Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1810 (2011)[1]

Unaccompanied children in Europe: issues of arrival, stay and return

Parliamentary Assembly

1. There is a growing awareness of the need to tackle the problems faced by unaccompanied migrant children arriving and remaining in Europe. There may be up to 100 000 of them, although there is little reliable data on their movement other than statistics on asylum claims. These children, predominantly boys of 14 to 17 years of age, arrive in Europe for multiple and complex reasons. However, once in Europe, their chances of protection and assistance vary considerably from one country to another, which creates disparities in treatment and different interpretations of the best interests of the child. In many cases these children are in an extremely vulnerable position and face abuse, neglect and can become victims of trafficking and criminal networks.

2. The Parliamentary Assembly recalls that by virtue of the United Nations Convention on the Rights of the Child, which all member states of the Council of Europe have ratified, there exists a special duty of protection and assistance to all unaccompanied children, irrespective of their nationality, immigration status or statelessness. The way in which immigration and asylum rules affect these children must be anchored in this obligation and perspective.

3. The Assembly has previously raised the above concerns in its Recommendation 1596 (2003) on the situation of young migrants in Europe and Recommendation 1703 (2005) on protection and assistance for separated children seeking asylum, which called, *inter alia*, for the recognition of the binding character of laws protecting the best interests of the child as a primary consideration in all actions, the harmonisation of national laws on legal guardianship, and the establishment of coherent and effective protection systems for children who are asylum seekers or victims of trafficking. Regrettably, little progress has been achieved in these fields.

4. In this regard, the Assembly commends the European Union on its decision to make unaccompanied minors a priority policy issue within its 2010-2014 Stockholm Programme and welcomes the adoption of a European Union Action Plan on Unaccompanied Minors. It nevertheless highlights the need to carry out the implementation of the action plan in a way that is fully compliant with the United Nations Convention on the Rights of the Child.

5. The Assembly believes that child protection rather than immigration control should be the driving concern in how countries deal with unaccompanied children. With this in mind, it establishes the following set of 15 common principles, which it invites member states to observe and work together to achieve:

5.1. unaccompanied children must be treated first and foremost as children, not as migrants;

5.2. the child's best interests must be a primary consideration in all actions regarding the child, regardless of the child's migration or residence status;

1. Assembly debate on 15 April 2011 (18th Sitting) (see Doc. 12539, report of the Committee on Migration, Refugees and Population, rapporteur: Mrs Reps; and Doc. 12558, opinion of the Social, Health and Family Affairs Committee, rapporteur: Ms Coleiro Preca). Text adopted by the Assembly on 15 April 2011 (18th Sitting). See also Recommendation 1969 (2011).

5.3. no child should be denied access to the territory or be summarily turned back at the borders of a member state. Immediate referral to assistance and care should be arranged by specialised services with a view to identifying if the migrant is a minor, ascertaining his or her individual circumstances and protection needs and ultimately identifying a durable solution in the child's best interest;

5.4. child victims of human trafficking should benefit from special arrangements in terms of identification, reception and protection. These should be adapted to their needs and ensure their protection in line with the Council of Europe Conventions on Action against Trafficking in Human Beings (CETS No. 197) and on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201);

5.5. every unaccompanied child should be provided immediately with a guardian mandated to safeguard his or her best interest. The legal guardian should be independent and should have the necessary expertise in the field of childcare. Every guardian should receive regular training and undergo regular and independent check-ups/monitoring;

5.6. legal, social and psychological assistance should be provided without delay to unaccompanied children. Children should be informed immediately upon arrival or interception, individually and in a language and form that they can understand, about their right to protection and assistance, including their right to seek asylum or other forms of international protection, and the necessary procedures and their implications;

5.7. all interviews with an unaccompanied child concerning his or her personal details and background should be conducted individually by specialised and well-trained staff and in the presence of the child's guardian;

5.8. access to asylum and international protection procedures must be made unconditionally available to all unaccompanied children. A harmonised, child-sensitive asylum system needs to be established, including procedures that take into consideration the additional difficulties children may have in withstanding trauma and in expressing coherently what has happened to them and their child-specific experiences of persecution. Asylum applications by unaccompanied children should be given priority and processed within the shortest appropriate time frame, while allowing children sufficient time to understand and prepare for the process. All unaccompanied children in asylum proceedings must be represented by a lawyer in addition to a guardian, provided free of charge by the state and be able to challenge before a court decisions regarding their protection claims;

5.9. no detention of unaccompanied children on migration grounds should be allowed. Detention should be replaced with appropriate care arrangements, preferably foster care, with living conditions suitable for children's needs and for the appropriate period of time. Where children are accommodated in centres, they must be separated from adults;

5.10. age assessment should only be carried out if there are reasonable doubts about a person being underage. The assessment should be based on the presumption of minority, involve a multidisciplinary evaluation by an independent authority over a period of time and not be based exclusively on medical assessment. Examinations should only be carried out with the consent of the child or his or her guardian. They should not be intrusive and should comply with medical ethical standards. The margin of error of medical and other examinations should be clearly indicated and taken into account. If doubts remain that the person may be underage, he or she should be granted the benefit of the doubt. Assessment decisions should be subject to administrative or judicial appeal;

