Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2449 (2022)[1]

Protection and alternative care for unaccompanied and separated migrant and refugee children

Parliamentary Assembly

1. The Parliamentary Assembly is alarmed by the rapidly growing number of unaccompanied or separated migrant or refugee children in Europe. These children have been separated from their parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. However, Article 8 of the European Convention on Human Rights (ETS No. 5) constitutes a positive obligation of member States to protect private and family life, especially of unaccompanied or separated migrant or refugee children, who are particularly vulnerable and require greater protection.

2. The main reasons for the substantial number of children ending up in Europe alone, often without any identification, means of subsistence or support are poverty, armed conflicts and the climate crisis. In recent years, most unaccompanied children have come from Afghanistan, Syria and Bangladesh. The Assembly stresses the need for sustained efforts to eradicate poverty and deprivation across the world; to invest massively in peacebuilding, reconciliation and peaceful conflict resolution; and to prioritise tackling climate change and ensuring decent living standards for all, rather than economic growth and profit maximisation for the few.

3. The Russian Federation's ongoing aggression against Ukraine has led to the dire consequence of a massive displacement of migrant or refugee children, many of them unaccompanied or separated. As such, they are extremely vulnerable to exploitation and abuse, and easily fall prey to smugglers and traffickers. It is of utmost importance and urgency that the competent authorities of Council of Europe member States, including members of parliaments, are fully aware of the legal obligations stemming from international and European treaties related to the protection of unaccompanied or separated children, including alternative care, to ensure the highest standards of protection for these children and to ensure their best interest in all aspects.

4. The Assembly recalls in particular the European Convention on Human Rights and the United Nations Convention on the Rights of the Child, to which all Council of Europe member States are party. The United Nations Committee on the Rights of the Child has issued useful general comments to guide member States in its effective implementation. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, "the Lanzarote Convention") and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), both ratified by all member States, together with the revised European Social Charter (ETS No. 163) and several non-binding texts provide a comprehensive set of standards and guidance to build a safety net to ensure the necessary protection to which these children are entitled.

5. The Assembly also recalls its Resolution 1810 (2011) "Unaccompanied children in Europe: issues of arrival, stay and return", Resolution 2020 (2014) "The alternatives to immigration detention of children", Recommendation 2190 (2020) "Effective guardianship for unaccompanied and separated migrant children", and Resolution 2324 (2020) "Missing refugee and migrant children in Europe" and the findings of its Parliamentary Campaign to End Immigration Detention of Children (2015-2019), in which the Assembly

1. *Assembly debate* on 22 June 2022 (22nd sitting) (see Doc. 15548, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Mariia Mezentseva; and Doc. 15554, opinion of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Sibel Arslan). *Text adopted by the Assembly* on 22 June 2022 (22nd sitting).

encouraged member States to adopt alternatives to detention that are in the best interest of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their migration status is being decided upon.

6. The Assembly underlines that all member States should adopt a common approach whereby unaccompanied or separated migrant or refugee children are, first and foremost, considered as children. This entails ensuring that their best interest is the primary consideration, irrespective of their migration status in the country concerned. In this context, member States must ensure that unaccompanied or separated migrant or refugee children benefit from:

6.1. all due child protection safeguards, including adequate and immediate identification and registration of their identity and legal, family and social situation;

6.2. a robust and gender-sensitive assessment of their immediate protection, support and care needs; particular attention should be paid to survivors of violence, abuse and human trafficking and to children with special needs, including medical and psychological needs;

6.3. the immediate appointment of a guardian, who will act to protect the child's best interest and link the child to required services, while searching for the child's parents and family members;

6.4. an exhaustive assessment and determination of their best interest by their guardians, child protection services or competent courts where necessary;

6.5. access to education; governments must provide for the integration of unaccompanied migrant minors in the field of education, ensure their learning process and facilitate their link with school and with other children of their age;

6.6. child-sensitive age assessment procedures, which should only be carried out if there are serious doubts about a person's age, should always be carried out in the best interest of the child and subject to independent monitoring; the development of a single model of age assessment in Europe, based on the presumption that the person is a minor; systematic application of the margin of error in favour of the person concerned, so that the lowest age in the margin determined by the assessment is recorded as the person's age; and access to effective remedies.

