

# SAFEGUARDING INTERESTS AND HUMAN RIGHTS OF UNACCOMPANIED MINORS SEEKING ASYLUM IN POLAND THROUGH CIVIL PROCEEDINGS

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## **ABSTRACT**

*This paper addresses the role of civil proceedings in safeguarding interests and human rights of unaccompanied minors seeking asylum in Poland. The first part of the paper describes which human rights, including procedural rights, need to be taken into consideration during aforementioned civil proceedings in order to secure the protection of the children in question, considering their special status, both as children and asylum seekers. In the second part of the research the provisions regulating procedures for appointing a guardian (called a curator) and for placing a minor in foster care as well as their application have been discussed. This provides an answer to questions whether it is possible to respect these rights within the current legal framework and if they are respected at present. To answer these questions selected provisions of the UN Convention of the Rights of the Child, the European Convention on the Exercise of Children's Rights, the Charter of Fundamental Rights of the European Union, two directives of the European Parliament and of the Council (the directive 2013/33/EU of 26 June 2013, which is still in force, and the directive 2024/1346 of 14 May 2024, which needs to be transposed by 12 June 2026 and will replace the directive 2013/33/EU) laying down standards for the reception of applicants for international protection and the Polish Code of Civil Procedure have been analyzed using legal-dogmatic and hermeneutical methods. The research shows that the best interests and rights of unaccompanied children seeking asylum in Poland can be effectively safeguarded in civil proceedings involving them and that Polish guardianship courts have sufficient legal means to provide protection to an unaccompanied minor by ruling in matters of custody or guardianship. On the other hand, in the area of praxis there is significant room for improvement.*

**Keywords:** *asylum, child rights, foster care, guardianship, legal representation, unaccompanied minors*

## **1. INTRODUCTION**

The migration crisis is a source of security challenges for the EU. Therefore, one of the strategic objectives of its migration policy has been to establish common

standards of migration security in the area of asylum and return policy. These standards primarily focus on the security of receiving countries and their societies (national security), while also addressing, though to a lesser extent, the security of migrants seeking international protection (individual security).<sup>1</sup> Among the latter ones unaccompanied children represent the most vulnerable subgroup.<sup>2</sup> According to Article 1 of the UN Convention on the Rights of the Child<sup>3</sup>, a “child” is defined as every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.<sup>4</sup> Whereas the “unaccompanied children” (also referred to as unaccompanied minors) are children, as defined in article 1 of the CRC, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.<sup>5</sup> In contrast, EU law provides a definition of “unaccompanied minor” in Article 2 (e) of the Directive 2013/33/EU<sup>6</sup> and Article 2 (5) of the Directive 2024/1346<sup>7</sup>. According to the former, an “unaccompanied minor”

<sup>1</sup> On the international level this issue is addressed by the Convention relating to the Status of Refugees, opened for signature on 28 July 1951, 189 UNTS 137 (entered into force on 22 April 1954).

<sup>2</sup> See e.g. Thorburn Stern, R., *Unaccompanied and separated asylum-seeking minors: implementing a rights-based approach in the asylum process*, in: Mahmoudi, S., *et al* (eds.), *Child-Friendly Justice: A Quarter of a Century of the UN Convention on the Rights of the Child*, Brill Academic Publishers, Leiden 2015, p. 242 *et seq.*

<sup>3</sup> Adopted by the UN General Assembly on November 20, 1989, 1577 U.N.T.S. 3 (1989), hereinafter: CRC.

<sup>4</sup> According to Polish law, a “child” is defined as a person from birth until reaching the age of majority, which occurs either upon turning 18 or, in the case of a woman, by entering into marriage for important reasons with court consent after turning 16 (Article 10 of the Act of 23 April 1964 - Civil Code, consolidated text: Journal of Laws 2024, item 1061, as amended).

<sup>5</sup> See the Committee on the Rights of the Child, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, U.N. Doc. CRC/GC/2005/6, 1 September 2005, para. 7, [<https://www.refworld.org/legal/general/crc/2005/en/38046>], Accessed 10 March 2025, hereinafter: General comment No. 6 (2005). This definition is analogous to the definition of an unaccompanied minor provided in Article 2 Point 9a of the Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland (consolidated text: Journal of Laws 2025, item 223, hereinafter: Act of 13 June 2003). Pursuant to this regulation, an unaccompanied minor is a minor foreigner who arrives on the territory of the Republic of Poland or stays on that territory without the care of adults responsible for him in accordance with the law in force in the Republic of Poland. Unaccompanied children should be distinguished from so-called “separated children”, i.e. children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives – see General comment No. 6 (2005), para. 8; Thorburn Stern, *op. cit.*, note 2, p. 243.

<sup>6</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/96, hereinafter: Directive 2013/33/EU.

<sup>7</sup> Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection [2024] OJ L 2024/1346, hereinafter: Directive 2024/1346.

is a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States. Similarly, the latter directive defines an “unaccompanied minor” as a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by the law or practice of the Member State concerned, and for as long as that minor is not effectively taken into the care of such an adult, including a minor who is left unaccompanied after he or she has entered the territory of the Member States. The slight differences between the definitions provided in the CRC and EU law do not affect the interpretation or application of these regulations in similar cases. Statistics indicate that the number of these children (71% of whom are minors under the age of 13) seeking asylum<sup>8</sup> through administrative procedure in Poland has increased in recent years.<sup>9</sup>

It is commonly accepted that children seeking asylum should not be treated as “adults in miniature”.<sup>10</sup> Therefore, they should receive special protection compared to adults seeking asylum.<sup>11</sup> This applies to unaccompanied minors as well. Moreover, their more vulnerable status<sup>12</sup>, in comparison to other children seeking asylum, demands even more nuanced and specialized forms of care and treatment. This is due to the fact that an unaccompanied minor faces triple jeopardy: as child, as refugee and as someone with no protector.<sup>13</sup> Consequently, the receiving state must ensure ongoing care and proper representation for such minors. Both these

<sup>8</sup> This term is used in the paper in the broad sense, i.e. encompassing all individuals seeking international protection under EU law (see Article 2 (a) of the Directive 2013/33/EU and Article 2 (a) of the Directive 2024/1346). See also General comment No. 6 (2005), para. 12.

