



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés



COUNCIL OF EUROPE  
CONSEIL DE L'EUROPE

12 June 2012

## CONCEPT NOTE

### UNHCR-COUNCIL OF EUROPE

### INTERNAL WORKSHOP ON THE DETENTION OF UNACCOMPANIED AND SEPARATED CHILDREN IN NEED OF PROTECTION IN EUROPE

Strasbourg, 20 June 2012, 10.00-12.30h  
Agora building, Room: G05

This concept note is intended to outline the main elements of an internal meeting which the **UNHCR** and the Council of Europe **Children's Rights Division** and the **Migration Coordination Unit** will jointly hold on June 20, 2012, on the occasion of the World Refugee Day, to discuss the legal standards and practice regarding the detention of unaccompanied and separated children in need of protection.

#### 1. Background

##### Definition

According to the Article 2 i of EU Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, "unaccompanied minors" means<sup>1</sup>:

"third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of Member States".

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

The working definition which was used for the Council of Europe Handbook for front-line professionals on Life Projects (2010)<sup>2</sup> reads as follows:

“The term “unaccompanied minor” includes all unaccompanied and separated children under 18 who find themselves outside their countries of origin, regardless of their immigration status and whether or not they have claimed asylum. Special safeguards for children claiming asylum are respected, notably the principle of non-refoulement and also non-disclosure of personal details to authorities in countries of origin”.

The definition contained in the UNHCR Statement of Good Practice of the Separated Children in Europe Programme (SCEP) (4<sup>th</sup> Edition of March 2010)<sup>3</sup> reads as follows:

“Separated children are under 18 years of age, outside their country of origin and separated from both parents, or their previous legal, or customary primary caregiver. Some children are totally alone while others (...) may be living with extended family members who are not necessarily their customary or primary caregivers. All such children are separated children and entitled to international protection under a broad range of international and regional instruments.”

The SCEP uses the word ‘separated’ rather than ‘unaccompanied’ because it more accurately defines the essential problem that such children face. Namely, that they lack the care and protection of their parents or primary caregiver and as a consequence suffers socially and psychologically from this separation.

### **The impact of detention on unaccompanied and separated children in Europe**

Detention of children in need of protection is still a common practice in several Council of Europe member States. Within this category, unaccompanied and separated children are even more vulnerable: in addition to their forced displacement, they lose the support and the protection of their family or their legal or customary guardian.

Furthermore, in such situation, many of the unaccompanied and separated children in need of protection do not dare to seek asylum and disappear. This hidden population is further at risk of being trafficked or smuggled because they do not have documents; they do not have any legal status despite the fact that they are in need of protection because they cannot return to their countries.

In this context, their detention is all the more traumatizing and can hardly be found to be in their best interest. According to several specialists, immigration detention is, inter alia, undermining:

- their capacity to integrate successfully and interact with the host community and their own community;

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<sup>2</sup> [http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects\\_GB.pdf](http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects_GB.pdf)

<sup>3</sup> <http://www.unhcr.org/refworld/pdfid/415450694.pdf>

- their capacity to submit their claim for asylum;
- their mental health;
- and, ultimately, their personal development and further possibilities of becoming full and active participants in society.

### **The legal framework of the Council of Europe**

The legal acquis of Council of Europe regarding the protection of children's rights in general is significant. For instance, the CoE has adopted a number of specific treaties on children's rights (e.g. the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2010)).

Regarding the detention of children, including administrative detention, a number of initiatives and instruments can also be highlighted, including relevant recommendations and resolutions of the Parliamentary Assembly, Guideline n° 11 of the 20 Guidelines on Forced Return, the recently adopted CoE Strategy for the Rights of the Child (2012-2015) and its Action Plan addressing specifically the detention issue (strategic objectives 2 and 3) and the internal meeting on the children's detention held by the Children's Rights Division in 2012.

Turning at the administrative detention of the specific group of unaccompanied and separated children in need of protection, the Council of Europe standards are fewer and somehow less clear, whereas, as outlined above, this group is probably the most vulnerable. This is why a decision was taken to prepare guidelines on detention of irregular migrants and asylum-seekers. This document, the work on which will start in the second half of 2013, are expected to fill this gap and provide clear guidelines on the principles that should govern detention of unaccompanied and separated children in need of protection.

The Council of Europe Guidelines on Accelerated Asylum Procedures provide that children, including unaccompanied minors, should, as a rule, not be placed in detention. In those exceptional cases where children are detained, they should be provided with special supervision and assistance. In those cases where other vulnerable persons are detained they should be provided with adequate assistance and support.<sup>4</sup>

It is worth noting that the ECtHR has ruled in several cases that the detention conditions have an impact on the separated child and could amount to an inhuman and degrading treatment in breach of Article 3 ECHR (e.g. the Rahimi case)<sup>5</sup> or to a violation of their right to liberty (Article 5) (e.g. the Mubilanzila Mayeka and Kaniki Mitunga v. Belgium case)<sup>6</sup>.

