

Summary report**ENOC Seminar « Children on the move »****30-31 May 2013, Barcelona****Venue:** Office of the Catalan Ombudsman
Passeig Lluís Companys 7, Barcelona/SpainDay 1 Thursday 30th May

- Welcome Address by Leda Koursoumba, ENOC Chair and Commissioner for Children's Rights, Cyprus

The ENOC Chair welcomed Seminar participants and reminded the purpose of the Seminar which is to prepare the theme for the Annual Conference. Ms. Koursoumba also introduced Yves Pascouau, expert on migration and diversity issues, who accepted to advise ENOC on the subject of "children on the move". The ENOC Chair thanked the Office of the Catalan Ombudsman and the Deputy Ombudsman for Children's rights for co-organizing and hosting the Seminar in Barcelona. Then, the ENOC Chair introduced the Seminar program and informed participants about the evening program.

Further explanations have been provided by the ENOC Chair on the reasons why the subject of "children on the move" has been chosen and the importance to know and understand the legal framework in the context of EU. This was also the reason to collaborate with an external expert on migration issues in the EU area.

- Welcome Address by Ms. Maria Jesus Larios, Deputy Ombudsperson for Children's Rights, Catalonia

Ms. Larios welcomed participants and thanked her staff and the ENOC Secretariat for the successful Seminar arrangements. She pursued by saying that it is important for her institution to host a seminar on the issue of children affected by being on the move since the Catalan office is continuously working to improve the situation of this group of children. She expressed the hope that the collective work ENOC is carrying out in this area will help bring the issue to the agenda of the European Union (EU) and other relevant European and international organizations and that 'children on the move' will finally receive the attention and the protection they are entitled to.

- Yves Pascouau, expert on migration issues at the European Policy Centre

Mr. Pascouau made a quick overview of the EU legal framework on migration and asylum in EU.

He presented three different approaches to address the issue:

1st approach (micro): There are four Treaty provisions which frame the situation. Those are Article 6 of the Lisbon Treaty on the respect of fundamental rights in all EU legislation; Article 20 of the Treaty on the respect of fundamental rights in EU external relations; Article 67 of the Treaty providing for Freedom, Security and Justice in the EU area; and Article 78 which provides for a common asylum policy in accordance with the Geneva Convention. The EU Charter for Fundamental Rights which has now legal effect is also an important tool that guarantees the protection of the fundamental rights of children on the move.

2nd approach: Secondary legislation on migration and asylum (Directives, regulations etc.) There are two important relevant Directives in this filed: the Family Reunification Directive and the Return Directive.

What are the main elements addressed by these instruments? Who is defined as a child in these Directives? Children are addressed as minors, vulnerable persons, as unaccompanied minors. In some provisions, the age of children is specifically mentioned or there is a reference to national laws. However, all those provisions apply only to unmarried children. A number of rights are established or referred to in these instruments. To quote a few: the best interests of the child, the assistance of children by specific bodies, the obligation to accommodate children with their families or relatives, etc.

3rd approach: the case-law of the European Court of Justice

Very few member states and national judges are referring to the ECJ for the interpretation/implementation of the EU law in the migration or asylum area. The role of the ECJ on migration and asylum is important but recognizes some margin of manoeuvre to the member states subject to respect of children's fundamental rights.

Discussions:

Seminar participants representing Ombudspersons for Children's Offices in different EU and not EU countries presented a number of state practices that violate relevant EU regulations and basic rights of children on the move. To quote a few: no legal representation of UAM in Cyprus; family reunification subject to legal residence while the ECJ has already ruled that there is no condition of legal residence in the country of reception (Cyprus); intra-European migration where Germany, Austria, the Netherlands and the UK recently tried to downgrade the standards for EU nationals on the basis of abuse of social rights in the country of reception; the question of international security laws put forward by border guards that prevents access to children by human rights organizations (Italy); no difference between return and expulsion and non-respect of the non-refoulement principle for children (Italy); misinterpretation of the Dublin II Regulation (Italy)...

