

CHILD FRIENDLY JUSTICE AND INTEGRATED CHILD PROTECTION SYSTEMS – LESSONS LEARNED FROM EU PROJECTS

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BACKGROUND PAPER



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Background paper

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1. Introduction

This conference on child-friendly justice and integrated child protection systems – lessons learned from EU projects has two objectives: to showcase examples of good practice to inspire others and to take stock of what has been done since 2011/2012 with EU funds under the Rights, Equality and Citizenship Programme (REC), to help inform future policy and practice. Under the REC Programme, there were two strands: the first on rights of the child and the second on violence against children (Daphne), i.e. focusing on child protection. Many projects would have capacity-building elements.

This short background note serves to recall some key principles for any child rights conference, and to provide you with some useful links.

1.1. Geographical scope for discussions

In broad terms, the geographical scope of conference discussions is European, with representatives invited from the 28 Member States of the European Union (25 present: all except DK, LU, SK), Norway, Iceland and Switzerland, and the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Serbia, and the former Yugoslav Republic of Macedonia). While the REC Programme covers only EU Member States and Iceland, discussions on projects and EU funding objectives can still be of relevance at wider European level.

1.2. Child rights approach and the best interests of the child

All participants are expected to embrace and respect a child rights approach. All speakers are expected to reflect what a child rights approach means applied to their remit, role, project and work.

General Comment No 13 of the UN Committee on the rights of the child, para 59, definition of a child rights approach

"...A child rights approach is one which furthers the realisation of the rights of all children as set out in the Convention by developing the capacity of duty bearers to meet their obligations to respect, protect and fulfil rights (art. 4) and the capacity of rights holders to claim their rights, guided at all times by the rights to non-discrimination (art. 2), consideration of the best interests of the child (art. 3, para. 1), life, survival and development (art. 6), and respect for the views of the child (art. 12). Children also have the right to be directed and guided in the exercise of their rights by caregivers, parents and community members, in line with children's evolving capacities (art. 5). This child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religious and cultural systems."

The best interests of the child are a right, a principle and a rule of procedure. General Comment No 14 (2013) of the UN Committee on the rights of the child to have his or her best interests taken as a primary consideration (Article 3 paragraph 1) provides interpretative guidance for states parties on implementation, including with regard to procedural safeguards to guarantee the implementation of the child's best interests (Section V.B of the General Comment). The concept of the best interests of the child is firmly embedded in European law,

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¹ http://www.refworld.org/docid/4e6da4922.html

² http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

including the Charter of Fundamental Rights, and, for example given more prominence in recast proposals³ under the Common European Asylum System. As stated in paragraphs 4 and 5 of GC No 14,

- 4. The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child. The Committee has already pointed out that "an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention." It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the "child's best interests" and no right could be compromised by a negative interpretation of the child's best interests.
- 5. The full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.

The concept can serve as a useful entry point, especially for non-experts, to consideration of the rights of the child in full, or as shorthand for experts to encompass all the rights in the Convention. It should not be used to mean a rather cursory or superficial assessment that may result in disregard for and violations of the rights of the child.

2. SOME OTHER CONSIDERATIONS FOR THIS CONFERENCE

An ethic of care should guide all interactions with children.

Discussions on child-friendly justice inevitably include discussions on the environment. To quote one former children's ombudsperson, "There's no point in having crocodile chairs and yellow walls if you have armed officers in uniform." We would suggest that discussions could usefully focus primarily on behaviour, attitude and actions by adults/practitioners/professionals towards children.

As discussed at the annual European forum on the rights of the child in 2012, 2013, 2015, 2016 and 2017, there is still a need to strengthen and integrate child protection systems. The <u>10 Principles for integrated child protection systems</u> (2015) are relevant to these discussions.

In short the 10 Principles state that:

- 1. every child is recognised, respected and protected as a rights holder, with non-negotiable rights to protection
- 2. no child is discriminated against
- 3. child protection systems include prevention measures
- 4. families are supported in their role as primary caregivers
- 5. society is aware and supportive of the child's right to freedom from all forms of violence
- 6. child protection systems ensure adequate care, including
 - standards, indicators and systems of monitoring and evaluation
 - child safeguarding policies and reporting mechanisms for organisations working with children
 - certification and training for all professionals working for and with children.

