

**Input from
the Dutch section of the International Commission of Justice
(Nederlands Juristen Comité voor de Mensenrechten, NJCM)
for the Public Consultation:
EU Strategy on the Rights of the Child 2021-2024**



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Introduction

In this position paper, the Dutch section of the International Commission of Jurists (Nederlands Juristen Comité voor de Mensenrechten, NJCM), offers its vision on the EU Strategy on the Rights of the Child 2021-2024.

As part of human rights, children's rights are largely enshrined in the UN Convention on the Rights of the Child (UNCRC).¹ The UNCRC is part of the general principles of EU law. The principles of the UNCRC serve as guidance for European Commission policies.² The EU is planning to accede to the European Convention on Human Rights (ECHR),³ the provisions of which constitute general principles of EU law.⁴ The EU Charter of Fundamental Rights (EU Charter), also specifically referring to the European Convention on Human Rights (ECHR), covers the protection of children's rights by the institutions of the EU and its member states.⁵

The EU Strategy on the Rights of the Child for the period of 2021-2024 is aimed at a number of thematic areas. This paper examines the following topics: challenges posed by digitalisation, including online violence against children, gender-based violence, data collection, and migration and asylum policies.

Challenges posed by digitalisation - online violence against children

The children of today are raised in a digital era, and this has become even more true since the COVID-19 pandemic prompted many countries to provide education from home. Education from home requires suitable circumstances, such as a stable internet connection and computer equipment, and above all, a peaceful and safe environment. It is beyond doubt that digitalisation has its benefits. Children stay connected with the whole world and education continues while children find themselves in a lockdown. Nevertheless, it comes with challenges as well, such as online violence. This section will further examine these risks with a focus on online education.

Risk analysis

A side effect of digitalisation in general, and more specific online education, is the excessive amount of time children spend online, therefore increasing online risks. Europol signals a worldwide increase in online sexual abuse, partly due to self-generated content and use of social media.⁶ More screen

¹ UNGA, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577.

² European Commission. *EU action on the Rights of the Child*.

³ EU, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/C 306/01, Art. 6(2).

⁴ *Ibid*, Art. 6(3).

⁵ EU Charter of Fundamental Rights, *Official Journal of the European Union* C 303/17 - 14.12.2007.

⁶ Europol, *Exploiting Isolation: Sexual Predators Increasingly Targeting Children During Covid Pandemic*, 19 June 2020.

time is not only unhealthy, but can also entail a higher risk of coming across inappropriate content online, as well as cyberbullying.⁷ Moreover, recent research shows that children have suffered physical, cognitive and social-emotional damage as a result of distanced learning.⁸ Furthermore, as indicated above, children are in the vulnerable position to fall victim to online peer-to-peer cyberbullying. Most concerning, however, is the development of online sexual exploitation and abuse. Online platforms and social media make it easier to contact potential victims and share imaginary. This is even more problematic since the online world is globally accessible and facilitates reproduction of imaginary, sex tapes, et cetera. In this connection, UN experts observed that '[a]s community ties are weakened due to the crisis, we must all remain alert and report any suspected child abuse'.⁹ Travel restrictions and the increase in the numbers of online users are also likely to result in a significant spike in cybercrimes, such as sexual grooming online, live streaming of child sexual abuse and the production and distribution of child sexual abuse material' and, therefore, the UN calls for urgent action.¹⁰

On the national level, the Dutch Council for Child Protection has in particular expressed concerns about situations of violence in vulnerable families.¹¹ Research conducted with regard to violence, contact with professionals and the need for help, indicates that more stress is experienced by families due to the pandemic and ensuing crisis. However, this occurrence has not gone so far as to show an increase of the situations of violence. The professional support for families, among which psychiatric care, continues to take place, but oftentimes online.¹² Continuity of mental health care for children and young persons is of extraordinary importance to ensure the wellbeing and safety of already vulnerable children.¹³ Mental healthcare is not only challenged by the lack of social contacts during the pandemic, but also by increasing risks of violence in the home environment. Online education may unintendedly create absence of social and educational measures that are meant to 'protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.'¹⁴ It would be in the best interests of the child for institutions to cooperate and act in due course when children are lost out of sight.¹⁵

