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

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A. Draft Resolution

1. The Parliamentary Assembly is alarmed by the rapidly growing number of unaccompanied and separated migrant and refugee children in Europe. These children have been separated from both 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 and separated migrant and refugee children who are particularly vulnerable and require higher protection.

Amendment 3
Tabled by the Committee on Social Affairs, Health and Sustainable Development

In the draft resolution, after paragraph 1, insert the following paragraph:

"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 came 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 peace building, reconciliation and peaceful conflict resolution; and to prioritise tackling climate change and ensuring decent living standards for all, rather than economic growth and profit-maximising for the few."

2. The ongoing Russian Federation's aggression against Ukraine has the drastic consequence of a massive displacement of migrant and refugee children, many of them unaccompanied and separated. As such, they are extremely vulnerable to exploitation and abuse, and fall easily 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 and separated children, including alternative care, to ensure flawless protection of these children and to ensure their best interest in all aspects.

3. The Assembly recalls in particular the European Convention on Human Rights and the United Nations Convention on the Rights of the Child, which all member States are party to. The United Nations Committee on the Rights of the Child has issued useful General Comments to guide member States in its efficient implementation. The Council of Europe Convention on Protection of Children against sexual exportation and abuse (CETS No. 201, "Lanzarote Convention") and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), also 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 which these children are entitled to.

4. The Assembly also recalls its Resolution 1810 (2011) "Unaccompanied children in Europe: issues of arrival, stay and return", Resolution 2020 (2014) "The alternatives to 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", as well as the findings of its Parliamentary Campaign to End Immigration Detention of Children (2016-2019), in which the Assembly encouraged member States to adopt alternatives to detention that meet 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.

5. The Assembly underlines that all member States should adopt a common approach whereby unaccompanied and separated migrant and 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 and separated migrant and refugee children benefit from:

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

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

5.3. 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;

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

Amendment 2
Tabled by Ms Luz MARTINEZ SEIJO, Mr Antonio GUTIÉRREZ LIMONES, Mr Sergio GUTIÉRREZ PRIETO, Ms Susana SUMELZO, Ms María Luisa BUSTINDUY, Mr Marc LAMUÀ

In the draft resolution, after paragraph 5.4, insert the following paragraph:

"access to education. Governments must provide for the integration of unaccompagnied migrant minors in the field of education, ensure their learning process and facilitate their link with school and with other children of their age."

Amendment 4
Tabled by the Committee on Social Affairs, Health and Sustainable Development

In the draft resolution, after paragraph 5.4, insert the following paragraph:

"child-sensitive age-assessment procedures, which should only be carried out if there are serious doubts about a person's age, and which should always be carried out in the best interests of the child, and be 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."

6. Furthermore, the Assembly underlines that member States are legally responsible for unaccompanied and separated migrant and 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.

7. 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 and separated migrant and refugee children.

Amendment 5
Tabled by the Committee on Social Affairs, Health and Sustainable Development

In the draft resolution, delete paragraph 7.

8. The Assembly invites member States to respond adequately to the needs of unaccompanied and separated migrant and refugee children by providing them with assistance that preserves family unity and keeps them with relatives or other caregivers. For 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:

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

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

8.3. ensure that family reunification requests of unaccompanied and separated migrant and refugee children are considered as a priority matter respecting the best interest of the child;

8.4. integrate asylum reception and migration systems in childcare and protection systems ensuring that unaccompanied and separated migrant and 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;

8.5. conduct a timely assessment of specific needs of unaccompanied and separated migrant and refugee children aiming at providing the best care adapted to the case of each child;

8.6. take into account all specific aspects of the new environment of migrant and refugee children (language,

different culture and living conditions) when proposing a care solution for the children;

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

Amendment 6
Tabled by the Committee on Social Affairs, Health and Sustainable Development

In the draft resolution, after paragraph 8.7, insert the following paragraph:

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

8.8. ensure that the public authority responsible for the State system of alternative care for unaccompanied and 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;

8.9. pay special attention to the recruitment of foster families, ensuring their intercultural awareness, pedagogical and nurturing experience, as well as capacity to create a space for a child. They should also have good awareness of the asylum process and be able to support a child at its different stages, including psychological support.

9. 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 and separated migrant and 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:

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

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

9.3. 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.

10. 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 any 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 and separated migrant and refugee children, in particular Part IX.

11. Finally, member States shall also provide services, programmes and measures aimed at supporting unaccompanied and separated migrant and refugee children to transition out of care and 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.

Amendment 7
Tabled by the Committee on Social Affairs, Health and Sustainable Development

At the end of paragraph 11, add the following words:

", as well as enhanced opportunities for integration in the host country."

12. The Assembly urges, as regards specifically the current emergency situation affecting Ukrainian children, that there is an ongoing need for member States to strengthen a co-ordinated approach at European level amongst 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 suitable quality alternative care arrangements.

13. 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.

Amendment 1
Tabled by Ms Serap YAŞAR, Mr Mehmet Mehdi EKER, Mr Ahmet YILDIZ, Ms Arzu ERDEM, Mr Kamil AYDIN, Mr Ziya ALTUNYALDIZ

In the draft resolution, at the beginning of paragraph 13, add the following sentences:

"Aware of the high number of children in institutional care in Ukraine, often orphans and children with special needs, the Assembly welcomes the initiative of the wife of the President of Ukraine, Ms Olena Zelenska, and the wife of President of the Republic of Türkiye, Mrs Emine Erdoğan, who organised the relocation of 1200 children to Türkiye, which already hosts 1.7 million Syrian children. The Assembly calls on member States to follow this example and provide international protection, care and adequate assistance to orphaned or institutionalised children fleeing conflict and war."