an interview with an attorney (21 March 2025).

[272] Information got through an interview with an attorney (21 March 2025).

[273] 'Metodika – participačné práva dieťaťa' [online]. The Ministry of Justice of Slovakia, 2024, p. 55 [accessed 16 April 2025]. Available at: https://www.justice.gov.sk/dokumenty/2024/01/Metodika-Participacne-prava.pdf.

assumption here is that the best interests of the child are always objectively determined and are always one, not that it is always a subjective assessment, albeit framed by certain defined aspects.

C. Defining the role of the guardian *ad litem* more as an assistant to the court than as a representative of the child

The definition of the role of the child protection authority as the child's guardian *ad litem* closely relates to the above-mentioned problem. The role of the child protection authority acting as the child's guardian *ad litem* is not related to the procedural rights of the child but corresponds much more closely to the powers of the administrative authority ensuring public protection and control of children and families at risk.

The duties of the child protection authority as a guardian *ad litem* relate both to resolving the situation of the child and to establishing the facts. The child protection authority is obliged to:

- provide social counselling and assistance, not to the child in relation to the exercise of their procedural rights, but to the child, his/her parents, or the person who personally cares for the child, with the aim of eliminating conflicts of interest between them. The child protection authority is even entitled to use authoritative measures for this purpose;[274]
- to make an assessment of the family situation, housing situation and social situation of the child;[275]
- the obligation to conduct an informative interview with both parents in the case of a post-divorce custody arrangement under the so-called Cochem model (an attempt to bring the parents to an agreement).[276]

The second task, i.e., the assessment of the child's circumstances, can be considered particularly problematic, as it effectively makes the guardian *ad litem* more of an investigative body than a procedural representative of the child. Moreover, the legislation expressly provides that the guardian *ad litem* is to assess, in the context of the assessment the child's circumstances, the possibilities of personal care for the child by both parents, taking into account the interests of the child, the provision for the child's needs and the child's opinion. In effect, the decision on the best interests of the child is taken before the court's own decision, the child's opinion being one of the sources of information, not the central consideration for the exercise of the function of the guardian *ad litem*.

9. Practical experience in child representation

All of the described facts are then reflected in the actual performance of the function of the guardian *ad litem* by the child protection authority. What these authorities bring to the proceedings in their role as guardian *ad litem* is, first and foremost, a report on the situation of the child and the solution they propose to the situation. The child's opinion need not be mentioned in the report.[277] Alternatively, it may be apparent that the child protection authorities are acting against the child's opinion.[278] In this situation, which in our view is problematic in itself, as it curtails the child's access to the exercise of their procedural rights,[279] the child protection authorities do not even deal with a more detailed justification of why they consider that the child's opinion is contrary to his or her best interests, with a proper assessment of all relevant aspects, including the age and maturity of the child.

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[274] Section 20 (1) of the Act No. 305/2005 Coll. on Social and Legal Protection of Children and Social Curatorship.
[275] Section 20 (1) of the Act No. 305/2005 Coll. on Social and Legal Protection of Children and Social Curatorship.
[276] Section 20 (3) of the Act No. 305/2005 Coll. on Social and Legal Protection of Children and Social Curatorship.
[277] For instance, in the case which was decided by the judgment of the District Court in Trenčín of 6 March 2025, No. 31P/162/2024, the social protection authority in its report did not capture the child's views, only the views of the child's foster parent.
[278] See, for instance, the case decided by the District Court in Komárno of 7 March 2025, No. 11P/153/2024, where the children expressed that they wanted to be placed in the foster care of their grandparents. Still, the child protection authority acting as their guardian ad litem proposed to deny the grandparents' motion because they thought that the situation was not a situation for ordering an alternative care placement.
[279] The child's procedural rights are used to defend the position the child does not agree with.

The coincidence of the role of the petitioner or the author of the motion that initiated the court proceedings is also very common.[280]

As already mentioned above, it is also very common that the child protection authorities waive the right to appeal on behalf of the child, and thus, the reasons for the decision may not even be drawn up. This practice also occurs in the case of placements of children in re-education centres, where, according to the report of the General Prosecutor's Office from the beginning of 2024, massive violations of children's rights occur.[281] Even after the publication of this report, the child protection authorities propose the placement of children in these facilities,[282] or the extension of their stay there,[283] without any consideration of the conclusions of this report, precisely in the context of an assessment of the best interests of the child.

6.2. Other legal contexts

In this section, we will focus very briefly on ensuring the child's participation rights in other types of judicial and administrative proceedings, paying attention to:

- the position of children who are victims of crime;
- the position of children in conflict with the law; and
- the position of children in situations of migration.