EU strategies – the legislative framework

The EU has adopted the EU Strategy for a more effective fight against child sexual abuse, as the fight against sexual child abuse enshrines one of the EU's main priorities.¹⁶ As the strategy concerns both online and offline child sexual abuse, it appears to be a valuable instrument for examining the effects of digitalisation on children and online violence. In this document, the EU calls for the full implementation of EU Directive 2011/93 establishing minimum rules concerning the definition of

⁷ A technical note from UNICEF and partners, *COVID-19 and its implications for protecting children online*, 15 April 2020.

⁸ Dokters voor Kinderen, *De gevolgen van de COVID-19 pandemie op de fysieke, cognitieve, emotionele en sociale ontwikkeling van kinderen*, website Nederlands Jeugdinstituut, 26 September 2020: dvhk.nl/wp-content/uploads/2020/09/Analyse-gevolgen-COVID-pandemie-op-kinderen-26092020-1.pdf.

⁹ The UN Special Representative of the Secretary General on Violence against Children, *UN rights experts call for urgent action to mitigate heightened risks of violence against children*, 7 April 2020.

¹⁰ *Ibid.*

¹¹ Raad voor de Kinderbescherming, *Eerste helft 2020: instroom onderzoeken bij Raad voor de Kinderbescherming stabiel*, 29 July 2020.

¹² Verwey-Jonker Instituut and Augeo, *Hulp en ondersteuning aan kwetsbare gezinnen*, 9 July 2020.

¹³ UNICEF Netherlands, *Coronacrisis en Kinderen en Jongeren in Nederland: Een inventarisatie van de impact van de coronacrisis op kinderen en jongeren in Nederland*, 28 May 2020.

¹⁴ UNGA, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 19.

¹⁵ *Ibid.*, Art. 3.

¹⁶ Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, *EU Strategy for a more effective fight against child sexual abuse*, COM (2020) 607.

criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children.¹⁷ The EU stresses that offences mentioned therein cover both online and offline situations. In 2019, the Commission was compelled to open 23 infringement procedures against member states for non-compliance.

Furthermore, in the context of online education from home, it should be observed that unstable home environments pose another risk, mainly with regard to domestic violence. In that context, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence¹⁸ stretches to educational material about equality, non-stereotyped gender roles and domestic violence,¹⁹ as well as protection and support in relation to children that have become the victim of (domestic) violence,²⁰ although signed by the EU in 2017 it still requires ratification by the European Council.

Hence, whereas a thorough legal framework to protect children appears to be in place, the NJCM suggests to increase cooperation among member states' authorities to coordinate their approach to combat online threats and domestic violence during a pandemic that may linger for another couple of years. In addition, the NJCM calls on the EU to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

EU strategies - cooperation with civil society

Apart from legislative measures, the EU applaudably, in the spirit of its strategy, started to collaborate with civil society by facilitating, encouraging and coordinating the cooperation between private and public actors. According to the EU, this is key to fight the indicated crimes effectively. In this vein, the EU started to provide funding for projects fighting sexual child abuse as well. The NJCM calls on the EU to continue, and even deepen, its fruitful collaboration with civil society.

Gender-based violence

Of great concern is furthermore the position of young and adolescent girls in today's society. Gender inequality and gender bias are unfortunately still common phenomena in the community and family that children grow up in.²¹ Small and adolescent girls more often fall victim to children's human rights violations than boys. Millions of girls worldwide are faced with sexual violence, domestic violence or exploitation. Half of all victims of sexual violence, for example, are girls aged 16 or younger.²²

During the current COVID-19 pandemic the position of girls worldwide has worsened. Recent data shows that since the start of the pandemic domestic violence against women and girls has intensified.²³ People's worries about security, health and their financial situation due to the ongoing pandemic cause tensions inside the home to rise, which is exacerbated by the need for the whole family to stay inside the home due to the lockdown measures. Whereas the tensions and risks of domestic abuse are increasing, the possibilities to identify children at risk are more limited. As teachers, childcare workers and community workers are no longer in regular contact with children due to measures taken by the national governments to contain the spread of the COVID-19 virus, child abuse can go unnoticed for a longer period of time.