³ http://ec.europa.eu/justice/fundamental-rights/files/rights_child/ceas_provision_on_children_table_updated.pdf

- 7. child protection systems have transnational and cross-border mechanisms in place
- 8. no child should be without the support and protection of a legal guardian or other responsible adult or competent public body at any time
- 9. training on identification of risks is given to teachers, health sector professionals, and social workers
- 10. safe, well-publicised, confidential and accessible reporting mechanisms are in place.

This reference was included in the background paper for the 2017 Forum, but is worth repeating. Time passes differently for children. A car journey really does feel longer for a child than for an adult <u>as this interactive digital representation shows</u> (be patient and keep scrolling) and we should be particularly mindful of a child's perception of time during discussions on children's contact with the justice and child protection systems, including with regard to the urgency principle⁴.⁵

Participants and panellists are encouraged to make connections and bridges between the topics of the different sessions, thus reflecting the importance of a comprehensive and integrated, interagency and multidisciplinary approach.

No children are present at this conference, but we would specifically ask those who work directly with and for children to actively participate in discussions and ensure that children's perspectives are brought forward and central to all discussions.

3. STRUCTURE OF THE CONFERENCE

The first day plenary focuses on setting the scene, giving an overview of EU level work on judicial training, and sharing some good practice examples which may be a source of inspiration. Justice and child protection topics are mixed throughout, to reflect how interconnected they are in life. Speakers are expected to keep to allocated time slots, to allow time for discussion at the end of each session.

Most of the discussions on day two, 26 June, will take place in smaller groups, drilling down to experience with and learning from EU projects. Each group will have a facilitator, who will help to steer discussions and report back in the closing plenary. The four facilitators are:

- 1) Delphine Moralis, Secretary-General, Terre des Hommes
- 2) Levent Altan, Executive Director, Victim Support Europe,
- 3) Professor Helen Stalford, University of Liverpool
- 4) Don O'Leary, Director, Cork Life Centre For the parallel sessions on Day 2: Anyone who is not comfortable with speaking and/or listening in English is invited to stay in the session in the Plenary Room (0/D), where interpretation will continue. The other three sessions will take place in English.

⁴In line with the Council of Europe Guidelines on child-friendly justice:50. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3

⁵ http://www.maximiliankiener.com/digitalprojects/time/

Even if you have not participated in an EU-funded project, or you are from a country not participating in the REC Programme, we would encourage you to also participate actively in discussions. Everyone has something to contribute.

All four sessions will discuss the same topics.

In each session, taking account of the rights listed in the Policy brief for the study on Children's involvement in criminal, civil and administrative judicial proceedings in the 28 Member States of the EU⁶ the following topics will be discussed:

1) Focusing on outcomes for children: all projects should be designed and implemented expressly and explicitly to lead to child rights compliant better outcomes for children. That is why we are funding projects, namely to promote the protection of the rights of the child, which is an EU objective. Even if target groups for capacity-building activities are professionals/practitioners, we cannot lose sight of the need to ensure better outcomes for children. This has to be the number one driver. The scale of outcomes for children and the number of children to be reached by the project should be discussed. This is also linked to the point in system-building. If we think about co-funding amounts in real rather than abstract terms, most of these projects are equivalent to the price of a house. Please discuss.

2) Embedding child safeguarding and child participation:

- a. For several years we have asked grant applicants to embed **child participation**, **i.e. respect for the child's right to be heard under Article 24 Charter and Article 12 UNCRC** as of design stage, and to ensure children are involved in all actions and decisions that concern them. To date, only a very tiny proportion of project applications do this. If you are an organisation working with and for children, why is child participation not central to your work? **At a minimum**, involving **individual children** in actions and decisions that concern them is a requirement. What are the perceived barriers to ensuring that individual children's participation rights are embedded in your work and respected? What are the perceived barriers to ensuring the participation rights of children as a group? See Laura Lundy's presentation on child participation myths in 2017 Forum side event.⁷ Please discuss.
- **b. Child safeguarding** is about taking the necessary measures to prevent harm to children during your project and in your organisation's work. All organisations having direct contact with children should have a robust child safeguarding policy in place. As stated in the Keeping Children Safe Child Safeguarding Standards and how to implement them, They... "have a responsibility to ensure that their staff, operations and programmes do no harm to children, that is that they do not expose children to the risk of harm and abuse, and that any concerns the organisation has about children's safety within the communities in which they work, are reported to the appropriate authorities." The standards cover: policy, people, procedures and

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^{6 &}lt;u>https://publications.europa.eu/en/publication-detail/-/publication/c3cd307f-ff03-4010-b322-dcf7063403c5/language-en/format-PDF/source-70450196</u>

⁷ http://ec.europa.eu/newsroom/just/document.cfm?doc_id=52907

accountability.⁸ While we see marked improvements in how grant applicants respond to this requirement over the last four years, we would invite you to discuss challenges and implementation.