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<sup>4</sup> See the Guidelines on Accelerated Asylum Procedures, "XI. Detention, par. 1"

<sup>5</sup> Case of Rahimi v. Greece (Application no. 8687/08), Chamber judgment of the 5 April 2011

<sup>6</sup> Case of Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (application no. 13178/03), Judgment of the 12 October 2006, Final on January 12, 2007)

Furthermore, Guideline No 11 of the 20 Guidelines on Forced return provides that “separated children should be provided with accommodation in institutions provided with the personnel and facilities which take into account the needs of persons of their age.”

However, within the CoE, only the Parliamentary Assembly pronounced itself against the detention of unaccompanied and separated children in need of protection in 2010, in its Resolution 1707 (2010) on “Detention of Asylum Seekers and Irregular Migrants in Europe”, recommending that “children in need of protection should not, as a rule, be placed in detention and that unaccompanied minors should never be detained”<sup>7[3]</sup>. This was reiterated more recently in its Recommendation 1985 (2011)<sup>8</sup>.

In 2012, around 166 organisations called on the EU institutions to adopt standards such as “that unaccompanied asylum seeking children must never be detained”<sup>9</sup>.

## 2. Objectives

The internal workshop will provide an opportunity to discuss the existing legal standards and the practice regarding the administrative detention of unaccompanied and separated children in need of protection in the Council of Europe Member States with a view to identifying the needs for further standard-setting and co-operation activities in this field.

That discussion is highly needed and will be particularly relevant:

- As a complementary follow-up to the internal meeting of the Children’s rights unit on detention of children (for criminal offences)
- To feed into the future standard setting work on detention of irregular migrations and asylum-seekers which should start in 2013-2014.
- To contribute to the implementation of the relevant parts of the Action Plan (Strategic objective 3: Guaranteeing the rights of all children: point “Children in detention” and point “Migrant children and children on the move”)
- To clarify the CoE position on that matter and reflect on the possibility to recommend the ban of the administrative detention of unaccompanied and separated children in need of protection.

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<sup>7</sup> Text adopted by the Assembly on 28 January 2010 (7th Sitting). (see Doc. 12105, report of the Committee on Migration, Refugees and Population, rapporteur: Mrs Mendonça), available at: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1707.htm>

<sup>8</sup> “Unaccompanied children should, however, never be detained” (§ 9.4.5. of the Recommendation 1985 (2011), Undocumented migrant children in an irregular situation: a real cause for concern, Assembly debate on 7 October 2011 (36<sup>th</sup> Sitting))

<sup>9</sup> Appeal to EU Institutions: Ensure Respect For Asylum-seekers’ Right To Liberty In Recast Reception Conditions Directive And Dublin Regulation, at: <http://www.statewatch.org/news/2012/may/eu-ngo-not-crossing-red-lines.pdf>

### 3. Scope

The workshop should be organised half a day, as follows:

- A short presentation of the relevant European and international standards regarding the administrative detention of unaccompanied and separated children in need of protection;
- A short presentation of different practice in some CoE Member States;
- An exchange of views on the legal standards and existing practices to give guidance on CoE future work, possible principles and standards on UASM

### 4. Draft Programme 20 June:

10.00-10.45 Introduction:

- Children's Rights Division
- Migration Coordination Division
- PACE
- UNHCR

10.45-11.30 Presentations experts:

- Mr. Kris Pollet, European Council on Refugees and Exiles (ECRE)
- European Network of Ombudspersons for Children (ENOC) (tbc)
- Danish Refugee Council (tbc)

11.30-12.30 Questions and answers, reflection and debate

12.30 Closing

### 5. Targeted audience

The meeting should gather representatives of the relevant Council of Europe institutions/entities notably:

- Action against Trafficking in Human Beings (GRETA)
- Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly (PACE)
- Committee of Ministers Thematic Coordinator for Children's Rights (TC-ENF)
- Congress of Local and Regional Authorities;
- European Commission against Racism and Intolerance (ECRI)
- European Committee for the Prevention of Torture (CPT)
- European Committee of Social Rights (ECSR)
- European Committee on Crime Problems (CDPC)
- European Committee on Legal Co-operation (CDCJ)
- European Court of Human Rights (ECtHR)

- European Steering Committee for Youth (CDEJ), Advisory Council on Youth (CCJ), Joint Council on Youth (CMJ)
- European Steering Committee for Human Rights (CDDH)
- Framework Convention for the Protection of National Minorities (FCNM)
- Migration Coordination Division
- Office of the Commissioner for Human Rights