<sup>9</sup> Łachacz, O.; Markiewicz-Stanny, J.; Tymińska, A., *Maloletni cudzoziemcy poszukujący ochrony międzynarodowej w Polsce oraz ich prawa w standardach międzynarodowych, prawie krajowym i praktyce polskich władz (2018-2023)*, Wolters Kluwer, Warszawa, 2024, pp. 42, 48, 117. This tendency is also observed in other EU Member States (see Szuniewicz-Stępień, M., *Zasady postępowania z dziećmi pozbawionymi opieki w procedurach azylowych – kilka uwag na tle zalecanego standardu międzynarodowego*, Themis Polska Nova, No. 2, 2016, p. 187), as well as in other countries (see Seugling, C.J., *Toward a Comprehensive Response to Transnational Migration of Unaccompanied Minors in the United States*, Vanderbilt Journal of Transnational Law, Vol. 37, No. 3, 2004, pp. 861, 863-864). According to data provided by the Office for Foreigners, unaccompanied children constituted 11.68% of all children seeking asylum in Poland between 2018 and 2023 – Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, p. 41.

<sup>10</sup> Bhabha, J.; Young, W., *Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines*, International Journal of Refugee Law, Vol. 11, Issue 1, 1999, p. 84.

<sup>11</sup> See e.g. Mikołajczyk, B., *Prawa dziecka w sytuacji ubiegania się o status uchodźcy*, Państwo i Prawo, No. 7, 2004, p. 89.

<sup>12</sup> They are prone to prostitution, child trafficking and other forms of abuse – see e.g. *Ibid.*, p. 95.

<sup>13</sup> Seugling, *op. cit.*, note 7, p. 888.

needs are met through civil proceedings: one to appoint a guardian and another to place the minor in foster care. Although these proceedings play a complementary role to asylum procedure, they are crucial in safeguarding the rights and interests of these minors.

This study aims to assess whether the Polish legal framework governing these proceedings, as well as its practical application, meets the child protection standards<sup>14</sup> established by international and EU law.<sup>15</sup> The time-frame of this analysis aligns with the transposition date of the Directive 2024/1346 of 14 May 2024 which needs to be transposed by 12 June 2026 and will replace the Directive 2013/33/EU (Articles 35 and 36 of the Directive 2024/1346). The result of this research may lead to proposals for aligning Polish regulations and judicial practices with the updated standards, ensuring the security and protection of these minors. This comes timely, as any necessary changes in this area should be implemented before the transposition deadline of Directive 2024/1346.

The research does not include minors receiving temporary protection in connection with the Russo-Ukrainian war due to the special status of Polish regulations governing this matter.<sup>16</sup> It also does not address administrative asylum proceedings or the fulfillment of international and European standards within them.<sup>17</sup>

## **2. DETERMINING HUMAN RIGHTS AND PROCEDURAL STANDARDS IN CIVIL PROCEEDINGS INVOLVING UNACCOMPANIED MINORS SEEKING ASYLUM**

### **2.1. Opening remarks**

In order to determine which human rights, including procedural rights, need to be taken into consideration during civil proceedings concerning unaccompanied

<sup>14</sup> This standard should be understood as an “abstract model and point of reference for detailed legal regulation of various spheres of social life”. It serves as both a model to strive for and a tool for verifying the correctness of the adopted solutions – Białocerkiewicz, J., *Organizacje europejskie i ich standardy prawne*, WSHE, Włocławek, 2003, s. 24-26.

<sup>15</sup> Under the principles of public international law, it is indisputable that national legislation cannot limit the scope of a state's international obligations. On the contrary, the provisions of international law take precedence over those of domestic law. Furthermore, the state has an obligation to align its internal law with its international legal commitments – see more Brownlie, I., *Principles of public international law*, Oxford University Press, New York, 2008, pp. 34-35.

<sup>16</sup> See e.g. Tymińska, A., *Dzieci z pieczy zastępczej oraz małoletni bez opieki z Ukrainy: ocena ex-post regulacji i praktyki stosowania specustawy ukraińskiej*, Warszawa 2022, [[https://hfhr.pl/upload/2022/11/hfpc\\_raport\\_dzieci\\_z\\_pieczy\\_zastepczej\\_oraz\\_maloletni\\_bez\\_opieki\\_z\\_ukrainy.pdf](https://hfhr.pl/upload/2022/11/hfpc_raport_dzieci_z_pieczy_zastepczej_oraz_maloletni_bez_opieki_z_ukrainy.pdf)], Accessed 10 March 2025.

<sup>17</sup> See Chlebny, J., *Postępowanie w sprawie o nadanie statusu uchodźcy*, C. H. Beck, Warszawa, 2011, pp. 333-350.

minors seeking asylum provisions of the CRC<sup>18</sup>, the European Convention on the Exercise of Children's Rights<sup>19</sup>, the Charter of Fundamental Rights of the European Union<sup>20</sup>, the Directive 2013/33/EU and the Directive 2024/1346 need to be discussed. The necessity to consider both international and EU law stems from the participation of Member States, including Poland, in the international framework for the protection of unaccompanied minors seeking asylum. Given the distinct nature of these legal systems, they will be examined separately. Finally, common standards derived from both systems will be presented.

## 2.2. International law

Among these acts the CRC plays a crucial role due to its general and fundamental status. It also sets a basic assessment pattern of national regulations. The CRC consists of two types of provisions relevant to the topic at hand. The first are general provisions, as the norms established within them apply to all children. The second are supplementary provisions, which support the general rights of children and the obligations of the state, specifically applying to children seeking refugee status.<sup>21</sup>

Regarding general rules, the principle of non-discrimination (Article 2)<sup>22</sup>, the principle of best interests of the child in all actions concerning children (Article 3)<sup>23</sup> and the principle of participation (Article 12) are particularly significant in the discussed matter.<sup>24</sup> Adherence to these general principles forms the founda-

<sup>18</sup> The CRC entered into force on September 2, 1990. Poland ratified the CRC on July 7, 1991 (Journal of Laws 1991 No.120, item 526, as amended).

<sup>19</sup> ETS No. 160, 25 January 1996, hereinafter: ECECR.

<sup>20</sup> Charter of Fundamental Rights of the European Union, OJ C 326/391, (hereinafter: CFR).

<sup>21</sup> Hence, the CRC's emphasised axiom is the idea that refugee children are, first and foremost, children, and secondly, refugees – see e.g. Szuniewicz-Stepień, *op. cit.*, note 7, p. 191.