We will pay particular attention to the issue of effective representation of children.

6.2.1. Children as victims of crime

The adoption of Act No. 274/2017 Coll. on Victims of Criminal Offences (hereinafter referred to as the "Victims Act"), which also introduced an important amendment to the Criminal Procedure Code, has contributed significantly to the legal protection of victims. This amendment, for example, anchored the role of the psychologist in criminal proceedings, especially in relation to the interrogation of particularly vulnerable victims.[284] At the same time, it also regulated, for example, the obligation to act with particular care and caution when questioning a particularly vulnerable victim, so that the questioning does not have to be repeated in subsequent proceedings, and to make a visual and audio recording of such questioning.[285] Children are automatically considered to be particularly vulnerable victims.[286] However, this rule has subsequently been modified so that it applies only to the situation of questioning a child about

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[280] See for instance, the judgment of the District Court in Žiar nad Hronom of 19 March 2025, No. 25P/180/2024; decision of the District Court in Michalovce of 6 March 2025, No. 15P/37/2025; judgment of the District Court in Trenčín of 6 March 2025, No. 31/162/2024; judgment of the District Court in Rimavská Sobota of 28 February 2025, No. 16P/5/2025. See also the decision of the District Court in Galanta of November 4, 2024, case no. 39P/42/2024. In this case, the child protection authority proposed a civil law interim measure, by which the minor was placed in a re-education centre, and at the same time, the authority also acted as the minor's guardian ad litem in the proceedings. A similar situation occurred in the case addressed in the decision of the appellate court – the Regional Court in Žilina of 18 September 2024, case no. 13CoP/158/2024, which concerned a civil law interim measure by which the minor was relocated to a corrective-treatment centre (it was a child with a disability, manifesting in difficult behaviour). The child protection authority proposed this relocation and also acted as the minor's guardian *ad litem* in the proceedings. The minor's own opinion on the relocation cannot be determined from the reasoning of the decision, as neither the court nor the guardian *ad litem* worked with the minor. In the case addressed in the judgment of the District Court in Lučenec of 22 August 2024, and the decision of the District Court in Lučenec of 11 September 2024, both case No. 17P/132/2024, the child protection authority again acted as both the author of the motion and the guardian *ad litem* for the minor. This case involved the relocation of the minor from one re-education centre to another. Lastly, we can mention the case addressed in the decision of the District Court in Trnava of 2 July 2024, case no. 27P/6/2024, in which the child protection authority again acted as both the author of the motion and the guardian *ad litem*. The case concerned the extension of the minor's stay in the re-education centre.

[281] Zhodnotenie Generálnej prokuratúry Slovenskej republiky o stave zákonnosti v reedukačných centrách [online]. General Prosecutor's Office of the Slovak Republic, 15/1/2024, p. 5 [accessed 17 April 2025]. The report is available in Slovak at: https://www.genpro.gov.sk/informacie/spravy/detail/generalna-prokuratura-sr-pre-zistenia-o-zavaznom-porusovani-prav-deti-v-reedukacnych-centrach-zvolava-generalny-prokurator-sr-multilateralne-pracovne-stretnutie/

[282] See, for instance, the decision of the District Court in Galanta of November 4, 2024, case no. 39P/42/2024.

[283] See, for instance, the decision of the District Court in Trnava of 2 July 2024, case no. 27P/6/2024; see also the judgment of the District Court in Rožňava of 11 March 2025, No. 8P/36/2025; judgment of the District Court in Rimavská Sobota of 28 February 2025, No. 16P/5/2025.

[284] Sections 30a and section 135 (2) of the Act No. 301/2005 Coll. Criminal Procedure Act (hereinafter "the Criminal Procedure Act").

[285] Section 134 (4) of the Criminal Procedure Act in the version effective from 1 January 2018 to 5 August 2024.