Workshop session 1:

- Legal status of children of irregular migrants

In **Cyprus** this group of children covers the situation of undocumented children, the ones whose asylum application and appeal has been rejected, or whose parents do not have an employment permit (case of controlled immigration). These children face a number of difficulties and have a limited access to rights. They have difficulties in accessing to food, health care, housing, social rights, to IDs and others. Some of these children are even born in Cyprus. Cyprus has a controlled immigration so it is up to the employer who wants to employ a third-country national to apply for a license. The only positive step from the Government was to issue a circular allowing children of third-country nationals to receive medical care.

In **Serbia** there is a serious problem concerning groups of children who do not have identity cards (IDs): one group is Roma population (nor parents neither children), the other group of children are internally displaced people (IDPs) from Kosovo (Roma and Serbs).

In **Italy**, children of irregular migrants have free access to education. The only problem concerns 16-17 years old teenagers who start training and don't have IDs.

In **Catalonia**, the law is adequate but in practice there is a problem in implementing the laws with regards to equal access to school or to health care.

In **France**, UAM are under the responsibility of local authorities-- the General Council, and the problem is one of financial nature (who pays for taking care of these children). The French Rights Defender made 15 specific recommendations related to IDs, health, education, and employment issues. The problem for these children is to succeed in accessing the child protection system so to prove they are minors.

In **Belgium**, there is the same administrative and financial problem as in France.

Recommendation: based on the CRC all children even those whose parents are irregular migrants should be entitled to access to all their rights-access to school, to health care etc.

- Age assessment (AA) issues

In Catalonia, the AA is addressed in case of unaccompanied minors (UAM). The most frequent test is the medical X-Ray test. Tests are conducted in case of undocumented teenagers but also in case of teenagers with valid documentation but whose physical appearance leads to believe that they have reached the legal age of majority and even in case of teenagers with valid documentation and whose physical appearance does not lead to believe they have reached legal age but coming from countries with no reliable citizen register (very often from the Sub-Saharan region), so almost in all cases.

It is the General Attorney who issues the final decision before all these medical tests are conducted and after a forensic examination. The AA procedure presents the following

shortcomings: inaccuracy of the test, lack of application of margin of error especially for teens coming from the Sub-Saharan region where no studies have yet been conducted on African population, no initiation of guardianship proceedings during the AA procedure, and conditions of care facilities not always adequate. In cases where the test determines that the teen is a minor, a preventive guardianship is initiated while the administration tries to find out whether the teenager has relatives in the country. The Catalan Ombudsman's Office has issued a recommendation requesting the authorities to shorten as much as possible this search period in order to allow access to educational and training resources, and not to delay the handling of documentation proceedings since the guardianship remains at a preventive stage. If the test results determine that the teen has reached majority, the teen is expelled from the protection system. In case of discordance between the test and the documentation provided by the young person, the child is deprived of adult professional or other training. Some improvements have however been noticed: the length of the procedure has been shortened, the number of conducted tests has increased in order to improve accuracy, a forensic final test completes the whole procedure, there is now a right of appeal within the five following days of the test determining the teen has reached majority, young people subject to AA are provided with free legal advice etc.

Recommendation: the 1st test should be conducted only if reasonable doubt about the real age of the teenager. Regardless of the medical test, the administration should carefully examine the documentation provided by the minor. The teenager should be given the opportunity to be heard through the whole proceedings and procedure. In case of tests determining the teenager has reached the legal age of majority, the authorities should provide him/her with support for the transition from foster care to adulthood.

In **France**, there are different ways to proceed for AA. In some departments there are specific protocols proposing a multi-disciplinary approach (psychological, physical and medical tests). The French Rights Defender has addressed a recommendation for unifying the procedure across France so that the same procedure AA procedure applies in all the departments.