<sup>22</sup> In order to comply with this principle, both passive and active approaches are required – see more Rehman, J., *International Human Rights Law*, Pearson, Harlow, 2010, pp. 561-564.

<sup>23</sup> The Committee on the Rights of the Child underlined that the child's best interests is a threefold concept: a substantive right, a fundamental interpretative legal principle and a rule of procedure – see the Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), U.N.Doc. CRC/C/GC/14, 29 May 2013, para. 6, [<https://www.refworld.org/legal/general/crc/2013/en/95780>], Accessed 10 March 2025, hereinafter: General comment No. 14 (2013). Therefore, the best interests of the child is not a universal, rigid concept with some abstractly defined content (see Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, p. 16), but rather a dynamic concept that encompasses various issues which are continuously evolving – General comment No. 14 (2013), para. 11. It is accepted that the provisions of Article 3 of the CPC cannot be the subject of any reservations – see Goodwin-Gill, G.S., McAdam, J., *The Refugee in International Law*, Oxford University Press, New York, 2007, p. 323.

<sup>24</sup> The fourth general principle of survival and development (Article 6) will not be discussed, as its importance to the subject matter of this paper is minimal.

tion for respecting all other provisions of the CRC.<sup>25</sup> The latter principle consists of essential procedural rights - the right of a child to be involved and heard in decision-making processes.<sup>26</sup> Pursuant to Article 12(1) of the CRC, States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. Article 12(2) further emphasizes the importance of a child's opportunity to be heard in judicial and administrative proceedings, either directly, through a representative, or through an appropriate body, in a manner consistent with national legal procedures. The Article 12 of the CRC not only affirms the right to be heard but also underscores the obligation for the court to take the child's opinion into consideration.<sup>27</sup> These rights are not dependent on the child reaching any specific age. They remain valid regardless of whether the child is fully matured, has a certain level of understanding, or can communicate their views.<sup>28</sup> Furthermore, according to the Article 20 of the CRC, a child temporarily or permanently deprived of their family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. States Parties shall, in accordance with their national laws, ensure alternative care for such a child. Such care could include, *inter alia*, foster placement or, when necessary, placement in suitable institutions for children.

Regarding special rules related to children seeking asylum, the provisions of the Article 22 need to be discussed. According to this Article, States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by their parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of their family environment for any reason, as set forth in the CRC. This provision is the first, universal, legally binding regulation *expressis verbis* recognizing the specific needs of unaccompanied minors as a special sub-group of refugee-children, and therefore plays a critical role in safeguarding

<sup>25</sup> Rehman, *op. cit.*, note 23, p. 559.

<sup>26</sup> *Ibid.*, p. 569.

<sup>27</sup> The Committee on the Rights of the Child, General comment No. 12 (2009) The right of the child to be heard, U.N.Doc. CRC/C/GC/12, 20 July 2009, paras 15, 28 *et seq.*, [<https://www.refworld.org/legal/general/crc/2009/en/70207>], Accessed 10 March 2025, (hereinafter: General comment No. 12 (2009)).

<sup>28</sup> Rehman, *op. cit.*, note 23, p. 569.

their protection.<sup>29</sup> The rights and obligations derived from this article are complementary<sup>30</sup> to the general rights and obligations resulting from the CRC.

The CRC entered into force in Poland on July 7, 1991.<sup>31</sup> All the above mentioned rights are indivisible and interdependent.<sup>32</sup> The absolute nature of the obligations deriving from the CRC and their *lex specialis* character<sup>33</sup> require Poland to adjust its domestic legislation to the standards set forth therein and to apply the provisions of the CRC directly when national law does not reflect them.

At the European level the provisions of the CRC have been supplemented by the provisions of the ECECR. Pursuant to its provisions, children are to be informed and allowed to participate in proceedings affecting them, either directly or through other persons or bodies, before a judicial authority (Article 1). The ECECR requires the courts to observe the principle of the best interests of the child, to provide the child with all relevant information, to allow the child to express their views and to give due weight to those views (Article 6). Article 3 of the ECECR states that “a child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting them, shall be granted, and shall be entitled to request, the following rights: a) to receive all relevant information; b) to be consulted and express his or her views; c) to be informed of the possible consequences of compliance with these views and the possible consequences of any decision”. Children’s views may be determined and presented to the court in various ways and by a number of different persons, either directly by the child or by a representative<sup>34</sup>. It is for internal law to decide whether a child should be formally represented or formally participate, and whether they are a party to the proceedings.<sup>35</sup> States can grant children additional procedural rights, for example, to apply themselves, or through other persons or bodies, for the appointment of a separate representative, in appropriate cases a lawyer (Article 5). The term “representative” in this regulation refers to a person, such as a lawyer, or a body appointed to act before a judicial authority on behalf of a child (Article 2)<sup>36</sup>. In proceedings before

<sup>29</sup> Nykänen, E., *Protecting children? The European Convention on Human Rights and Child Asylum Seekers*, European Journal of Migration and Law, Vol. 3, Issue 3-4, 2001, p. 323.

<sup>30</sup> General comment No. 6 (2005), para. 65.

<sup>31</sup> Journal of Laws 1991 No. 120, item 526.

<sup>32</sup> General comment No. 6 (2005), para. 6.

<sup>33</sup> *Ibid.*, para. 16.

<sup>34</sup> See Articles 2 and 10 of the ECECR; the Council of Europe Explanatory Report to the European Convention on the Exercise of Children’s Rights, ETS No. 160, Strasbourg, 25.I.1996, p. 5-6, <https://rm.coe.int/16800cb>, Accessed 10 March 2025, hereinafter: Explanatory Report.

<sup>35</sup> *Ibid.*, p. 3, para. 14.

<sup>36</sup> Such as a child welfare authority or the holders of parental responsibilities if they have been specifically appointed to act on his or her behalf before the judicial authority - *Ibid.*, p. 5, paras 25, 26.

a judicial authority affecting a child, the representative shall, unless this would be manifestly contrary to the best interests of the child: a) provide all relevant information to the child, if the child is considered by internal law as having sufficient understanding; b) provide explanations to the child if the child is considered by internal law as having sufficient understanding, concerning the possible consequences of compliance with their views and the possible consequences of any action by the representative; c) determine the views of the child and present these views to the judicial authority (Article 10).