7. Furthermore, the Assembly underlines that member States are legally responsible for unaccompanied or separated migrant or refugee children within their territory in accordance with Article 8 of the European Convention on Human Rights and, therefore, should offer solid child protection systems, which include strong co-ordination between the competent child protection and migration bodies as well as with other authorities and relevant civil society. Appropriate and sustainable budgeting and investment in human and other resources can ensure adequate and gender-sensitive protection and care.

8. The Assembly considers that the Council of Europe should facilitate the creation of a European platform for the exchange of knowledge, practical know-how and best practices between its member States in the successful implementation of alternative care for unaccompanied or separated migrant or refugee children.

9. The Assembly invites member States to respond adequately to the needs of unaccompanied or separated migrant or refugee children by providing them with assistance that preserves family unity and keeps them with relatives or other caregivers. To this end, the member States should adopt alternative care solutions as interim measures, until the time when children can be reunited with their family members. Therefore, member States are invited to:

9.1. create safe, legal and accessible routes for children to reunite with their families in Europe which spare them from long and dangerous travel alone;

9.2. adopt a legislative framework, if not already in place, allowing the development of proactive targeted measures which address the specific needs of unaccompanied or separated migrant or refugee children;

9.3. ensure that family reunification requests of unaccompanied or separated migrant or refugee children are considered as a priority, respecting the best interest of the child;

9.4. integrate asylum reception and migration systems in childcare and protection systems, ensuring that unaccompanied or separated migrant or refugee children have access to the same protection and care as all other children; provide necessary funding and designate a public authority responsible for this integration;

9.5. conduct a timely assessment of specific needs of unaccompanied or separated migrant or refugee children, aiming to provide the best care adapted to the case of each child;

9.6. take into account all specific aspects of the new environment of migrant or refugee children (different languages, culture and living conditions) when proposing a care solution for the children;

9.7. ensure that the views of migrant or refugee children in need of alternative care are considered when identifying care arrangements that are in their best interest;

9.8. build public support for child-friendly policies in the field of migration, by raising awareness of the plight of unaccompanied or separated migrant or refugee children, making full use of the wealth of witness accounts and advocacy;

9.9. ensure that the public authority responsible for the State system of alternative care for unaccompanied or separated children guarantees different care options and employs a sufficient number of well-trained specialists in providing different types of care. It should also monitor different alternative care solutions on a regular basis;

9.10. pay special attention to the recruitment of foster families, ensuring their intercultural awareness, pedagogical and nurturing experience and capacity to create a space for a child. Foster families should also have good awareness of the asylum process and be able to support a child through the different stages, including with psychological support.

10. The Assembly reaffirms that when such family reintegration is not possible, member States should develop and implement a range of suitable quality alternative care that responds to the specific and individual needs of unaccompanied or separated migrant or refugee children. Recalling the United Nations Guidelines for the Alternative Care of Children, the Assembly calls on member States to provide the following alternative care models:

10.1. kinship care, whereby children live with an adult member of their extended family;

10.2. foster care, whereby children are formally placed in the domestic care of suitable adults acting as foster parents;

10.3. emergency and transit shelters, in exceptional circumstances while the situation that caused the family separation is assessed and addressed. If minors are placed in emergency and transit shelters, they should not be placed together with adults.

11. Furthermore, member States should develop other family-based care with supervised and independent living arrangements, small-group care and, as a last resort, suitable residential care, ensuring that the principle of non-detention is safeguarded in all of these modalities. The UN Guidelines for the Alternative Care of Children should be applied when determining the necessity and suitability of arrangements for the care of unaccompanied or separated migrant or refugee children, in particular Part IX.

12. Finally, member States should also provide services, programmes and measures aimed at supporting unaccompanied or separated migrant or refugee children to transition out of care, in addition to continuing emotional and practical support aimed at strengthening their autonomy; this entails appropriate preparation and planning prior to leaving care, regardless of whether the young person is staying in or leaving the country, in combination with enhanced opportunities for integration in the host country.

13. The Assembly underlines, as specifically regards the current emergency situation affecting Ukrainian children, that there is an ongoing need for member States to strengthen the co-ordinated approach at the European level among countries of first arrival, transit countries and host countries to ensure that children are promptly identified, registered and do not go missing, that they benefit from all protection safeguards and that they are placed, when determined as necessary, in alternative care arrangements of suitable quality.

14. The security of all children, including those awaiting family reunification and in temporary care, should be prioritised. Adoption should not be considered in any emergency setting.