¹⁷ Directive 2011/92 of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA [2011] OJ L 335.

¹⁸ Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, November 2014.

¹⁹ *Ibid.*, Art. 14.

²⁰ *Ibid.*, Art. 18.

²¹ UNICEF, *For every child, every Right: The Convention on the Rights of the Child at a crossroads*, New York 2019.

²² M. Greene, O. Robles, K. Stout & T. Suvilaakso, *A girl's right to learn without fear: Working to end gender-based violence at school*, Plan International, p. 17.

²³ UN, *COVID-19 and ending violence against women and girls*, New York 2020.

In addition to increased domestic violence, there are concerns that human trafficking, arranged marriages and sexual exploitation will increase if the global crisis caused by the COVID-19 virus continues for a longer period of time, due to lack of surveillance in these times.²⁴

On the basis of Article 19 UNCRC, state parties should take necessary measures to protect children against physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. It is therefore of utmost importance to ensure that children are protected against aforementioned threats, especially in these times of health crisis.

In the past decade the EU adopted a considerable body of legislation and other types of measures on violence against children and on gender-based violence against women and children, such as the Directive on sexual abuse and sexual exploitation of children,²⁵ the 2011 Directive on trafficking in human beings,²⁶ the Directive on victim rights,²⁷ establishing minimum standards on the rights, support and protection of victims of crime. In this context, the EU has also set up instruments for the mutual recognition of protection measures, which ensure protection of victims crossing borders as measures such as restraining or barring orders issued in one EU country are now also recognised in another member state with a minimum of bureaucracy.²⁸ Additionally, the EU has stated that it aims to raise awareness on gender-based violence by co-funding campaigns in the member states.²⁹ The NJCM welcomes these endeavours of the EU to put together a strong protection mechanism for youthful victims of all different types of gender based violence.

Since the current COVID-19 pandemic poses more risks for children and women to fall victim to gender-based violence, the NJCM urges the Commission to further support the prevention and response services to protect children from this type of violence, especially in these exceptional times. Because of the greater vulnerability of young girls, it is important that appropriate measures are taken to provide suitable protection for girls against e.g. sexual abuse. Furthermore, the NJCM underlines the importance, particularly in these times, of the swift ratification by the Council of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).

Supporting member states in improving the collection of data

As stated in UNICEF's *Research on violence against children during the COVID-19 pandemic* the collection of data can play a crucial role in uncovering and understanding increased risks during the COVID-19 pandemic in relation to violence against children.³⁰ In this respect the NJCM would like to highlight the vulnerability of refugee children and join UN Secretary-General Antonio Guterres' statement that those (including refugee children) in internal displacement are among the 'ultra-vulnerable' people, especially in this time of COVID-19.³¹ According to UNICEF's data, misinformation on the spread of COVID-19 has intensified the xenophobia, racism and discrimination, which migrant

²⁴ UN, *COVID-19 and ending violence against women and girls*, New York 2020.

²⁵ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1-14.

²⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

²⁷ 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.

²⁸ As laid down in Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order OJ L 338, 21 December 2011, p. 2-18.

²⁹ European Commission 2020, *Ending Gender-Based Violence*: ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/ending-gender-based-violence_en [accessed 5 December 2020].

³⁰ UNICEF, A. Peterman, A. Guedes, G. Berman & R. Subrahmanian, *Research on Violence Against Children During COVID-19: Guidance to Inform Ethical Data Collection*, 13 October 2020.