In the European law, the general right to protection and care necessary for the well-being of a child has been outlined in Article 24(1) of the CFR. Additionally, the principles of non-discrimination (Article 12 of the CFR), the best interests of the child (Article 24(2) of the CFR), and the right of the child to express their views freely, similar to the provisions of the CRC, are also emphasized. The latter matter is particularly highlighted in Article 24(1) of the CFR. Pursuant to this regulation, children may not only express their views freely, but such views must be taken into consideration on matters which concern them in accordance with their age and maturity.

### 2.3. EU law

Similar rights of children and obligations of the Member States have been expressed in the Directive 2013/33/EU and the Directive 2024/1346<sup>37</sup>. These directives lay down minimum standards for the reception of applicants for international protection in EU Member States. The first one, still in force, ensured that all asylum seekers are treated with dignity and have access to basic services while their applications are being processed. Building on this framework, Directive 2024/1346/EU introduces updated and more harmonized reception conditions across the EU. It was adopted in response to ongoing migration challenges and to prevent disparities between Member States that could lead to unequal treatment or encourage secondary movements within EU Member States. This directive places even greater emphasis on the protection of vulnerable applicants, including children<sup>38</sup>. Since this directive is not yet in force and there is still uncertainty about whether it will come into force at all, both directives will be discussed side by side.

<sup>37</sup> Provisions of these directives should be interpreted in light of the treaties, including the CFR, in accordance with international law binding the European Union, and in line with the general principles of EU law – see Szpunar, M., *Wybrane problemy stosowania prawa Unii Europejskiej przed sądami państw członkowskich*, Palestra, No. 5, 2020, p. 64.

<sup>38</sup> See more Markiewicz-Stanny, J., *Nowy Pakt o migracji i azylu – pomiędzy spójnością a fragmentacją prawa*, Europejski Przegląd Sądowy, No. 2, 2025, pp. 4-12.



In applying these directives Member States should ensure full compliance with the principle of the best interests of the child in accordance with the CFR, the CRC and the ECHR (see preamble Point 9 and Article 23 of the Directive 2013/33/EU and preamble Point 38 and Article 26 of the Directive 2024/1346). Under both directives unaccompanied minors require special treatment because they are accounted to the group of vulnerable persons (according to Article 21 of the Directive 2013/33/EU) or a group of applicants with special reception needs (according to Article 24(b) of the Directive 2024/1346). Unaccompanied minors should, as a general rule, not be detained. Instead, they should be provided with suitable accommodation that includes special provisions for minors (see Article 11(2 and 3) of the Directive 2013/33/EU and preamble Point 40 and Article 13(2 and 3) of the Directive 2024/1346).

A representative should be appointed for such minors as soon as possible (Article 24(1) of the Directive 2013/33/EU and Article 27(1)(b) of the Directive 2024/1346). Moreover, Directive 2024/1346 Member States to appoint a representative no later than 15 working days from the date on which the application is made. It also requires Member States to designate a person suitable to provisionally act as a representative until a representative has been appointed (Article 27 (1)(a and b) of the Directive 2024/1346). The definitions of a “representative” differ slightly in both directives, but it generally refers to a person or an organization appointed by the competent authorities to represent, assist, and act on behalf of an unaccompanied minor, safeguarding the best interests of that minor.<sup>39</sup> A minor shall be informed immediately of the appointment of the representative (Article 24 (1) of the Directive 2013/33/EU and Article 27 (5)(a) of the Directive 2024/1346).

From the moment unaccompanied minors are admitted to the territory of a Member State until they are required to leave, they should be placed: a) with adult relatives; b) with a foster family; c) in accommodation centers with special provisions for minors; d) in other accommodation suitable for minors. Siblings should, where possible, be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors should be limited to a minimum (Article 24 (2) of the Directive 2013/33/EU and Article 27 (9) of the Directive 2024/1346). The Directive 2024/1346 further emphasizes the need to place a child, where appropriate, in non-custodial, community-based placements rather than institutions.

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<sup>39</sup> See and compare Article 2(j) of the Directive 2013/33/EU and Article 2(13) of the Directive 2024/1346.

Both directives impose an obligation on Member States to ensure that those working with unaccompanied minors receive appropriate training concerning their needs and are bound by confidentiality rules provided for in national law regarding any information obtained during their work (Article 24 (4) of the Directive 2013/33/EU and Article 33 of the Directive 2024/1346).

Providing free legal assistance and representation in civil proceedings related to the cases discussed is not required by either directive. However, both directives require Member States to take due account of the views of the minor, in accordance with their age and maturity (see Article 23 (2)(d) of the Directive 2013/33/EU and Article 26 (2)(d) of the Directive 2024/1346).

#### **2.4. Common Standards under International and EU Law**

In conclusion, the following procedural standards, derived from the aforementioned regulations, should be adhered to in civil proceedings involving unaccompanied minors seeking asylum:

1. The primary objective of all proceedings is to ensure the effective implementation of the principle of the best interests of the child.
2. The principle of non-discrimination must be upheld in every case
3. The child should be heard in all cases, either directly or indirectly, and the court is obliged to give due weight to the child's views
4. The appointment of a guardian and a legal representative for the unaccompanied minor must be prioritized.
5. States are obligated to provide an alternative form of care for the child.

These legal instruments establish a minimum standard that states must respect, while also allowing them the possibility to take further measures to enhance the protection of children's rights.

### **3. IMPLEMENTATION OF SET STANDARDS IN PROCEEDINGS FOR APPOINTING A GUARDIAN AND FOR PLACING A MINOR IN FOSTER CARE**

The obligation to ensure the protection of unaccompanied minors in Poland is generally fulfilled through two civil proceedings:<sup>40</sup> one for the appointment of a

<sup>40</sup> Furthermore, proceedings for securing claims may also be initiated. In such cases, a distinction should be made between the following situations: a) an unaccompanied minor foreigner over the age of 15, b) an unaccompanied minor foreigner under the age of 15, and c) a separated minor. When an unaccompanied minor is found in Poland, the police are required to immediately transfer the minor to the

guardian (called a curator) and another for the placement of the minor in foster care. These proceedings allow the court to provide a child with both a legal representative and a guardian.<sup>41</sup> The roles of the guardian and the legal representative differ in terms of their obligations. A guardian should be familiar with the child's background and be competent and able to represent their best interests.<sup>42</sup> In Poland, this role is fulfilled by the foster family (Article 112<sup>1</sup> of the Act of 25 February 1964 – the Family and Guardianship Code<sup>43</sup>). On the other hand, a legal representative ensures proper legal representation throughout the proceedings.<sup>44</sup> According to Polish regulations, this function is provided by a curator. The research on the implementation of these regulations between January 1, 2018, and December 31, 2023, indicates that the appointment of both a guardian and a legal representative is a common practice. Hence, in this regard, Poland is adhering to international and the EU requirements.<sup>45</sup>