In **Hungary**, the Fundamental Rights Commissioner has argued that from human rights perspective a medical test is not an adequate tool to assess the age and in any case such a test is not in conformity with the CRC. Until recently, UAM in Hungary have been placed in a refugee camp and not in the child protection system but since a recent investigation of the Commissioner in this field, some improvements have already been noticed. For AA, the Commissioner has recommended a multidisciplinary and not only a medical approach which is outdated and inaccurate.

In **Scotland**, the AA starts with age disputes. In the UK, there are no medical tests strongly argued as unethical and not for medical purposes by human rights institutions and medical associations. There is a mental development assessment test conducted by social workers but there is no nationally agreed procedure. Local authorities have the responsibility to conduct tests and to establish the age. The UK Commissioners are however advocating for an independent assessment body as there is currently a conflict of competences. The detention issue remains one of the biggest problems in Scotland.

In Italy, there was a protocol recommending the use of a multi-disciplinary approach that has been signed three years ago but not applied by the regions having the responsibility in AA. Children arriving in the harbors and elsewhere are usually taken by the police to the medical test but the Italian Ombudsman for Children is recommending the use of the multi-disciplinary tool only in cases of real and clear doubt on the age, and if the doubt persists after the test the AA should be decided in favor of the teenager.

Recommendation: the teenager should be given the possibility to refuse to undergo the AA test if he/she has documentation or if he/she has already undergone a previous examination in another country (question of mutual recognition of AA tests).

- Reception conditions for children/young people close to the majority/ Reception conditions in the context of intra-European migration

In Italy, UAMs live in communities and when they reach the age of majority they can apply for a permission to stay living in the same conditions. However recently due to budget and other cuts, the possibility to extend the permission to stay in the community has been considerably reduced. In the current situation, teenagers who reach the age of majority move from the community to the street or disappear from the community and they are not provided with any further assistance.

In Belgium, the problem concerns intra-European migration. No reception conditions or facilities are provided to families arriving from other EU countries they are treated as common tourists and as such they are not entitled to any subsistence support such as food or shelters. The legal situation of their parents should not be a reason for those children to live in the streets or at the train way station.

Serbia mentioned the other side of EU-migration which is the re-admission issue where huge numbers of families with children are re-admitted back in their country of origin. Serbia mentioned a recent study conducted by Save the Children addressing the situation of children in the context of a re-admission agreement between Serbia and Norway. Children who participated in the study unanimously expressed the view that they cannot understand why they are sent back while they have already learned the language and went to school in the country of reception where they felt integrated.

Recommendation: call for the open method of coordination to be used as approach in relation to reception conditions for children in the different countries. It should be reminded that children are never irregular.

- Guardianship services for UAM/child victims of trafficking

Scotland: There are many international and EU instruments requiring guardianship services. However the UK authorities believe that there is no need to give a new role to social workers since they are already assuming a guardianship role. However there are strong objections against the system expressed by specialized organizations arguing that those children have to navigate through a very complex system and should be able to do so

by providing them with additional support. There is currently a project in Scotland, funded by the Scottish Government, providing a guardianship support and this is the only one in the UK. There is also the legal aspect of the guardianship. Lawyers expressed concerns in situations where they need to take instructions from their clients who are children and do not have the maturity to do so while a guardian would better protect the interests of these children.

In **Cyprus**, UAM are taken under the legal care of the Director of Social services.

In **Italy**, there are different levels of guardianships. The judge for Children can be guardian but the official guardianship is given to the mayors of the cities who delegate to social services but the results are not good since there are problems of conflict of competences. Some regional Ombudspersons are training voluntary guardians who can be appointed to play this role for UAM. There are also guidelines for guardians issued as a result of an international project.

In **Serbia**, similar to other countries, social services have the guardianship role but the problem is that the social workers have the guardianship not only of UAMs but also of children with no parental care so very often the guardian has many children under his/her responsibility and cannot efficiently perform his/her guardian role.

Recommendation: national legislation to require the appointment of independent and specially trained guardians.

