Parliamentary Assembly
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Recommendation 1985 (2011)[1]
Final version

Undocumented migrant children in an irregular situation: a real cause for concern

Parliamentary Assembly

1. A child is first, foremost and only, a child. Only after this may he or she be seen as a migrant. This, together with the need to take into account the best interest of the child, as stipulated by Article 3 of the United Nations Convention on the Rights of the Child, and the requirement not to discriminate between children, should be the starting point of any discussion about undocumented migrant children. The issue of migratory status can only ever be a secondary consideration.

2. Undocumented migrant children are triply vulnerable: as migrants, as persons in an undocumented situation and as children.

3. The Parliamentary Assembly highlights five particular areas where the rights of undocumented migrant children need to be clarified and strengthened. These include education, health care, housing, detention and exploitation.

4. The Assembly underlines that undocumented migrant children should benefit from the right to social security, if necessary, and an adequate standard of living, as stipulated by paragraphs 9 and 11 of the United Nations International Covenant on Economic, Social and Cultural Rights.

5. Undocumented migrant children are children who, because of their irregular status, do not have any identification papers. They may be with parents or family, or unaccompanied. They may have been born in or outside Europe.

6. The Assembly notes that there is a wide discrepancy across Europe in how member states treat these children, both in law and in practice, and considers that all member states should have a firm legislative basis for dealing with the rights of children belonging to this vulnerable group.

7. Undocumented children who are separated from their parents (either because the parents do not accompany them or cannot take care of them) need particular protection and should be provided with a legal guardian. They should also receive continuous and reliable support beyond the age of majority thus avoiding unnecessary psychological pressure caused by uncertainty about their future, which may otherwise affect their development at an early age and deprive them of their right to development as protected by Article 6 of the United Nations Convention on the Rights of the Child.

8. Notwithstanding legislation in many member states, there are many barriers that exist which restrict the enjoyment of these rights in practice. These include, *inter alia*, administrative barriers; linguistic hurdles; the complexity of the administrative, judicial and other systems; discrimination; lack of information and the fear of being reported. Statelessness is another risk for undocumented migrant children, which further adds to the barriers to the enjoyment of their rights.

1. Assembly debate on 7 October 2011 (36th Sitting) (see Doc. 12718, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Agramunt; and Doc. 12751, opinion of the Social, Health and Family Affairs Committee, rapporteur: Ms Strik). Text adopted by the Assembly on 7 October 2011 (36th Sitting).

9. Bearing in mind the need for a firm legislative basis and implementation of the laws in practice, the Assembly recommends that member states:

9.1. guarantee the right to education by:

9.1.1. ensuring that this right is enshrined in clear and unequivocal legislation and is being implemented with the assistance of policy documents and education circulars;

9.1.2. tackling administrative obstacles which prejudice the registration or attendance of children at school, such as the lack of a fixed address, lack of documentation, lack of funding and linguistic barriers;

9.1.3. removing administrative obstacles that act as a disincentive to schools, including complicated administrative steps and problems in receiving funding for children without documents;

9.1.4. encouraging and facilitating integration of these children into the school system, including through linguistic support and training for teachers to assist them in dealing with children with complex needs;

9.1.5. tackling discrimination, particularly at intake, which can lead to exclusion, sidelining inside the education system and, in certain cases, the creation of “ghetto schools”;

9.1.6. supporting civil society initiatives which facilitate the participation of undocumented migrant children in the education system;

9.1.7. permitting these children to participate in internships where these are part of the education cycle;

9.2. guarantee the right to health care by:

9.2.1. clarifying, through legislation, the entitlement, without discrimination, of undocumented migrant children to health care that goes beyond emergency care and which includes primary and secondary health care, as well as appropriate psychological assistance;

9.2.2. simplifying the administrative requirements for the recipients and the providers of health care, and ensuring that the persons concerned receive relevant information on the right to health care, responsibility to provide health care and information on how to access it;

9.2.3. providing financial assistance, or keeping costs to a minimum, so as to ensure that the cost does not become an insurmountable hurdle to accessing health care;