[286] Section 2(1)(c)(1) of Act No. 274/2017 Coll. on Victims of Crime.

matters the recollection of which, in view of the child's characteristics, relationship to the accused or suspect, dependence on the accused or suspect, or the nature and circumstances of the offence, could adversely affect the child's mental integrity or expose the child to the risk of secondary victimization. [287]

The study prepared by the Forum for Human Rights in cooperation with Validity Foundation on the status of victims of crime with intellectual and/or psychosocial disabilities points out that the implementation of Directive 2012/29/EU establishing minimum rules on the rights, support and protection of victims of crime has been in the spirit of protecting victims from secondary victimization, and several very important measures have been taken in this regard. However, the position of victims of crime as a party to criminal proceedings has been somewhat lost sight of. The study explicitly states that the transposition of the Directive 2012/29/EU "hasn't brought a system of supportive measures that could serve as procedural accommodations for the victim when exercising his/her procedural rights."[288]

The Slovak legal system does not automatically guarantee children legal representation in criminal proceedings. As victims, child victims are parties to criminal proceedings, but are represented by their legal representatives, i.e., typically parents. Only in case that the legal representative is unable to perform this role, a guardian from among attorneys will be appointed for the child.[289] This rule may be tricky, for example, in the case of children whose parents may themselves have difficulty understanding the criminal proceedings, but in general terms they do not significantly deviate from the norm of 'ordinary' parties to criminal proceedings and so the law enforcement authorities will not consider that the child should be appointed an attorney as the child's guardian.

Moreover, the position of guardian can be tricky in the sense that guardianship is based on substitute, not supported, decision-making. In a situation where there is no conflict of interest between the child and their parents, but the family merely needs professional legal support in the proceedings, it would be far more considerate if the attorney approached the child as a contractual representative rather than as a guardian. However, the Slovak legislation encounters a rather limited scope of providing free legal representation to the victim. This is conditional on the submission of an application and the fulfilment of three other conditions: 1) the claim for compensation in criminal proceedings; 2) successful demonstration that the victim (the injured party) does not have sufficient resources to cover the costs of representation; and 3) a finding by the judge that free legal representation is necessary to protect the interests of the victim.[290]

Last but not least, it should be noted that the appointment of a guardian ad litem is first applied at the stage of initiation of criminal proceedings.[291] It does not, therefore, apply to the stage of reporting of the offence, at which point the child may be left completely unassisted or dependent on the support of bodies providing assistance to victims of crime,[292] which they seek out on their own or with support persons.

In general, it should be noted that although the Victim Act and the accompanying amendments to the Criminal Procedure Code have significantly strengthened the procedural position of victims, Slovak criminal proceedings remain traditionally oriented towards the relationship

[287] The amendment was adopted as Act No. 40/2024 Coll.
[288] Forum for Human Rights. *Voices for Justice. Victims of crime with disabilities in Slovakia* [online]. Prague, 2022, p. 20 [accessed 17 April 2025]. Available at: https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-Slovakia-en-220424.pdf.
[289] Section 48(2) of the Criminal Procedure Act.
[290] Section 47(6) of the Criminal Procedure Act.
[291] Section 48(2) of the Criminal Procedure Act. See also Forum for Human Rights. *Voices for Justice. Victims of crime with disabilities in Slovakia* [online]. Prague, 2022, p. 30 [accessed 17 April 2025]. Available at: https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-Slovakia-en-220424.pdf.
[292] By these bodies we mean not only bodies under the Victims of Crime Act that provide general specialist assistance, including legal assistance on the application of victims' rights according to the Victims of Crime Act and the Criminal Procedure Act, and specific specialist assistance, but also information offices for victims. These were originally established within the framework of a project implemented by the Ministry of the Interior with the aim of providing locally accessible basic social, psychological and legal counselling for all victims in Slovakia. With effect from 1 February 2023, the information offices for victims have been legislatively anchored (Act No. 458/2022 Coll.) and carry out their activities as part of the organisational structure of the Ministry of the Interior.

between the state and the perpetrator. A striking example of this orientation is, for example, the regulation which allows the drafting of the reasons for the judgment to be dispensed with. This procedure is conditional on the prosecutor and the accused having waived their right to appeal within the prescribed time limit.[293] However, the injured party-victim is also entitled to appeal, albeit limited to the verdict on compensation for the damage caused. The injured party may thus easily be placed in a situation where they are referred to civil proceedings, which is still common practice, and the judgment so decided, against which they may appeal, does not contain a statement of reasons.[294]

6.2.2. Children in conflict with the law

The age of criminal responsibility in Slovakia is 14 years in general and 15 years for the offence of sexual abuse.[295]

Criminally responsible minors have the right to mandatory representation by an attorney in criminal proceedings.[296] However, this representation is not available to the juvenile for initial contact with the police, even if the juvenile is in the position of a suspect.[297] An attorney is appointed for the juvenile only after the criminal proceedings have been initiated.