³¹ UNICEF, 'A global approach is the only way to fight COVID-19, the UN says as it launches humanitarian response plan', COVID-19 Global Humanitarian Response Plan, 30 March 2020.

and displaced children are facing. Beside the aforementioned issues, these children are also facing health, socio-economic and protection crisis where violence (such as abuse and exploitation) against them plays an important role.³² The NJCM acknowledges that collecting data and evidence on violence against children could further help in shedding light on ethical, safety and methodological challenges during COVID-19. It will also help in drawing attention to the experiences of children in situation of violence, and eventually in advocating a range of protection measures for preventing this violence against children. By collecting data at European level member states would have the opportunity to take effective measures to respond to violence against (refugee) children within Europe.

Preserving the right to privacy is a very important matter when it comes to collecting data from and about children. The European Union has sought to ensure this right through legislation within primary and secondary EU Law, such as Article 38 of the General Data Protection Regulation. The NJCM supports the idea that when collecting data with respect to children in vulnerable situations such as violence, the collecting needs to be done in accordance with European data protection legislation and standards. It is important to give attention to the manner that this data is going to be collected by different child protection systems and/or institutions; is this going to be with or without the consent of the child or the child's legal guardian? The NJCM understands that gaining the consent of the child and or his legal guards depends on the situation. For example in cases of return procedures of refugee children, different systems are used to collect data of the refugee child with or without consent, such as: Eurodac, the Schengen Information System, the European Travel Information and Authorisation System and the European Criminal Records Information Systems. In this respect, the Guidance to respect children's rights in return policies and practices³³ mentions that it is important that personal data collection of children should be in accordance with the best interests of the child, as mentioned in Article 3 UNCRC, which view is supported by the NJCM.

Migration, Asylum and Best Interest of the Child

With a few minor exceptions, almost all Dutch asylum and migration law has a basis in EU law.³⁴ For asylum law, there is first of all the European asylum acquis, which forms the basis for the various components of Dutch asylum law. The regulations for family reunification are governed by the frameworks of Article 20 of the Treaty on the Functioning of the European Union (TFEU) – the right to stay with a Dutch child in the Netherlands –, the Citizens' Rights Directive (Directive 2004/38/EC) – right to reside for EU citizens who make use of their free movement rights – and the Family Reunification Directive (Directive 2003/86/EC). Although this last directive is originally only meant for third country nationals who want to bring over their family members, it has been implemented into Dutch law in such a way that it also applies to Dutch nationals who want to bring over their foreign family members.³⁵ Finally, the regulations on return, entry bans and detention are largely based on the Return Directive (Directive 2008/115/EC).

Almost all the various EU directives and regulations that form the basis of Dutch asylum and migration law include provisions that oblige the best interests of the child to be a primary consideration, or that even indicate more concretely how to deal with the specific position of children. However, this has hardly had any effect in the implementation of these EU laws in Dutch law. The specific position of children in EU law has not resulted in an elaborate framework at national level where the best interests of children are actually a primary consideration. Dutch case law is only

³² UN Policy Brief: *COVID-19 and People on the Move*, June 2020.

³³ UNICEF, OHCHR, IOM, PICUM and ECRE, *Guidance to respect children's rights in return policies and practices: focus on the EU legal framework*, (2019), p. 28.

³⁴ C.A. Groenendijk & M.L. van Riel, 'Migratierecht is bijna helemaal Unierecht', *Asiel & Migrantenrecht (A&MR)* 2017-09, p. 405-414.