- 3) Project design and partnerships: How well can you respond to the call? Do you have the necessary expertise? If not, can you bring it in through partners? How do you balance the expertise required for the project with working with tried and tested partners? How do you ensure that you embed international and European standards and build on them? What partners are needed to ensure system-building and system changes? Have you used these two days to explore new partnerships? We ask for Member State authority involvement because of the system-building focus. As 24 months is the maximum project duration allowed under the programme, most applicants apply for two-year projects. Are such long timescales necessary in every case? How do you keep and gain momentum over so many months?
- 4) System-building and project legacy: EU funding is rather limited and does not cover operational costs. Projects need to focus on system changes, so that apart from children reached during the project life span, outcomes can be assured for children in the future. If you have used €400 000 on training, did you focus on train-the-trainer activities? What were your multipliers? Did you contribute any useful training tools/protocols/toolkits/standards that can be shared and re-used by others? How did you promote and disseminate tools and outputs with actors in the system, for the purpose of making them an integral part of the system approach? How do you involve actors in the system in the dissemination and promotion of tools/documents? How do you generate ownership among those who work with and for children? One, two or three years after project end, what remains? What has the follow up been? What has the impact been? What about those outcomes for children? Please discuss.

4. EU LEGISLATIVE AND POLICY FRAMEWORK⁹

4.1. Charter of Fundamental Rights of the European Union (Charter) (2000)

The Charter is directly applicable to EU institutions and agencies and to Member States when implementing EU law.

Article 24 The rights of the child

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

⁸https://www.keepingchildrensafe.org.uk/how-we-keep-children-safe/capacity-building/resources/child-safeguarding-standards-and-how-implement

⁹ Not all relevant laws are replicated here. See the compilation on EU acquis on rights of the child for other laws: Compilation of EU acquis on the rights of the child lists and links all legislation and proposals

- 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
- 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

4.2. Child victims

4.2.1. <u>Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA</u>

The Directive includes extensive provisions for children: See Recital 14 on best interests of the child and right to be heard, Recital 17 on children of victims of gender-based violence, Recital 19 on rights of child victims, Recital 38, Recital 42 on right to be heard, Recital 54 on privacy, Recital 57 on secondary or repeat victimisation, Recital 60 on child's guardian or representative, Recital 66 on rights of the child, Recital 69 on more far-reaching provisions on victims of trafficking or victims of child sexual abuse, sexual exploitation or child pornography taking precedence; Article 1 on child's best interests and a child-sensitive approach, Article 2 definition of a child, Article 10 on right to be heard, Article 21 on privacy, Article 22.4 on individual assessment of child's special protection needs, Article 23 on special measures (adapted premises, trained professionals, etc.), Article 24 on child victims, Article 26 on cooperation and coordination of services, and note Article 28 on provision of data and statistics.)

4.3. Children in conflict with the law 10

4.3.1. <u>Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings</u>

The directive applies to children (persons below the age of 18 years) who are suspects or accused in criminal proceedings or subject to a European arrest warrant proceeding. It does not apply to other types of proceedings, in particular proceedings which are specially designed for children and which may lead to corrective or educative measures (see recital 17). This is a horizontal legislative instrument foreseeing procedural safeguards for children who are suspects or accused in criminal proceedings. It applies until the final conviction. It contains notably provisions on (mandatory) assistance by a lawyer in specific circumstances (Article 6), a particular right to information for children (Article 4), a right to have the holder of parental responsibility informed (Article 5) and to be accompanied by the holder of parental responsibility (Article 15), a right to an individual assessment (Article 7), a right to a medical examination (Article 8), rules on audio-visual recording of questioning (Article 9), safeguards in case of deprivation of liberty and detention (Articles 10-12) such as limitation of deprivation of liberty, alternative measures and specific treatment in case of deprivation of liberty, including separate detention of children from adults, a right to protection of privacy (Article 14), a right to appear in person at, and to participate in trial (Article 16), a right to legal aid (Article 18), as well as provisions on training and costs (Articles 20 and 22). UK and IE opted out (see recital 69). DK does not take part either (see recital 70). For all other Member States, the directive is binding. It needs to be transposed by Member States by 11 June 2019.