It does not appear from a study of the available judgments that representation by an attorney would effectively ensure the fulfilment of the juvenile's procedural rights, including their participation rights. According to the decisions available in the database of the Ministry of Justice, it appears that the right to appeal on behalf of a juvenile is very rarely exercised, for example, even in cases where the juvenile's offence consisted of escaping from a re-education centre where the juvenile was serving a protective upbringing for which the juvenile was imposed on an unconditional prison sentence. Meanwhile, a report published by the Prosecutor General's Office in January 2024 on the massive violations of children's rights in re-education centres[298] makes their escapes eminently understandable. However, it does not appear from the reasons for the decision that the attorneys worked with this report or tried to bring the perspective of the represented juvenile into the proceedings. It is also very common for decisions to be taken in the form of a criminal order without reasons, a judgment without reasons, with reference to the fact that the juvenile, their legal representatives, the juvenile's attorney, the public prosecutor and the child protection authority have waived their right to appeal.[299] The approval of a plea agreement is also quite common. However, the subject matter of the plea agreement also includes, for example, the imposition of an unconditional prison sentence on the juvenile.[300] Similarly, the right of appeal is waived in cases where a juvenile has been given an unconditional prison sentence.[301]

Children below the age of criminal responsibility are not provided with legal assistance from an attorney at all, despite the fact that they can be placed either in closed regime educational

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[293] Section 172(2) of the Criminal Procedure Act. In case of a juvenile accused the right to appeal must also be waived by their legal representatives and the child protection authority.

[294] See, for instance, the judgment of the District Court in Spišská Nová Ves of 2 April 2025, No. 2T/93/2024.

[295] Section 22 of the Act No. 300/2005 Coll. The Criminal Code.

[296] Section 37(1)(e) of the Criminal Procedure Code.

[297] See The Concluding Observations of the CRC Committee on the combined third to fifth periodic reports of Slovakia, 20/7/2016, CRC/C/SVK/CO/3–5, para. 56 (d). Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FSVK%2FCO%2F3-5&Lang=en.

[298] Zhodnotenie Generálnej prokuratúry Slovenskej republiky o stave zákonnosti v reedukačných centrách [online]. General Prosecutor's Office of the Slovak Republic, 15/1/2024 [accessed 17 April 2025]. The report is available in Slovak at: https://www.genpro.gov.sk/informacie/spravy/detail/generalna-prokuratura-sr-pre-zistenia-o-zavaznom-porusovani-prav-deti-v-reedukacnych-centrach-zvolava-generalny-prokurator-sr-multilateralne-pracovne-stretnutie/,

[299] Section 172 (2) of the Criminal Procedure Code.

[300] See, for instance, the judgment of the District Court in Rimavská Sobota of 2 September 2024, No. 19T/107/2024, by which the juvenile was sentenced to 12 months' unconditional imprisonment on the basis of a plea agreement.

[301] See, for instance, the judgment of the District Court in Spišská Nová Ves of 29 October 2024, No. 6T/81/2024.
iz npr. rozsudok Okresného súdu Spišská Nová Ves ze dne 29. 10. 2024, sp. zn. 6T/81/2024. The case involved two juveniles, one of whom was given an eight-month unconditional prison sentence for one offence. Nevertheless, the right of appeal was waived.

institutions (the aforementioned re-education centres) or even in psychiatric institutions for their unlawful acts breaching the criminal law.[302]

6.2.3. Children in the situation of migration

From the area of the position of children in the situation of migration, which is itself very complex, we would like to focus on the issue of effective representation of children, here primarily in relation to the possibility for children to initiate proceedings relevant to them.

a. Access to the possibility of applying for international protection

Slovak law does not grant minors the possibility to apply for international protection on their own. Act No 480/2002 Coll. provides that in the case of minor children, the declaration of asylum must be made by their legal representative or a guardian appointed by the court, and the minor child must be present for the declaration. The Act expressly provides that the asylum procedure shall not be initiated if the minor makes the declaration themselves.[303]

In the case of unaccompanied minors, the procedure for applying for asylum is that child protection authorities are informed immediately when the residence of such a child in the territory of Slovakia is detected, usually by the police.[304] The child protection authorities shall immediately submit a proposal for the placement of the unaccompanied minor in alternative care - the children's home in Medzilaborce,[305] and the appointment of a guardian,[306] who will subsequently be authorized to act on behalf of the minor also in matters of declaring asylum or applying for another residence status in the territory of the Slovak Republic.

Certain protection of children's access to the application for asylum is provided by the legislation in the Act on Social and Legal Protection of Children and Social Guardianship, which authorizes the child protection authority to make a declaration under the Asylum Act, including at the request of a child.[307] However, the child is still dependent on their legal representative, guardian, or the child protection authority for access to the asylum application.

