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Regional Conference
“Migration of unaccompanied minors: acting in the best interests of the child”

Torremolinos, Malaga - Spain
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GENERAL RAPPORTEUR’S CONCLUSIONS

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Presentation of the General Rapporteur's Conclusions

- *Main characteristics of the migration of unaccompanied minors*
- *Identification of problems relating to the reception and care of unaccompanied minors*
- *Proposed solutions for the integration of unaccompanied minors, taking account of the best interests of the child*

Ladies and Gentlemen,

As General Rapporteur, I have the awesome honour of producing summary conclusions in the light of the various speeches and debates at this regional conference, which was organised by the Council of Europe in partnership with the Spanish authorities.

I will do my best to be brief and concise and simply underline a number of points which were common to many of the statements and highlight the salient features of the very diverse situations described in these very interesting contributions and some of the similarities encountered.

In agreement with the Directorate General of Social Cohesion of the Council of Europe and under the aegis of the Migration Department, we decided to bring together representatives of Council of Europe member states, non-member states such as Morocco, Tunisia, Angola and the Republic of Congo, representatives of international institutions and non-governmental organisations, researchers and various observers concerned with the migration of unaccompanied minors, to facilitate discussion of the complex and often ill-defined problem of this type of migration. We also decided to base the discussion on very specific local case studies so that we could describe and assess the phenomenon from various perspectives. For instance, **I talked** about the situation in Morocco, Ms Rosa Maria Bravo Rodriguez talked about Spain, Ms Elizabeth Johnston about France, Mr Sylvain Vite about Switzerland, Dr Ching Lin Pang about Belgium, Ms Roberta Medda-Windischer about Italy and Ms Renta Rakaczki about Hungary.

These local case studies were backed up by more general contributions concerning an entire country or group of countries. For example, Mr George Moschos, Deputy Ombudsman for Children, described the general situation in Greece.

I believe that we have met the challenge of bringing a wide range of people together to consider case studies from Europe and Africa, and that the debates have been fruitful.

The fact that this regional conference has been held in Malaga, with the help of the authorities of the autonomous region of Andalusia and the Spanish Government, is no coincidence. Spain, and particularly Andalusia, which, owing to its geographical position (it shares borders with other European countries and with Africa), used to be a country of emigration, has gradually become a country of immigration and transit.

Several points have emerged from the Regional Conference:

1. At the very beginning of the Conference, Ms Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, underlined the importance of upholding and protecting children's rights, which are interdependent, inalienable and indivisible. The best interests of the child must be the cornerstone of all policies for managing the migration of unaccompanied minors, at every stage of the migration process (in the country of origin, the country of transit, the country of destination and on return to the country of origin). European policies must be comprehensive and integrated, and aimed at devising and establishing

practices based on the rights of the child, and must be founded on strategies of solidarity and co-operation with the countries of origin.

Ms Boer-Buquicchio pointed out that this is a major challenge. Europe must make its position clear vis-à-vis the ever-increasing number of unaccompanied minors: does it want to be an open and tolerant Europe or a Europe that looks only to its own interests?

The representatives of the Spanish authorities taking part in the opening session - Ms Consuelo Rumí, State Secretary for Immigration and Emigration, Ministry of Labour and Social Affairs, Ms Amparo Marzal Martínez, Director General of Family and Childhood, Ministry of Labour and Social Affairs, and Ms Micaela Navarro Garzón, Adviser on Equality and Social Welfare - also underlined the importance of acting in the best interests of the child.

Mr George Moschos, Deputy Ombudsman for Children (Greece), recalled the principles laid down by the European Network of Ombudsmen for Children (ENOC) with regard to the reception and care of unaccompanied minors: abolition of detention; review of the methods by which migrant children are identified and their exact age determined; minors' right to be informed in their mother tongue about procedures relating to applications for asylum; the right to dignified living conditions; the right to appeal if their applications for asylum are rejected; legal representation ensuring that children's rights are respected pending their properly prepared return to their family or their placement in a suitable accommodation centre; appropriate training for all those concerned; and the children's right to a residence permit once they reach the age of majority in the host country.