9.2.4. ensuring that there are no reporting instructions on the status of children and their families, which might be dissuasive to undocumented migrant children or their parents seeking health care for them;

9.2.5. ensuring that undocumented migrant children are provided with an individual medical file which can move around with them;

9.3. guarantee access to housing by:

9.3.1. ensuring a legislative basis for dealing with the accommodation needs of undocumented migrant children that does not simply provide for placing them in care institutions;

9.3.2. respecting the right to family life under the European Convention on Human Rights (ETS No. 5);

9.3.3. paying particular attention to the situation of those most vulnerable, including single parents with young children;

9.3.4. providing support to local authorities and civil society, to allow them the possibility of assisting children who would otherwise be destitute;

9.4. refrain from detaining undocumented migrant children, and protect their liberty by abiding by the following principles:

9.4.1. a child should, in principle, never be detained. Where there is any consideration to detain a child, the best interest of the child should always come first;

9.4.2. in exceptional cases where detention is necessary, it should be provided for by law, with all relevant legal protection and effective judicial review remedies, and only after alternatives to detention have been considered;

9.4.3. if detained, the period must be for the shortest possible period of time and the facilities must be suited to the age of the child; relevant activities and educational support must also be available;

9.4.4. if detention does take place, it must be in separate facilities from those for adults, or in facilities meant to accommodate children with their parents or other family members, and the child should not be separated from a parent, except in exceptional circumstances;

9.4.5. unaccompanied children should, however, never be detained;

9.4.6. no child should be deprived of his or her liberty solely because of his or her migration status, and never as a punitive measure;

9.4.7. where a doubt exists as to the age of the child, the benefit of the doubt should be given to that child;

9.5. tackling exploitation in the area of work by carrying out further research on the problem, the persons primarily at risk and the persons or groups responsible for the exploitation. In this respect, the issues of sexual exploitation, the use of children for begging and crime, exploitation of children as domestic workers and in sweatshops, as well as other forms of exploitation through labour, all require greater examination.

10. The Assembly considers that, notwithstanding the difficulties faced by member states in taking up rights-based issues linked to irregular migration in the current political and economic climate, the human rights problems of undocumented migrant children warrant particular attention. The Assembly therefore recommends that the Committee of Ministers:

10.1. invite its relevant intergovernmental committees to:

10.1.1. examine the problematic of ensuring access to education for undocumented migrant children and to provide member states with guidelines and good practice on how to guarantee the right to education in practical terms;

10.1.2. provide guidelines to member states on minimum health-care requirements which need to be made available to undocumented migrant children, taking into account the recent decision of the European Committee on Social Rights (Collective Complaint, *FIDH v. France*);

10.2. as already suggested by the Assembly in Recommendation 1969 (2011) on unaccompanied children in Europe: issues of arrival, stay and return, set up a working group to draw up Council of Europe guiding principles on the protection of unaccompanied children in the form of a new recommendation of the Committee of Ministers, which would draw upon the Council of Europe “Life projects for unaccompanied migrant minors” as well as recent work undertaken at the European level on core standards for guardians of separated children in Europe;

10.3. examine with its relevant intergovernmental committee, the problematic of assuring housing for undocumented migrant children, with a view to advising member states on how to tackle this politically sensitive human rights issue, taking into account the recent decision of the European Committee on Social Rights (Collective Complaint, *Defence for Children International v. the Netherlands*);

10.4. consider the steps necessary to tackle the growing problem of begging and the link to exploitation and trafficking, and the human rights concerns that may arise from criminalisation of this activity. While this issue affects undocumented migrant children, it is not restricted to them as a group.

11. The Assembly welcomes the attention paid to undocumented migrant children by both the Council of Europe Commissioner for Human Rights and the European Commission against Racism and Intolerance (ECRI). It encourages them to continue their monitoring of the situation of these children, in general terms as well as in each member state.

12. The Assembly invites the World Health Organization to examine further the problem of health care of undocumented migrant children with a view to strengthening their right to health care, and to follow up on the proposal for each undocumented child to have a health card or a medical file which may be used wherever they go.