10. Access to the possibility of applying for a residence permit in Slovakia

Act No.404/2011 Coll. on the Residence of Foreigners does not grant minors the capacity to independently apply for various residence titles in Slovakia. A minor must always be represented by a legal representative and, if they do not have one, by a guardian.[308] The only exception is provided for minors over 15 years of age if they apply for residence for the purpose of study or special activity. However, even in these cases, their application for temporary residence must be signed by a legal representative and the signature of the legal representative must be certified.[309]

The Residence of Foreigners Act also grants the child protection authority the right to submit an application for tolerated stay on behalf of an unaccompanied minor, but only on condition that the minor is placed in an alternative care facility.[310]

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[302] This happened, for instance, in the case addressed by the judgment of the District Court in Žiar nad Hronom of 11 January 2021, No. 9P/47/2020.
[303] Section 3(1) of the Act No. 480/2002 Coll. on asylum.
[304] Section 127 (4) of the Act No. 404/2011 Coll. on the residence of foreigners (hereinafter "the Residence of Foreigners Act").
[305] In case the children have no close relatives in Slovakia. However, refugees from Ukraine may often have close persons in Slovakia who are not parents of minor children.
[306] Section 29(1)(a) of the Act No. 305/2005 Coll. on Social and Legal Protection of Children and Social Curatorship.
[307] Section 29(1)(d) of the Act No. 305/2005 Coll. on Social and Legal Protection of Children and Social Curatorship.
[308] Section 127 (2) of the Residence of Foreigners Act.
[309] Section 127 (2) of the Residence of Foreigners Act.
[310] Section 127 (3) of the Residence of Foreigners Act. zákona o pobyte cudzincov.

6.3. Approach to children with intellectual and/or psychosocial disabilities

The approach to children with disabilities in Slovakia is marked primarily by the still prevailing medical model of disability.[311] This most significantly affects the situation of children with intellectual and/or psychosocial disabilities.[312]

In the area of participation rights, it may be manifested by the fact that, for example, the determination of the child's opinion is modelled more like an expert examination of the child.[313] This can bring with it a number of problems, as the child's authentic opinion can be drowned out by an expert perspective. The medical model may also render ineffective the statutory provision that ties the duty to ascertain the child's opinion to the child's ability to express their views. This formulation was adopted to encourage the ascertainment of the child's views without the necessary link to the child's attainment of a certain age and maturity. However, from a medical perspective, it may be reversed in relation to children with intellectual and/or psychosocial disabilities, in the sense that these children will be perceived as 'unable' to express their opinion and therefore not covered by the duty to ascertain their views. The medical model leads to a failure to look for ways to support the child, so that relevant information can be provided and communicated with, e.g., through augmentative and alternative communication. Instead, the child is examined or neglected.

In terms of access to the exercise of procedural rights, the medical model is manifested in reliance on substitute decision-making institutions, i.e., legal representation or guardianship.[314] The focus is therefore not on finding supportive measures that would enable the child to actually participate in the proceedings and exercise their procedural rights, if the child wishes to do so.

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[311] See, for instance, the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities, on the initial report of Slovakia, 2016, CRPD/C/SVK/CO/1, para. 11. Available at: https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=iZvHOYp5p5t%2BPIDVI259HrzW44YHyjbg1cAC%2B4YbydF5NxewHghO38vO%2BUKgfIf%2Fs0F5Vqj0bOzjO6sD7Am4xA%3D%3D. See also Forum for Human Rights. *Voices for Justice. Victims of crime with disabilities in Slovakia* [online]. Prague, 2022, p. 4 [accessed 17 April 2025]. Available at: https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-Slovakia-en-220424.pdf.

[312] See, for instance, the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities, on the initial report of Slovakia, 2016, CRPD/C/SVK/CO/1, para. 11. Available at: https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=iZvHOYp5p5t%2BPIDVI259HrzW44YHyjbg1cAC%2B4YbydF5NxewHghO38vO%2BUKgfIf%2Fs0F5Vqj0bOzjO6sD7Am4xA%3D%3D. See also Forum for Human Rights. *Voices for Justice. Victims of crime with disabilities in Slovakia* [online]. Prague, 2022, p. 4 [accessed 17 April 2025]. Available at: https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-Slovakia-en-220424.pdf.

[313] This impact is largely reflected in the Ministry of Justice's 2024 guidelines on children's participation rights cited above.

[314] *Ibidem*, p. 5.