2. The analysis of the main characteristics of the migration of unaccompanied minors, by means of the aforementioned case studies, highlighted the following points:

The children concerned by these case studies are unaccompanied minors under 18 years of age with no legal representatives or guardians. They come from third countries and usually fall into one or more of the following categories: refugees from countries in armed, ethnic or religious conflict, who have little or no knowledge of asylum procedures; victims of people trafficking (sexual exploitation, illegal labour); runaways or street children; or children who have a relative or know someone in the country of destination. *However, the majority have come for financial reasons, often sent by their families. They therefore carry the hopes and ambitions of an entire family, their aim being to find work and obtain papers giving them legal status..*

The great majority of these children are boys between 14 and 16 years of age, with little or no school education and only casual work experience. They usually come from unstable families or families suffering financial hardship, where children are considered the main source of income.

There are some girls but they are less visible because they are quickly caught up in trafficking for the purposes of domestic slavery or prostitution.

These unaccompanied child migrants come from various countries - North and Sub-Saharan Africa but also an eastern European country, Romania, West Africa, Latin America and China - and their numbers vary according to the country.

It is difficult to estimate the number of these children because of their illegal status and their high level of mobility within Europe, and data vary from one country to the next and depending on their nationality. Nevertheless, all of the speakers at this conference agreed that the number of unaccompanied minors migrating to Europe is steadily rising and they are ever younger.

Unaccompanied minors leave their country of origin for the following reasons: armed, ethnic or religious conflict; social and economic crises; the lack of prospects; the difficulty, if not the impossibility, of being allowed into Europe (restrictions on the granting of visas). Sometimes an entire family places its hopes in the unaccompanied minor.

They are attracted to the country of destination by: the myth of a European Eldorado conveyed by the media and the return, in the summer, of friends or relatives who are lawfully resident in Europe and show obvious signs of prosperity; the common historical memory (the social and cultural heritage linked to the existence of protectorates, colonisation and successive waves of migration); the wide range of means of transport, which makes it easier for them to travel; the fact that unaccompanied minors cannot be returned to their country of origin; and the increase in trafficking networks and the fact that they are now better organised.

There are many ways of reaching Europe, by sea, air or land. The cost of getting there depends on the distance, the means of transport and the networks concerned.

3. An analysis of the relevant legislation and reception and care arrangements revealed a number of points. Although the founding principles of the Convention on the Rights of the Child, including the principle of acting in the best interests of the child, have been incorporated into the legislation of almost all countries, practices still vary from one country to the next, and even from one town or region to the next within the same country.

The rights of unaccompanied minors are not always respected. The following have attracted various degrees of criticism, often within the country concerned: administrative detention; the absence of legal representation; forced and/or unprepared returns; the lack of any possibility of appealing if the application for asylum is rejected; failure to inform minors of their rights and to explain asylum procedures; failure to take account of their views; the uncertainty caused by the lack of clear methods for determining children's age, which in no way helps unaccompanied minors; inequality of access to healthcare, education and training; instances of minors being subjected to violence when arrested by the police; overcrowded accommodation centres with untrained staff; the lack of a system for tracking down minors who run away or disappear; and the permanent risk of their being expelled once they reach the age of majority.

The fact that practices vary widely between towns, regions and countries also explains why unaccompanied minors readily move from one place to the next in search of a situation that meets their expectations better.

With a view to tackling these problems, many countries have introduced and implemented other procedures and/or strategies: review of legislation; harmonisation of procedures; decentralised (ie. local and regional) partnerships, and partnerships between NGOs and public authorities and between host countries and countries of origin; and renewable residence permits for people on training courses.