¹⁰ DCI is drafting a manual for Member States about the right to access to a specialised lawyer for children based on the five EU directives in the framework of their "My lawyer, my rights" project (see http://www.mylawyermyrights.eu/)

4.3.2. <u>Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty</u>

The directive applies to all suspects and accused persons in criminal proceedings, including children. Article 5, which deals with the right to have a third person informed of deprivation of liberty, contains specific rules for children defined as persons below the age of 18 years (see Article 5(2) second sentence). The Directive foresees that the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed (see Article 5(2) first sentence). With the purpose to avoid that children could be held incommunicado Member States need to make sure that at least an authority responsible for the protection or welfare of children is informed in cases where a possible temporary derogation is applied¹¹ (see Article 5(4). Recitals 52 and 55 contain additional explanations. UK and IE opted out (see recital 58). DK does not take part either (see recital 59). For all other Member States the directive, which had to be transposed by 27 November 2016, is binding.

4.3.3. <u>Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings</u>

Directive 2012/13/EU applies to all suspects and accused persons in criminal proceedings, including children. It provides for the right to information about procedural rights (Article 3). According to Article 3(2) Member States shall ensure that the information provided for under para 1 shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons. Moreover, recital 26 foresees that "competent authorities should pay particular attention to persons who cannot understand the content or meaning of the information, for example because of their youth or their mental or physical condition." In case of arrest or detention (Article 4) and in European Arrest Warrant proceedings (Article 5), a written Letter of Rights shall be provided. The directive also ensures for suspects and accused persons (including children) the right to information about the accusation and the right of access to the materials of the case. This directive is binding for UK and IE, both opted in (see recital 44). Denmark does not take part in this directive (see recital 45). It had to be transposed by Member States on 2 June 2014.

<u>Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings</u>

Directive 2010/64/EU does not contain any specific separate provisions for children but generally applies to child suspects/accused during criminal proceedings and proceedings for execution of a European Arrest Warrant. Article states that 2 Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are

¹¹ Member States legislation may allow for derogations only where justified in the light of the particular circumstances of the case on the basis of one of the following compelling reasons:

⁽a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

⁽b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised.

provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings. Interpretation should also be available for communication with legal counsel. This directive is binding for UK and IE, both opted in (see recital 35). Denmark does not take part in this directive (see recital 36). It had to be transposed by Member States on 27 October 2013.

4.3.4. <u>Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest</u> warrant and the surrender procedures between Member States

Article 3.3 of the Framework Decision on the European arrest warrant includes, as grounds for mandatory non-execution of the European Arrest Warrant, cases where a child is below the minimum age of criminal responsibility (MACR). It means that if, according to the national law of the executing Member State, a child is below the minimum age of responsibility, the executing judicial authority must refuse the execution of such arrest warrant.

5. SOME USEFUL LINKS

- 5.1. EU-funded projects on child-friendly justice and integrated child protection systems
- 1. Compilation of EU-funded projects on rights of the child and violence against children
- 2. The Rights, Equality and Citizenship Programme

5.2. Rights of the child – general

- 3. Compilation of EU acquis on the rights of the child lists and links all legislation and proposals
- **4.** EU Agenda for the rights of the child (2011)
- **5.** FRA, 2015 Handbook on European law relating to the rights of the child http://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf

5.3. Child-friendly justice

- 6. Council of Europe Guidelines on child-friendly justice https://rm.coe.int/16804b2cf3
- 7. <u>Children's involvement in criminal, civil and administrative judicial proceedings in the 28 Member States of the EU policy brief (European Commission, 2015)</u>
- 8. Summary of contextual overviews on children's involvement in civil and administrative judicial proceedings in the 28 Member States of the European Union (European Commission, 2015) Sections 5.3 on safeguards applying to children in placement in care, family law, migration law, health law and education law
- 9. Study on children's involvement in criminal judicial proceedings (European Commission, 2014)
- 10. <u>Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union</u> (European Commission, 2016)

