

Migration in rights

Priority to the best interests of the child: checklist

'Dublin' transfers, detention and removal procedures, family reunification: in several of the chapters of its annual report, Myria urges the authorities and judges to take due account of the best interests of the child in all decisions that concern them. Different legal standards are applicable depending on the context. Myria presents the list below as a tool to better enable decision-makers and practitioners to consider the best interests of the child, and jurisdictions to better identify and take action against any possible shortcomings.

Are the best interests of the child given priority?		
1	Before taking a decision, has an analysis been made of its impact on the fundamental rights of the child?	<input checked="" type="checkbox"/>
2	Does the analysis carried out consider the actual implications of the decision on the fundamental rights of the child, especially their health, their private and family life, their schooling and their education?	<input type="checkbox"/>
3	Does the decision include the analysis described in points 1 and 2? If not, are the reasons why mentioned?	<input type="checkbox"/>
4	Has the child's opinion, according to his or her age and maturity, and the opinion of their guardians or representatives been recorded, before taking the decision, by an independent professional specialised in collecting statements from minors, using a method that is non-suggestive and as unintrusive as possible, in a language the child understands?	<input type="checkbox"/>
5	Did independent experts determine the best interests of the child in circumstances that guarantee the child's dignity and the reliability of the result?	<input type="checkbox"/>
6	Does the decision (or the administrative document issued to the interested parties) include the result of the steps described in points 4 and 5? If not, are the reasons why mentioned?	<input type="checkbox"/>
7	Does the decision give priority to the best interests of the child? If the decision takes into account other interests, does it include a balancing of such interests that respects the principle of proportionality?	<input type="checkbox"/>
8	Does there exist an effective remedy against the decision? Are the judges competent to review or rescind a decision that insufficiently takes into account the best interests of the child, including the examination of developments occurring after the appeal was lodged?	<input type="checkbox"/>

¹ Article 3 of the International Convention on the Rights of the Child, articles 24 (interest of the child) and 47 (effective remedy) of the EU Charter of Fundamental Rights, articles 3 (prohibiting torture and inhuman or degrading treatment or punishment), 5 (prohibiting arbitrary detention) and 8 (right to private and family life) of the European Convention on Human Rights, article 22bis of the Constitution, certain provisions of the Aliens Act (art. 10ter § 2 al.4, art. 12bis § 7, art. 61 § 2 al.2, art. 61/17, art. 74/13, art. 74/16).