Both procedures are regulated under the Polish Code of Civil Procedure<sup>46</sup> as non-contentious proceedings and may be initiated either upon the request of the Border Guard or *ex officio* (Article 570 of the CPC).<sup>47</sup> Pursuant to Article 61 Section 1 Point 3 of the Act of 13 June 2003, if an unaccompanied minor has declared to the Border Guard authority the intention to submit an application for interna-

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custody of the Border Guard authority. The Border Guard, in turn, must apply to the court for the placement of the child either in a care and upbringing facility or in a guarded center (Article 397 Section 1 of the Act of 12 December 2013 on Foreigners, consolidated text: Journal of Laws of 2024, item 769, as amended). The latter option, which allows for the placement of a minor in a detention center and can only be applied to minors over the age of 15 (Article 397 § 3 of the aforementioned Act), raises significant legal concerns (see e.g. Białas, J., *Detencja cudzoziemców w Polsce a standard EKPC*, in: Pudzianowska D. (ed.), *Status cudzoziemca w Polsce wobec współczesnych wyzwań międzynarodowych*, Wolters Kluwer, Warszawa, 2016, pp. 204-206; Liszewska, A., in: Chlebny, J. (ed.), *Prawo o cudzoziemcach*. Komentarz, Warszawa, 2020, p. 764; Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, pp. 98-100). Consequently, unaccompanied minors under the age of 15 can only be placed in a care and upbringing facility within the framework of these proceedings. For this proceedings, a curator should be appointed *ex officio* (Articles 144 and 510 § 2 of the CPC). Finally, in the case of separated children, the Border Guard authority may submit an application for securing claims under Article 755 § 1 Point 4 of the CPC, in the form of custody by a relative, as referred to in paragraph 1a, for the duration of the proceedings concerning the placement of the unaccompanied minor in foster care (Article 26 § 1b of the Act of 12 December 2013 on Foreigners).

<sup>41</sup> See General comment No. 6 (2005), paras 21, 69.

<sup>42</sup> *Ibid.*, para. 69.

<sup>43</sup> Consolidated text: Journal of Laws of 2023, item 2809, as amended, hereinafter: the FGC.

<sup>44</sup> Szuniewicz-Stepień, *op. cit.*, note 7, p. 208.

<sup>45</sup> Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, pp. 83.

<sup>46</sup> Act of 17 November 1964 – Civil Procedure Code, consolidated text: Journal of Laws 2023, item 1550, as amended, hereinafter: CCP.

<sup>47</sup> The court may initiate these proceedings *ex officio* upon receiving notification of a minor residing in the territory of the Republic of Poland, e.g. from organizations providing assistance to refugees.

tional protection<sup>48</sup>, the authority receiving the declaration shall immediately apply to the guardianship court for the appointment of a guardian to represent them in the proceedings concerning granting international protection<sup>49</sup> and placing him/her in foster care. This regulation fulfills the principle of the best interests of the child, as it requires the state to provide care and protection before any other proceedings involving the child are commenced. It also aligns with the constitutional framework established in the Constitution of the Republic of Poland of 2 April 1997.<sup>50</sup> Moreover, an unaccompanied minor found on Polish territory should be placed in a professional foster family acting as an emergency family service or in an emergency care and educational facility until the guardianship court issues a ruling (Article 63 Section 2 of the Act of 13 June 2003). This arrangement ensures temporary care for the child until the proceedings are concluded. The costs of such care are covered by the state treasury (Article 63 of this Act). In such cases, the role of the court is typically not to designate a specific foster family or facility, but rather to confirm the child's placement in a particular facility, as determined by another authority (Article 579<sup>1</sup> of the CPC).<sup>51</sup>

The jurisdiction of Polish courts in these matters will most likely be based on Article 11 of Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction<sup>52</sup>. According to Article 11 (1) where the habitual residence of a child cannot be established and jurisdiction cannot be determined on the basis of Article 10, the courts of the Member State where the child is present shall have jurisdiction. Furthermore, under Article 11 (2), this jurisdiction also applies to refugee children or children internationally displaced

<sup>48</sup> The same rules apply when an application on behalf of an unaccompanied minor was submitted by a representative of an international or non-governmental organization providing assistance, including legal assistance, to foreigners or when another Member State transferred an unaccompanied minor under Regulation (EU) No 604/2013 for whom a guardian has not been previously appointed, or who has not previously been placed in foster care (Article 61 Section 3 of the Act of 13 June 2003).

<sup>49</sup> The same provision applies in cases where an unaccompanied minor is transferred to another Member State pursuant to Regulation (EU) No 604/2013, as well as in cases involving the provision of social assistance or assistance in voluntary return to the country of origin.

<sup>50</sup> Journal of Laws No. 78, item 483, as amended, hereinafter: Constitution. Pursuant to Article 72 of the Constitution, the Republic of Poland shall ensure the protection of the rights of the child. (...). Specifically, it stipulates that a child deprived of parental care has the right to receive care and assistance from public authorities. Furthermore, public authorities and individuals responsible for the welfare of children are required, when determining the rights of the child, to consider and, whenever possible, prioritize the views of the child.

<sup>51</sup> Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, p. 113.

<sup>52</sup> Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, OJ L 178, pp. 1–115.

because of disturbances occurring in their Member State of habitual residence. Such cases generally fall within the jurisdiction of the guardianship court (Article 568 of the Polish Code of Civil Procedure), determined by the minor's place of stay in accordance with Article 569. The court is required to appoint a curator *ex officio* for absent parents or guardians when their place of residence is unknown (Article 510 Section 2 Sentence 2 of the CPC), a scenario commonly encountered in such cases. Both proceedings can be conducted jointly (Article 219 in conjunction with the Article 13 § 2 of the CPC<sup>53</sup>) or separately.<sup>54</sup> Polish courts apply Polish law in these cases (Article 15 of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children<sup>55</sup> and Articles 56 Section 1 and 60 Section 2 of the Act of 4 February 2011 on Private International Law<sup>56</sup>). Decisions issued by the guardianship court are effective and enforceable immediately upon their announcement, or if no announcement is made, from the moment they are issued (Article 578 § 1 of the CPC).