³⁵ See: CJEU 12 December 2019, G.S. & V.G., C-381/18 and C-382/18, ECLI:EU:C:2019:1072, par. 44-48.

slowly undergoing a development towards greater recognition of children's rights. It is therefore important that the EU indicates more specific and less arbitrary to the member states how the interests of the child should be interpreted in the various areas of immigration law. The NJCM strongly recommends to harmonise the reference to the best interest of the child in the European Union instruments, *i.e.* Directives, Guidelines etc., and to refer in the aforementioned instruments to General Comment No 14 of the UN Committee on the Rights of the Child. This General Comment offers a clear frame work on how to assess and determine the best interests of the child. Reference to General Comment No 14 contributes to the specification of the best interests of the child. In 2016 Commissioner Avramopoulos, then member of the European Commission, answered questions from the European Parliament on the Family Reunification Directive and indicated that there is no framework under EU law for assessing the 'best interests of the child'.³⁶ He acknowledged the relevance of General Comment No 14 and agreed that the European Committee will maintain if countries give too little weight to the 'best interests of the child'. This was an encouraging sign from the Committee, but it has had no concrete consequences so far. The NJCM strongly recommends that a specific assessment framework for the various EU instruments in asylum and migration law should be drawn up now, based on the guidelines from General Comment No 14. Since a number of important instruments of EU migration law are currently under negotiation, this seems to be the ideal time to take important steps in this regard.

Asylum procedures

Children who want to apply for asylum must be prevented from having to wait long and in poor circumstances for their application to be processed. The circumstances such as in the Moria camp are horrendous and must be an urgent reason for the EU to improve the rights of minor asylum seekers, as well as the possibilities for this group to enforce their rights, independent of the member state in which they submit their asylum application. The NJCM would like to emphasize that Article 22 UNCRC prescribes special protection not only for children with refugee status, but also for children who wish to obtain this status. EU law must comply with this standard.

Child specific grounds for persecution

The NJCM urges the European Commission to clarify that asylum claims of children require a child specific interpretation of the provisions within the 1951 Convention and Article 3 ECHR. Furthermore, assessing an asylum claim of a minor requires child specific country of origin information.

Unaccompanied minors

The NJCM recommends the European Commission to set out a clear standard for unaccompanied minors. A durable solution for unaccompanied minors requires a framework which prevents the irregular stay of a minor after the rejection of an asylum claim. It also requires a clear framework on the responsibilities of the authorities of the member state to organise the return of an unaccompanied minor to the country of origin, bearing in mind the best interests of the child and what can reasonably be expected of the unaccompanied minor. For example, in the Netherlands, an unaccompanied minor, whose asylum claim has been rejected, is, in fact, only qualified for a residence permit after three years of irregular stay in the Netherlands, and under the condition that it has not been the fault of the unaccompanied minor that return to the country of origin has not been organised within the aforementioned period. In other words, the standard to qualify for a residence permit is too high in the Netherlands, and in the view of the NJCM does not offer a durable solution.

³⁶ See: E-000345/2016 Answer given by Mr Avramopoulos on behalf of the Commission (16.6.2016).

Family reunification

Article 10 UNCRC is one of the very few provisions in human rights treaties that specifically relates to family reunification. This article illustrates the importance of good family reunification procedures for children. It obliges states to handle family reunification requests involving children in a humane manner and expeditiously, and expects states to adopt a positive basic attitude. In the past ten years, a lot of attention has been paid to the 'best interests of the child' in family migration in Europe, but there still seems to be no systematic handling of this interest in relation to the conditions that may be imposed on family reunification. A number of concrete themes are discussed below.

In the context of the Family Reunification Directive, it is recognized on the one hand that states may impose a number of conditions on family reunification, but Article 5 (5) also provides that member states have due regard to the best interests of minor children when examining applications for family reunification. This obligation deserves further elaboration. In Dutch practice, for example, you either meet the conditions for family reunification or you end up in a test against Article 8 ECHR. In practice, there does not seem to be an effective possibility to include the 'best interests of the child' in assessing whether someone meets the conditions for family reunification. In the assessment against Article 8 ECHR, the various interests are taken into consideration, but Article 8 ECHR leaves member states much more freedom to regulate migration than the Family Reunification Directive seems to do. Therefore, the NJCM recommends that there should be more clarity on how the 'best interests of the child' should be taken into account when assessing individual cases where the conditions for family reunification are not fully met.

