

30 July 2008

**European Network of Ombudspersons for Children
Statement on the E.U. 'Return' Directive**

The European Network of Ombudspersons for the Children is deeply concerned about the recent agreement reached by the European Parliament and the Council of E.U. on the 'Return' Directive (18.6.2008) and calls on national governments to transpose it by respecting fully and without any exceptions the rights of children and the safeguards for their full enjoyment by foreign minors, especially those unaccompanied.

The Directive provides grounds for the violation of children's rights, despite including vague clauses for respect of fundamental rights, special treatment of vulnerable groups and due consideration to the best interests of the child. Those clauses right next to provisions allowing detention and expulsion of unaccompanied minors seem to be rather wishful and do not guarantee the prevention of children's rights violations. Minors are grouped altogether under the general title "vulnerable persons" (art.3) with other categories of subjects, who are also –each one of them- bearers of specific rights deriving from international conventions and legal instruments. This inevitably leads to downgrade the child's condition and absolute right to protection, by grouping them under the vague and general title of 'vulnerable', which is also true for other categories too. In fact, the Directive allows detention and forced deportation ('removal') of minors or unaccompanied minors.

ENOC issued in October 2006 a Statement on "State Obligations for the Treatment of Unaccompanied Children", based on the provisions of CRC and of the General Comment No 6 (2005) issued by the UN Committee on the Rights of the Child - "Treatment of Unaccompanied and Separated Children Outside their Country of Origin"-, a document with a high standing authority in all states that have ratified the Convention.

The ENOC Statement emphasizes in its very first principle that unaccompanied children should not be prosecuted for illegal entry to the country or detained solely because of their immigration status. Sadly, the Directive (art.17) provides for the detention of minors as 'measure of last resort', despite including the contradictory wishful general clause that *the best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.*

The ENOC principle n.10 stresses that unaccompanied children should never be deported /expelled. On the contrary, the Directive (art.10) allows expulsion providing '*before deciding*' an undefined '*assistance by appropriate bodies (..) with due consideration given to the best interests of the child.*'

The ENOC principle n.10 defines the return of minors as re-integration into their social environment of origin (family, care institution or other), which should be sought only through assisted voluntary repatriation¹, and only if this is considered to be in their best interests, after careful assessment including due consideration of their views. Article 10 of the Directive does not guarantee re-integration, but leaves repatriation as a police task by providing only that *‘removing an unaccompanied minor from its territory, the authorities of the Member State shall be satisfied that he/she will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the state of return.’*

Among other minimum standards, the ENOC principle n.13 for the treatment of unaccompanied children requires that from their arrival, unaccompanied children should have access to education, vocational training and health. The Directive solely provides for leisure-recreational activities for minors in detention and conditional access to education, depending on the length of their detention.

The ‘Return’ Directive fails to fully respect children’s rights and to provide for their best interests. Migrant minors and especially unaccompanied ones are bearers of rights and subject to protection and not to persecution, detention and removal. Therefore, we urge the European national governments to transpose the Directive through adopting the minimum standards and respecting the principles provided by international law and the CRC, as analyzed by the General Comment No 6 (2005) and specifically indicated by the ENOC 2006 Statement on State Obligations for the Treatment of Unaccompanied Children².

¹ “Assisted voluntary repatriation of unaccompanied children implies their participation in decision making with the assistance of a tutor / guardian and their informed decision depending on the degree of their maturity. Children should not be returned where this would be against their best interests, taking account of their views. Paragraph 86 of the General Comment of UN CRC on Unaccompanied and Separated Children sets out limited circumstances in which other considerations may apply.”

² Full text: http://www.crin.org/docs/ENOC_Statement_Unaccompanied.doc