The procedure for appointing a curator, regulated in Articles 599-605 of the CPC<sup>57</sup>, serves as a key procedural safeguard to ensure the protection of the best interests of an unaccompanied minor. As previously noted, these proceedings should precede the asylum procedure<sup>58</sup> and guarantee the proper representation of the unaccompanied minor, both in the asylum process and in the procedure for placing the minor in foster care. The role of the curator is strictly procedural, as the primary function of this curatorship is to represent the minor in legal proceedings.<sup>59</sup> *In casu*, a curator is empowered to file a motion on behalf of the unac-

<sup>53</sup> See Decision of the Supreme Court (7) of 1 December 2011, I CSK 83/11, OSNC-ZD 2012, No. 3, item 60.

<sup>54</sup> Statistics from 2018 to 2022 indicate that these proceedings are primarily conducted separately, with only a few cases where they were held jointly - Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, p. 63.

<sup>55</sup> The Convention entered into force with respect to Poland on November 1<sup>st</sup>, 2010. Journal of Laws 2010, No. 172, item 1158.

<sup>56</sup> Consolidated text: Journal of Laws 2023, item 503.

<sup>57</sup> In instances where the provisions governing the appointment of a curator do not provide specific guidance, the provisions on guardianship apply accordingly to curatorship (Article 179 Section 2 of the FGC). The same applies to the procedural provisions (see Article 605 of the CPC).

<sup>58</sup> General comment No. 6 (2005), para. 33. Although it is worth noting that a child can apply for asylum independently, even before the appointment of a guardian – see e.g. Nykänen, *op. cit.*, note 30, p. 318; Chlebny, *op. cit.*, note 17, pp. 346-347.

<sup>59</sup> Therefore, this curator should be treated as guardian or legal assistant in proceedings only and not as a guardian in sense of a person, who is taking care of all child's affairs and who looks after the child's best interests and general well-being – see UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A) 2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/06/07, p. 26, footnote 135, [https://hrcak.

accompanied child for international protection (Article 26 Section 2 of the Act of 13 June 2003).<sup>60</sup> The curator cannot withdraw the child's application for asylum if the child has applied for asylum independently beforehand. However, they are authorized to take actions such as appointing an attorney<sup>61</sup> or filing an appeal.<sup>62</sup>

The guardianship court is required to appoint a curator immediately, but no later than three days from the date of receiving the motion (Article 61 Section 2 of the Act of 13 June 2003). This regulation fully aligns with the time frame for appointing a guardian established by both directives. Due to its importance the appointment of a competent guardian should take place as expeditiously as possible.<sup>63</sup> Legal scholars have pointed out that the obligation to apply "immediately" to the court for appointing a curator, along with the court's requirement to appoint a curator within a maximum of three days, is insufficient, because the effectiveness of this of this protective measure depends not only on the court's but rather on speed with which the Polish Border Guard initiates the proceedings. Consequently, it has been suggested that a maximum time limit for filing the motion should be formally regulated.<sup>64</sup> However, in practice, this issue is of minor significance, as the Border Guard takes prompt action in such cases.

In praxis, curators are appointed mostly from the Polish Border Guard officers, attorneys, judicial curators and court employees.<sup>65</sup> Before assuming their role, the

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srce.hr/ojs/index.php/eclic/issue/view/1327/405], Accessed 10 March 2025, (hereinafter: UNHCR, Guidelines on International Protection No. 8).

<sup>60</sup> According to the same regulation an application for international protection can be filed by a representative of an international or non-governmental organization providing assistance to foreigners, including legal assistance, if, based on an individual assessment of the situation of an unaccompanied minor, the organization considers that he or she may need such protection.

<sup>61</sup> There is no doubt that legal aid is crucial in providing an unaccompanied minor seeking asylum with a proper protection, because he or she does usually know neither the law nor the language - see e.g. Mikołajczyk, B., *Pomoc prawna w sprawach uchodźczych. Nowe wyzwania w związku z przystąpieniem Polski do UE*, Palestra, No.1-2, 2004, p. 20. The provisions of the CPC allow for the appointment of an attorney free of charge when a party or participant in the proceedings is fully or partially exempted from court fees by the court (Article 117 of the CPC). In both of the discussed proceedings, no fees are charged for filing the motion (Article 95 Section 1 Points 2 and 4 of the Act of 28 July 2005 on court costs in civil cases, Consolidated text, Journal of Laws 2024, item 959, as amended). This enables the guardian to file a motion for the appointment of an attorney. Therefore, the court cannot appoint a legal representative ex officio without such a motion. These provisions align with the requirements of both directives (Articles 9(6) and 26(2) of Directive 2013/33/EU and Preamble Point 26, Articles 11(6) and 29(2) of Directive 2024/1346), as they obligate states to provide free legal assistance in the second instance of asylum proceedings, rather than in the accompanying civil proceedings.

<sup>62</sup> Chlebny, *op. cit.*, note 17, p. 348.

<sup>63</sup> See also UNHCR, Guidelines on International Protection No. 8, p. 25, para. 66 and p. 26, para. 69.

<sup>64</sup> Dańczak, P., in: Chlebny, J. (ed.), *Prawo o cudzoziemcach. Komentarz*, Warszawa, 2020, p. 1125.

<sup>65</sup> See Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, pp. 83-85.

curator must take an oath to act on behalf of the minor with due consideration for the child's welfare (Article 590 and 591 in conjunction with Article 605 of the CPC). The court issues a certificate to the curator, specifying the scope of powers granted to a curator (Article 604 of the CPC).

Once a guardian has been appointed the court should ensure alternative care for children in question, as required by Article 22 of the CRC. The guardianship court places the child in foster care immediately, but no later than 10 days from the date of receipt of the application (Article 61 Section 7 of the Act of 13 June 2003). This statutory deadline (similarly to the 3-day deadline for appointing a curator) is of prescribed nature. That means that exceeding it does not have legal effects. Nevertheless, in light of the best interests of the child and the need to provide proper care, this deadline should not be exceeded. On the contrary, such cases should be resolved as soon as possible.<sup>66</sup> This regulation fully complies with the time frame for providing an alternative care to the child set by both directives.

