Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1703 (2005)[1]

Protection and assistance for separated children seeking asylum

Parliamentary Assembly

1. Half of the world's refugees and displaced persons are children, defined as persons under 18 years of age by the 1989 United Nations Convention on the Rights of the Child. They have fled their homes to escape persecution, human rights violations, exploitation, abuse or natural disasters; more than 2 million have been killed in conflicts during the past decade; thousands lost their lives in the recent tsunami in Southeast Asia while those who survived, traumatised and confused, risk falling prey to unscrupulous traffickers.

2. Children are vulnerable and among them the most vulnerable group is represented by those who are in a foreign country seeking asylum and separated from their parents or legal or customary primary care-givers. Separated children seeking asylum make up approximately 4% of the number of asylum applicants in Europe ; in some member states, including countries in which immigration is a relatively new phenomenon, this proportion can attain 10%.

3. The Parliamentary Assembly considers the situation of separated children seeking asylum in Council of Europe member states a matter of urgent concern. National legislation, policies and practices fail to address in a coherent manner the threefold protection needs of this group : as children, as children without parents or legal care-givers and as children in the asylum process.

4. Even if all Council of Europe member states are parties to the United Nations Convention on the Rights of the Child, a number of provisions laid down therein are often neglected by states in the elaboration and implementation of asylum measures. This is the case regarding the principle of the best interests of the child (Article 3), which in the wording of the convention should be a primary consideration ; the principle of non-discrimination, including on grounds of nationality (Article 2) ; the facilitation of family reunification (Article 10) ; the right for the child to be consulted on all matters that may affect him or her (Article 12) ; and the right to special protection for refugee children or children seeking refugee status (Article 22).

5. As they are without their parents or legal or customary primary care-givers, separated children seeking asylum should benefit from the prompt appointment of a legal guardian to defend their interests and ensure their well-being and they should also be placed in care and reception structures in keeping with their age and maturity. By contrast, the legislation of Council of Europe member states often does not provide for an appropriate system of guardianship on behalf of foreign children. Even when an adequate legal framework is in place, administrative delays pose a serious threat to the safety of children, leaving them more exposed to a risk of trafficking or other abuses. Furthermore, the detention of separated children in the asylum process is a widespread practice in the vast majority of Council of Europe member states, in open disregard of the obligation to provide care and reception in structures suitable for children and in violation of Article 37 of the United Nations Convention on the Rights of the Child, which states that detention shall only be used as a measure of last resort and for the shortest appropriate period of time.

6. As regards the asylum system, the Assembly regrets that separated children are often prevented from having access to effective protection against refoulement, due to the applicable legislation: at procedural level, in most Council of Europe member states, children can be denied access to the territory on the grounds that

1. Assembly debate on 28 April 2005 (15th Sitting) (see Doc. 10477, report of the Committee on Migration, Refugees and Population, rapporteur : Mr van Thijn). Text adopted by the Assembly on 28 April 2005 (15th Sitting).

they travelled via a safe country where they could have applied for asylum; their asylum application can be processed under an admissibility or accelerated asylum procedure ; they may not benefit from the appointment of a legal representative ; and at substantive level, most Council of Europe member states do not recognise child-specific forms of persecution, such as forced recruitment into armed forces, forced child labour, female genital mutilation, forced marriages or forced pregnancies, as persecution under the terms of the 1951 Geneva Convention relating to the Status of Refugees.

7. Various specialised agencies and bodies have adopted recommendations and guidelines to enhance the protection of separated children seeking asylum, including the Committee on the Rights of the Child, the United Nations High Commissioner for Refugees (UNHCR) and the Separated Children in Europe Programme. The Assembly believes that the Council of Europe should urge its member states to comply with the standards recommended by such agencies and bodies.

8. Moreover, the Council of Europe should complement these standards by adopting a single coherent instrument on the issue of separated children seeking asylum. Such an instrument should restate previous recommendations of the Assembly and the Committee of Ministers regarding specific aspects affecting refugee children and try to fill gaps in protection.

9. The Assembly therefore recommends that the Committee of Ministers :

instruct one or more of the specialised committees to conduct in-depth studies on access to the territory and to the asylum procedure for separated children seeking asylum in Council of Europe member states, as well as on the availability of a system of legal guardianship ;

instruct one or more of the specialised committees to conduct a study to review the practice of member states as regards child-specific forms of persecution ;

draw up, in co-operation and co-ordination with the UNHCR, the Save the Children Alliance and the Separated Children in Europe Programme, a recommendation urging member states to :

a. recognise the primacy of the principle of the best interests of the child in all asylum or immigration decisions, procedures, practices or legislative measures affecting minors ;

b. recognise and fully implement in practice the principle of non-discrimination, ensuring that all rights apply to all children on their territory or within their jurisdiction without exception ;

c. refrain from refusing entry to their territories to separated children, on any grounds ;

d. amend their legislation and remove any administrative obstacle so as to ensure that separated children can have a legal guardian and a legal representative appointed as a matter of urgency and not later than two weeks of their presence coming to the knowledge of the authorities ;

e. ensure that separated children are heard in the context of the asylum procedure, either directly or through their legal guardian, and that they are questioned in a manner in keeping with their age, maturity and psychological situation ;

f. amend their legislation so as to exempt separated children from accelerated or admissibility asylum procedures ;

g. recognise child-specific forms of persecution as persecution within the meaning of the 1951 Geneva Convention relating to the Status of Refugees ;

h. grant special or humanitarian residence permits to children who have been subjected to child-specific forms of persecution and who are not recognised as refugees ;

i. facilitate family reunification on behalf of separated children, as indicated in Assembly Recommendation 1596 (2003) on the situation of young migrants in Europe ;

j. allow the detention of separated children only as a last resort and for the shortest possible time, as indicated in Recommendation Rec(2003)5 of the Committee of Ministers to member states on measures of detention of asylum seekers ;

k. ensure that the return of separated children to their country of origin is implemented only if this is in the best interest of the child and in compliance with the safeguards set out in Assembly Recommendations 1547 (2002) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity and Recommendation 1596 (2003) as mentioned above ;

encourage the organisation and provision of specific training for lawyers as well as officials and other professionals dealing with separated children during the asylum procedure and in the context of anti-trafficking policy and law ;

urge member states to comply with the guidelines adopted by the UNHCR, the Save the Children Alliance and the Separated Children in Europe Programme, in particular the revised Statement of Good Practice on Separated Children Seeking Asylum ;

call on member states to continue their co-operation with the UNHCR and the Separated Children in Europe Programme in order to :

a. *introduce a uniform format for registering information on separated children as regards age, gender and country of origin, with a view to facilitating identification, family tracing and the comparability of information collected ;*

b. *introduce common standards for assessing the age of separated children ;*

c. *harmonise the collection of statistical data relating to separated children seeking asylum as regards gender, age, country of origin and decisions on asylum and communicate such information to the UNHCR and other relevant organisations.*