5.11. the child's views should be heard and given due weight in all relevant procedures, in accordance with his or her age and maturity. Administrative and judicial procedures within member states should be conceived and applied in a child-friendly manner;

5.12. finding a durable solution should be the ultimate goal from the first contact with the unaccompanied child. It should include family tracing if requested by the child or his or her guardian – where it is safe to do so and will not put family members in danger – and an individualised best-interest assessment that examines all options for durable solutions on an equal basis. A durable solution may be the child's integration into the host country, family reunification in a third country, or return and reintegration in the country of origin. An individual life project should be identified jointly by the authorities, the legal guardian and the child concerned, and monitored throughout the accomplishment of the project in line with Committee of Ministers Recommendation CM/Rec(2007)9 on life projects for unaccompanied migrant minors. Pending identification of a durable solution, the child should benefit

from legal residence status in the host country. This should be valid throughout the duration of the child's personal life project conducted in the host country, even if the project extends to the age of adulthood;

5.13. access to adequate accommodation, education, vocational training and health care must be guaranteed to all unaccompanied children, regardless of their migration status and under the same conditions as to child nationals. Moreover, unaccompanied children should be able to benefit from comprehensive child welfare programmes. These should, where necessary, take into consideration their emotional needs following traumatic experiences and should, beyond the immediate psychological assistance to be provided (see paragraph 5.6), comprise measures such as targeted educational assistance, placement in foster families or specialised residential care, or integration assistance for children with disabilities;

5.14. family reunification possibilities should be extended beyond the country of origin and approached from a humanitarian perspective exploring wider family links in the host country and third countries, guided by the principle of the child's best interest. The Dublin II Regulation should only be applied to unaccompanied children if transfer to a third country is in the child's best interests;

5.15. the best interests of the child should be taken into account in all steps leading to the return of the child to his or her country of origin. Return is not an option if it risks leading to the violation of the child's fundamental human rights. If no parents or members of the extended family are identified, return should only take place with advance secure, concrete, and adequate care and reintegration arrangements in the country of origin. Return to institutional care should not in and of itself be viewed as a durable solution. A professional child-protection body should conduct the assessment of return conditions. A follow-up plan should be established in order to ascertain that the protection of the child is guaranteed following the return. Non-rights-based arguments such as those relating to general migration control, must not override best-interest consideration in return decisions. Returns to countries where the child's security, protection – including against *refoulement* – and welfare cannot be guaranteed, must not be envisaged. Children in return proceedings must be represented by lawyers in addition to guardians. They must be granted access to the return case file and be able to challenge return decisions before a court; their appeals must have suspensive effect on the return.

6. The Assembly calls upon the European Union to, in particular:

6.1. promote full implementation of the European Union Action Plan on Unaccompanied Minors, in accordance with the United Nations Convention on the Rights of the Child;

6.2. consider proposing new legislative standards to close existing protection gaps in European Union law for all unaccompanied children, irrespective of whether they seek asylum;

6.3. establish a harmonised method for gathering relevant information on unaccompanied children Europe-wide, to enable an accurate comparison at European level, while ensuring that personal data is protected; and to support national independent institutions capable of collecting the data and creating a suitable resource centre regarding all areas touching upon the situation of unaccompanied children;

6.4. adopt and implement common standards and procedural safeguards on guardianship and legal aid for all unaccompanied children to ensure that their interests and protection needs are safeguarded throughout all administrative and judicial procedures;

6.5. support the adoption of a common protocol for carrying out age assessments in accordance with ethical, medical and legal principles in order to balance the current divergent approaches and practices;

6.6. continue to work towards the creation of a harmonised system of asylum for unaccompanied minors within the framework of the revised Asylum Directive and a harmonised system for assisting and protecting trafficked children within the framework of the European Union asylum and trafficking instruments which are currently under revision; and to ensure that all European Union member states comply with their obligations under European Union law with regard to unaccompanied children;

6.7. establish improved transnational mechanisms for dealing with child-protection concerns as unaccompanied children move across Europe, including when they disappear from reception centres;

6.8. refrain from supporting or financing the construction of reception facilities for the purpose of deporting children to countries of origin which do not have proper functioning child-protection systems providing sufficient safeguards and operating in a transparent fashion; ensure that in no case would the existence of centres pre-empt a case-by-case decision as to whether return is indeed in the child's best interest;

6.9. reinforce support to countries of origin in their efforts to promote child-protection systems and life opportunities for all children in order to reduce the risk of unsafe and unnecessary migration;

6.10. ensure co-operation with countries of origin on the assessment of the child's circumstances, with a view to finding durable solutions for children on a case-by-case basis;

6.11. promote good practices throughout Europe on the return process, including co-operation with third countries, to ensure proper care and custodial arrangements and reintegration support;

6.12. ensure proper integration of unaccompanied children in the host country where this has been considered to be in the child's best interest.