Workshop session 2

- Child-trafficking

In **Scotland**, the 1st report on how the UK Government is implementing the Council of Europe Convention on Human Trafficking (GRETA experts report) has been recently released. The report contains very specific recommendations made by the GRETA group which can also be used in the context of child trafficking. In Scotland, the problem is the one of the identification of children victims of trafficking but also the problem of non availability of additional support like access to specialized services (mental care support etc). It is also very important that perpetrators are prosecuted while not a single case of prosecution in Scotland has been noticed.

It has also been underlined that there is a new EU Directive on child sexual exploitation addressing also the issue of child trafficking and other child rights related area which needs to be transposed by November 2013, therefore there is a need to make sure that Governments transpose it correctly.

In **Belgium** there is another problem that is reported. There is currently a draft law providing for the prosecution of the mother of begging children (very often Roma children). The mother is considered as using/exploiting her child. However, the Ombudsperson for Children of the French community in Belgium reminded that

Ombudspersons should remain cautious on this issue as there is a difference between child trafficking/exploitation and a child accompanying her begging mother.

- Children in transit

In **Italy**, it is estimated that there is a big number of ‘ghost’ children—those who don’t want to be identified and to enter the protection system in the country of transit as they are intending to travel to another EU country. Very often, even before their arrival these children have the wrong information and their choice to stay invisible is not always in their best interest as this is considered as a denial of participation. So there is a need to provide them with accurate information but the most important question is who would have the obligation to give them the right information. The first ones who meet these children are the border officers who do not have the necessary skills and training to inform them properly.

In **Cyprus**, upon arrival of UAMs the police have the obligation to inform immediately the welfare services. The Commissioner for Children is monitoring whether this happens as very often the police do not inform or do not do it immediately.

In **Belgium**, there is a difference of the treatment of UAM asylum seekers and of UAM not asylum seekers and very often the 2nd group do not pretend for social services. It is very difficult to locate these children (UAM not asylum seekers) who are invisible, or live in the streets. They move only for economic reasons, not for seeking asylum and they do not receive any assistance while the law does not make a difference between asylum and not asylum seeking UAM.

In **Cyprus**, there is a similar problem with UAM not asylum seeker or whose application has been rejected but the law makes a difference in the treatment between the two groups.

Scotland invoked also the situation of UAMs not asylum seekers and who are EU citizens. This group of children does not receive any protection at all and children are very often sent back to their home country considered as a safe since a EU country.

Recommendation: there should be no difference in the treatment in terms of the provided assistance and support to unaccompanied asylum seeking minors and to unaccompanied minors not asylum seekers.

- The Separated Children Project of Ireland’s Ombudsman for Children’s Office (OCO) presented by Karen McAuley, Participation & Education Officer at the OCO



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- Other issues....

Hungary invoked the situation of missing children and of abducted children however these two groups of children have been considered outside the scope of the target category of ‘children on the move’.

Day 2 Friday 31st May

Based on the shared information and experiences on the different sub-themes in the workshops of the previous day discussions, Seminar participants launched the preliminary discussions on the ENOC draft Statement on “children on the move”. Thus, the scope, the background, the general principles on the basis of which the statement will be further developed, and the main addressees have been primarily defined by attending ENOC member representatives.

The debate on the specific terms of the ENOC statement has been initiated at the 2nd part of the working day when the drafting work started with the support and advice of Yves Pascouau, expert on migration issues at the European Policy Centre. It was agreed that a finalized version of the draft statement will be circulated around the Seminar participants for further comments and suggestions before the draft is circulated among the ENOC membership. The ENOC expert, Yves Pascouau and Stephan Durviaux from the Belgium Ombudsperson for Children’s Office (French speaking community) took up the responsibility to centralize observations submitted by attendees and to integrate them in the final proposed draft version of the statement.

The draft ENOC statement “on children on the move” as agreed by Seminar participants available here:



ENOC draft
statement children or

The Seminar program and the list of participants are available on the ENOC website:

<http://crin.org/enoc/resources/infodetail.asp?id=30571>



ENOC is financially supported by the Fundamental Rights and Citizenship Programme of the European Commission