Foster care can be established in two forms, depending on the minor's situation. The guardianship court chooses one of the foster families listed in Article 39 of the Act of 9 June 2011 on family support and the foster care system<sup>67</sup> or institutional foster care facilities stated in Article 93 of this Act<sup>68</sup>, including orphanages.<sup>69</sup> The latter option is commonly chosen by Polish courts, as there are few foster families available, and they are often not capable of dealing with the needs of foreign minors. This practice is contrary to the recommendations outlined in aforementioned directives.

The foster family or a worker from the institutional foster care facility acts on behalf of the child. In this sense, they are legal representatives understood as people looking after the child's best interests and general well-being.<sup>70</sup> They should strive to maintain continuity in the child's upbringing.<sup>71</sup> It is obvious that replicating the exact conditions the child previously had is not possible, but the best possible conditions, according to the circumstances, that allow for the physical, mental, spiri-

<sup>66</sup> Dańczak, *op. cit.*, note 61, p. 1126.

<sup>67</sup> Consolidated text: Journal of Laws of 2025, item 49.

<sup>68</sup> According to Article 61 Section 1a of the Act of 13 June 2003, if the children in question are accompanied by an adult relative in the direct line of the second degree (such as a grandmother or grandfather) or a collateral line of the second or third degree (such as a sister or brother of the mother or father, or an adult nephew/niece), the Border Guard may designate such a person as a foster family, with their consent. This provision, while not directly introducing the concept into Polish law, acknowledges the existence of a group of separated minors.

<sup>69</sup> Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, p. 112.

<sup>70</sup> See UNHCR, Guidelines on International Protection No. 8, p. 26, footnote 135.

<sup>71</sup> See General comment No. 6 (2005), para. 39.

tual, and moral development of the child should be provided. This also includes ensuring that siblings are kept together and that care is permanent, minimizing changes in the child's residence. Therefore, interim care must be also provided for the shortest time appropriate for unaccompanied children.<sup>72</sup> In this regard, the principle of non-discrimination is fully respected, and Polish regulations align with established standards.

The court has several other measures to secure the best interests of the child in these proceedings. Firstly, unaccompanied children are considered as participants in these proceedings (Article 510 of the CPC).<sup>73</sup> Secondly, the child possesses full procedural capacity unless they lack legal capacity (Article 573 § 1 of the CPC). Thirdly, the court may limit or exclude the minor's personal participation in proceedings if upbringing reasons justify such a measure (Article 573 § 2 of the CPC). Fourthly, the guardianship court may also order the minor's personal appearance if deemed necessary (Article 574 § 1 of the CPC). Fifthly, in urgent cases, the guardianship court is empowered to issue all necessary decisions *ex officio*, even if the court lacks local competence (Article 569 § 2 of the CPC). Lastly, the court is obligated to conduct the proceedings, either in whole or in part behind closed doors if the minor's welfare requires the case to be heard in private (Article 575<sup>1</sup> of the CPC).

Additionally, according to Article 576 § 2 of the CPC, in cases concerning the person or property of a child, the court is required to hear the child, provided that the child's mental development, health condition, and degree of maturity allow it, while considering the child's reasonable wishes to the extent possible. The hearing takes place outside the courtroom. This regulation is more conducive to the realization of the child's rights provided in Article 12 of the CRC or Articles 3 and 6 of the ECECR, because it mandates the court to hear the child directly.

The right to be heard, as expressed in international, European, and Polish law, is not absolute. Therefore, conducting a hearing is not mandatory in every case involving a child. A court is required to conduct a hearing only when certain criteria are met.<sup>74</sup> Moreover, each state has the right to define the criteria to assess whether children are capable of forming and expressing their own views.<sup>75</sup> Furthermore, the CRC does not impose an age limit on the child's right to be heard, and the Committee on the Rights of the Child advises States parties against introducing

<sup>72</sup> *Ibid.*, para. 40.

<sup>73</sup> See Bodio, J., *Status dziecka jako uczestnika postępowania nieprocesowego*, Wolters Kluwer, Warszawa, 2019, pp. 123 *et seq.*, 341 *et seq.*

<sup>74</sup> *Ibid.*, pp. 416-417.

<sup>75</sup> Explanatory Report, p. 6, para. 30.



age limits, either in law or in practice.<sup>76</sup> The Polish legislator adheres to these recommendations. According to Polish law, no age limit has been established; however, children must possess a certain level of understanding to be considered capable of forming and expressing their own views. The admissibility of the child's hearing is assessed *ex ante*, without their participation.<sup>77</sup> For the same reasons, the exercise of the right to be heard should not depend on having legal capacity, procedural capacity or being legally incapacitated.<sup>78</sup>

Article 576 § 3 of the CPC states that a hearing should be conducted in accordance with the provisions of Article 216<sup>1</sup> § 3 and 4 and Article 216<sup>2</sup> of the CPC. As a general rule, the child may be heard only once during the proceedings unless the child's best interests necessitate a second hearing or the child requests it. If a repeated hearing is required, it should be conducted by the same court, unless this is impossible or would not be in the child's best interests (Article 216<sup>1</sup> § 3 of the CPC). On the other hand, if the court decides not to hear the child, it must record the reasons for this decision in the minutes of the session or hearing, and these reasons must be provided no later than before the conclusion of the proceedings (Article 216<sup>1</sup> § 4 of the CPC). According to Article 216<sup>2</sup> of the CPC, the hearing of the child shall be conducted in camera. The hearing must take place in a room suitably adapted for such purposes, or, if necessary for the child's welfare, outside the courtroom. In addition to the judge, an expert psychologist may participate in the hearing if it is deemed necessary due to the child's health, mental development, or age, or if it is essential for assisting the judge in understanding the child's needs. The course of the hearing will be recorded in an official note, but no sound or video recordings may be made.<sup>79</sup>

The provisions regarding the location of the hearing and the specific individuals involved in the hearing ensure, on the one hand, an accurate interpretation of the child's reactions and, on the other hand, allow the child the opportunity to express themselves freely<sup>80</sup>. It is therefore widely recognized that such provisions guarantee the child's freedom of expression in a safe environment, appropriately adapted to

<sup>76</sup> General comment No. 12 (2009), para. 21.

<sup>77</sup> Sutova, M.; Zembrzuski, T., *Hearing a Minor as an Instrument of Protecting a Child's Best Interests in Polish and Macedonian Procedural Law*, Balkan Social Science Review, Vol. 24, 2024, p. 117.