- 11. <u>Data on children in Judicial Proceedings</u> <u>criminal justice</u> and <u>civil & administrative justice</u> (European Commission, 2015)
- 12. FRA, 2015 perspectives of professionals on children's involvement in judicial proceedings http://fra.europa.eu/en/publication/2015/child-friendly-justice-perspectives-and-experiences-professionals-childrens
- 13. FRA, 2017 <u>Child-friendly justice Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States (FRA, 2017)</u>
- 14. FRA, 2017 checklist for professionals: child-friendly justice http://fra.europa.eu/sites/default/files/fra_uploads/child-friendly_justice_-checklist_for_professionals.pdf
- 15. Power Up/Power Down: recommendations from children on how to make their experience of justice systems in contact/custody proceedings more child-friendly: PowerUp/PowerDown www.cypcs.org.uk https://www.cypcs.org.uk/policy/domestic-abuse/power-uppower-down (videos are about 45 minutes in all, and they illustrate the challenges and solutions well)

5.4. Child-friendly judgments

16. The Honourable Mr Justice Jackson: Judgment written so that the (older) children concerned could understand: Lancashire County Council v M & Ors (Rev 1) [2016] EWFC 9 (04 February 2016)

URL: http://www.bailii.org/ew/cases/EWFC/HCJ/2016/9.html

Cite as: [2016] EWFC 9

- 17. The Honourable Mr Justice Jackson: 2017, judgement in form of a letter to a 14-year-old boy involved in a parental custody dispute : http://www.familylawweek.co.uk/site.aspx?i=ed178912 and URL to letter: http://www.bailii.org/ew/cases/EWFC/HCJ/2017/48.html
- 18. Deputy District Judge Reed: Judgment written so that a parent with a learning disability could understand: Jack (A Child: care and placement orders) [2018] EWFC B12 (27 March 2018) URL: http://www.bailii.org/ew/cases/EWFC/OJ/2018/B12.html Cite as: [2018] EWFC B12
- 19. Professor Ton Liefaard, blogpost on child-friendly judgments: http://leidenlawblog.nl/articles/child-friendly-judgments

5.5. Child protection systems / violence against children

- 20. Mapping of national child protection systems in the EU (FRA, 2015)
- 21. Violence against children with disabilities: legislation, policies and programmes (FRA, 2015)

- 22. 10 Principles for integrated child protection systems: https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/rights-child/child-protection-systems_en
- 23. Barnahus Project project outputs: outputs (published 2017): http://www.childrenatrisk.eu/promise/ European Barnahus Quality Standards: http://www.childrenatrisk.eu/promise/european-barnahus-quality-standards/ Tracking tool: http://www.childrenatrisk.eu/promise/trackingtool/ Enabling child-sensitive justice: the success of Barnahus model story the and its expansion Europe http://www.childrenatrisk.eu/promise/wp-content/uploads/PROMISE-Enabling-Child-Sensitive-Promise compendium of law and guidance - European and international http://www.childrenatrisk.eu/promise/publications/ Advocacy guidance: http://www.childrenatrisk.eu/promise/publications/
- 24. WHO 2013 European report on preventing child maltreatment

 http://www.euro.who.int/ data/assets/pdf file/0019/217018/European-Report-on-Preventing
 Child-Maltreatment.pdf geographical scope is wider than the EU, covering 53 countries:

 WHO European Region countries: http://www.euro.who.int/en/countries.
- 25. September 2014 report from UNICEF 'Hidden in plain sight: A statistical analysis of violence against children10' prevalence of different forms of violence against children data from 190 countries http://www.unicef.org/publications/index_74865.html.
- 26. 2014 FRA Gender-based violence against women

 http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report
- 27. Council of Europe one in five campaign https://www.coe.int/t/dg3/children/1in5/default_en.asp
- 28. Report of the 9th European Forum on the rights of the child (ref Bragi Gudbrandsson on disclosure rate, medical evidence and Ana Marija Spanic on forensically-sensitive therapy (urgency principle/time lag between disclosure and court proceedings) http://www.dei-belgique.be/IMG/pdf/9th forum report en-2.pdf
- 29. General Comment No 13 (2011) of the UN Committee on the rights of the child on the child's right to freedom from all forms of violence http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13 en.pdf
- 30. World Report on Violence against Children (Pinheiro, 2006): http://www.unviolencestudy.org/
- 31. ECtHR case law e.g. <u>Z v UK (2001)</u>
- 32. 2015 FRA Handbook on European law relating to the rights of the child http://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf see chapter 7 on violence

5.6. Asylum and migration

- 33. Commission Communication of 12 April 2017 on the Protection of children in migration
- 34. Extract of child-specific provisions in the current Common European Asylum System (CEAS) and in the proposals for its reform of 4 May and 13 July 2016

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