Another important problem with regard to the best interests of the child in the Dutch implementation of the Family Reunification Directive, is the difference in treatment in proving the family ties between mothers and their children and fathers and their children. In the latter case, it is not sufficient for the Dutch authorities that there is a biological and/or legal relationship between parent and child, and it is required that proof is submitted of the actual exercise of the family relationship between the father and his child.³⁷ The question is, whether this difference in treatment between mothers and fathers has a basis in the Family Reunification Directive, and how this relates to the rights of the child.³⁸ For example, Article 7 UNCRC gives children the right to know their parents, as well as to be cared for by them. Even if children have no connection at all with their parents outside the biological relationship, this right exists. The Dutch interpretation of the Family Reunification Directive is at odds with this line of reasoning.

With regard to the right of residence, based of Article 20 TFEU, for third-country national parent(s) of minor EU citizens residing in their own country, the *Chavez-Vilchez-judgment*³⁹ has brought a positive change to the Dutch situation. Since this judgment, it has also been recognized in the Netherlands that at least the primary caring parent of a Dutch child has the right to stay with his/her child. Where, prior to the Chavez ruling this was not the policy in the Netherlands, in case the caring parent was a third-country national. Certainly in the first year after the Chavez-judgment, a generous explanation was given to the judgment. When the facts of the case showed that both parents were involved in the care and upbringing of the Dutch child, the third-country national parent of the child was also granted a right of residence, even if his/her role was possibly more limited than the role of the Dutch parent. Since mid-2018, however, the Netherlands has gradually been pushing back the boundaries of policy; there is a very strict division of the burden of proof and if the Dutch parent is involved in the care and upbringing of the child, it is quickly concluded that the child is not dependant on his/her third-country national parent. It seemed forgotten by Dutch authorities that the right to regular contact with both parents in Article 24 (3) EU Charter in fact gives substance to the term 'best

³⁷ See for example the following judgment: Council of State 18 July 2018, ECLI:NL:RVS:2018:2366.

³⁸ For criticism of this Dutch practice, see: the case note of A.J.M. Cleuters in *Jurisprudentie Vreemdelingenrecht*, 2020/1, the case note of M.A.K. Klaassen in *Jurisprudentie Vreemdelingenrecht*, 2018/185 and J. Werner, 'Your children are (not) your children', *Tijdschrift voor Jeugdrecht*, 2020-03, p. 71-80.

³⁹ CJEU 10 May 2017, C-133/15, *Chavez-Vilchez and others*, ECLI:EU:C:2017:354.

interests of the child' from Article 24 (2) EU Charter. This can be deduced from case law of the Court of Justice on other subjects than Article 20 TFEU.⁴⁰ What is lacking, however, is clear guidance on this case law within the scope of Article 20 TFEU. The *Chavez-judgment* also obliges authorities to take into account the consequences of decisions on the development of the child, in accordance with Article 6 (2) CRC, but there are no concrete guidelines on how to do this. In practice, this means that hardly any account is taken of the development of children in Article 20 TFEU-cases in the Netherlands. In view of this, the NJCM recommends the European Commission to come up with concrete guidelines on both aforementioned subjects regarding Article 20 TFEU.

Detention of minors and families

Article 37 UNCRC prescribes that the detention of children is only acceptable as a measure of last resort, and for the shortest appropriate period of times. Therefore, the NJCM welcomes the efforts of the European Commission to compel the detention of minors. In the view of the NJCM, detention is never in the best interest of the child as a measure of immigration control.. This also applies for children detained with their families. The NJCM urges to ban the detention of minors and families in the context of migration and asylum seeking without any exceptions.

The NJCM concludes that there are still major challenges in the various sub-areas of asylum and migration law. While the best interests of the child are often cited as an important principle, in practice the interests of children are often under great pressure. More concrete tools for member states on how to deal with the best interests of the child, based on General Comment No 14 of the UN Children's Rights Committee, are needed in order to change this situation.

⁴⁰ CJEU 23 December 2009, C-403/09, *Deticek*.