<sup>78</sup> Bodio, *op. cit.*, note 70, pp. 417-418.

<sup>79</sup> The specifics of conducting the hearing are regulated by the Minister of Justice's Regulation of October 21, 2024, which outlines the methodology for preparing and conducting a child's hearing and the conditions for rooms where such hearings must take place, Journal of Laws, item 1579.

<sup>80</sup> In this respect, vital changes came into force on 15 February 2024. They implemented recommendations made by the Committee on the Rights of the Child in Concluding observations on the combined fifth and sixth periodic reports of Poland, CRC/C/POL/CO/5-6, 6 December 2021, p. 5, para. 21 [<https://docs.un.org/en/CRC/C/POL/CO/5-6>], Accessed 10 March 2025.

the child's psychological needs.<sup>81</sup> In that respect, these provisions meet standards set in international and European law. Furthermore, the provisions of the CPC, similarly to international and constitutional laws, offer two-tier protection within the right to be heard. This entails not only hearing the child but also taking their opinion into account.<sup>82</sup> The right to be heard is therefore not merely a formal procedural step but must have a tangible impact on the child's situation.<sup>83</sup> While the court is not required to base its decision solely on the child's opinion, it must give that opinion due consideration in accordance with the best interests of the child.

However, despite the aforementioned advantages of provisions regulating the child's hearing, in most cases, unaccompanied children are not directly heard by the guardianship court. This practice does not infringe international or European law regarding the right to be heard, as these legal frameworks permit states to hear a child either directly or through a representative. Rather, this practice violates Article 576 § 2 of the CPC, which mandates a direct hearing of the child. It also constitutes a violation of the child's right to non-discrimination, as Polish children in similar circumstances are generally heard directly. The differentiation in practice is based solely on the language barrier, as the children in question typically do not speak Polish.<sup>84</sup> This should not be viewed as an insurmountable obstacle to the child's right to be heard, particularly given that interpreters may be used.<sup>85</sup> In practice, however, this can present difficulties, as finding interpreters specializing in languages such as Afghan, Syrian or others may prove challenging.<sup>86</sup>

Moreover, this practice is supported by Article 576 § 1 of the Code of Civil Procedure (CPC), which mandates that before issuing a decision on the merits, the guardianship court must hear the legal representative of the person concerned. It is important to note that this provision does not preclude the child's direct hearing. Rather, it provides a separate procedural act for hearing the legal representative or another close person. Therefore, the child's right to be heard directly should not be

<sup>81</sup> Pietruszewska, A., Zaruczyńska, A., *Wysłuchanie małoletniego w postępowaniu cywilnym. Refleksje de lege lata i de lege ferenda*, *Ars Iuridica*, No. 2, 2023, pp. 148-149.

<sup>82</sup> General comment No. 12 (2009), para. 19.

<sup>83</sup> Bodio, *op. cit.*, note 70, p. 412.

<sup>84</sup> Children seeking asylum in Poland between 2018 and 2023 came from 53 different countries – see Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, pp. 28-30. Almost half of them were citizens of the Russian Federation – Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, p. 40. Among the group of unaccompanied minors, 37.33% were citizens of the Russian Federation – Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, p. 45.

<sup>85</sup> Which complies with the means of application of the CRC – see General comment No. 6 (2005), para. 71.

<sup>86</sup> On top of that, these interpreters should be trained to work with children and possess a fundamental understanding of migration and refugee issues – Łachacz; Markiewicz-Stanny; Tymińska, *op. cit.*, note 7, p. 87.

generally substituted by hearing a legal guardian<sup>87</sup>, particularly given that the child is often the only source of critical information in the case.<sup>88</sup>

#### 4. CONCLUSION

The general tendency of failure to respect rights of those seeking asylum in compliance with ever more restricting immigration policy has been observed worldwide<sup>89</sup>. This also applies to Poland, which has been hindering the asylum application process for years. On the other hand, an analysis of the provisions of the CPC has shown that they are well-suited for providing protection to unaccompanied children seeking asylum in Poland according to standards established in the international and European law. Thus, no amendments to the CPC should be made before the transposition deadline of Directive 2024/1346. Both discussed procedures put emphasis on ensuring the implementation of the principle of the best interests of the child. They allow the court to appoint a curator to act as a legal representative and place the child in foster care, securing guardianship within a short period of time. The research also highlights significant progress in ensuring the children's right to be heard, as all requirements set forth in international and EU law are met. Furthermore, Article 576 § 2 of the CPC establishes higher standards for the right to be heard, as it mandates to hear a child directly. However, in practice, this obligation is often not fulfilled, as courts typically hear only the legal representative, rather than the child. In this regard, the principle of non-discrimination is not upheld, as Polish children in similar circumstances are heard directly. Therefore, the state should ensure the availability of more interpreters to address this issue. Additionally, more foster families should be trained and prepared to care for the children in question, as they should not be placed in institutions, which is a common practice in Poland. Moreover, an individual approach catering to the special needs of a particular child should be applied. This would require a special training for judges handling these cases. It is worth noting that such measures were already undertaken<sup>90</sup>, demonstrating Poland's efforts to improve its practices in applying international and EU standards.

<sup>87</sup> Only when the court decides not to hear the child directly due to the child's incapacity to be heard pursuant to the requirements set in Article 576 § 2 of the CPC a representatives are entrusted with the responsibility of reliably determining and presenting the child's position in the proceedings – see Borkowska, K., *Prawo dziecka do wypowiedzi w prawie międzynarodowym i krajowym*, Rodzina i Prawo, No. 19, 2011, p. 33.

<sup>88</sup> See UNHCR, Guidelines on International Protection No. 8, p. 26, para. 70.

<sup>89</sup> See e.g. Mikołajczyk, *op. cit.*, note 9, p. 89.

<sup>90</sup> See *Pierwszych 160 sędziów zostało przeszkolonych w temacie ochrony małoletnich przed detencją z przyczyn migracyjnych*, available at: [[https://www.unicef.org/eca/pl/press\\_release/pierwszych-160-s%C4%99dzi%C3%B3w-zosta%C5%82o-przeszkolonych-w-temacie-ochrony-ma%C5%82oletnich-przed](https://www.unicef.org/eca/pl/press_release/pierwszych-160-s%C4%99dzi%C3%B3w-zosta%C5%82o-przeszkolonych-w-temacie-ochrony-ma%C5%82oletnich-przed)], Accessed 10 March 2025.

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