The speakers and the participants agreed that there is an urgent need for a comprehensive strategy based on international co-operation between Europe and the countries of origin in order to obtain a better understanding of the migration phenomenon (scale, procedures used, causes, networks, etc.), adapt programmes and measures to the profile of unaccompanied minors and ensure the effective involvement of consular departments and legal representatives from the countries of origin, the aim being to help unaccompanied minors to work out their aspirations and plan accordingly. Plans should be drawn up in co-operation with the minors concerned. A good knowledge of their personal experience, family

situation and how they got to the country of destination is required. Such plans should give them access to a status which will in turn ensure that they have access to welfare services, education and training. Once the plan has been drawn up and set in motion, it should be followed up in the country of origin. A careful social assessment must first be carried out to ensure that the appropriate conditions exist. If not, the plan should be implemented in the host country.

At the same time, it is necessary to frame a proper policy to prevent the migration of unaccompanied minors, based on a decentralised (local and regional) co-development strategy, information and awareness campaigns in the countries of origin and the host and transit countries and greater efforts to combat trafficking networks.

Finally, the participants stressed the fact that European policies concerning the migration of unaccompanied minors must take account of the North-South and East-West dimensions.

The interviews with young unaccompanied migrants in France, Spain, the United Kingdom and Morocco carried out by Ms Imogen Lamb, a reporter for Radio France Internationale, offered an insight into how these young people viewed their situation. Some said that their first encounters with the authorities had not taken place in appropriate surroundings and that they had not felt at ease or that they could trust the authorities. Others described the accommodation centres as if they were prisons (the centres were overcrowded and they had been locked up and subjected to corporal punishment). They had often not been dealt with by social workers trained to listen to their problems or respect their rights.

Not all minors have access to schools, training and/or employment. Those interviewed said that they had either been misinformed or been given little information about their rights; they had suffered from having to wait for a long time to find out what was going to happen to them and were afraid they would be expelled. Some of them wandered from country to country seeking answers to their problems (a residence permit, schooling, training and sometimes employment).

The fear that dominated the lives of the majority was that they would be expelled as this would mean that they had failed and would lead an insecure, illegal existence, in which they might be forced to turn to juvenile delinquency or might fall prey to mafia networks.

Families bring great psychological pressure to bear on unaccompanied minors: the children have to reassure their parents and yet never mention their need for affection or their loneliness.

Voluntary repatriation is not one of their immediate objectives: they can return home only if they have been successful (i.e. if they have secured a residence permit, been accepted for training or found employment).

4. On the subject of managing the migration of unaccompanied minors in the best interests of the child, Mr Hatem Kotrane, member of the UN Committee on the Rights of the Child, said that a holistic approach based on the rights of the child is urgently needed (see General Comment No. 6 (2005) laying down minimum rules governing the reception and care of young unaccompanied migrants). He also referred to the document drawn up in 2004 by Save the Children and UNHCR, entitled “Separated Children in Europe Programme: Statement of Good Practice”.

Mr Michel Villan, Chair of the European Committee on Migration (CDMG), highlighted

two initiatives by his committee: the monitoring and assessment of existing policies and the establishment of dialogue between countries of emigration, transit and immigration. He drew attention to the proposals of the Council of Europe Political Platform on Migration (set up by the CDMG) on how to manage the migration of unaccompanied minors while taking account of the best interests of the child: decentralised and consistent co-operation, with the migrants themselves central to initiatives; public information campaigns; setting up a scheme to facilitate the exchange of information and know-how; and preparing and putting into practice suitable plans for the lives of minors in their country of origin or, failing that, in the host country.

He announced that an ad hoc committee (a group of specialists) will be charged with preparing draft recommendations based on the conclusions of the conference.

In his address, Mr Manuel Lezueta, Director of the Office of the Council of Europe Commissioner for Human Rights, stressed the need to ensure that the fundamental rights of young unaccompanied migrants are respected in practice, as they are first and foremost vulnerable children. He called on all those concerned by this problem in the countries of origin, transit and destination to work together to devise a comprehensive policy for the protection of young unaccompanied migrants.

Ms Annick Goeminne, from the European Commission, drew attention to the binding instruments on asylum for young unaccompanied migrants. The Directive on qualification and status as a refugee (2004/83/EC, April 2004) contains provisions acknowledging unaccompanied minors and lays down specific procedures for young unaccompanied migrants, based on the best interests of the child. Moreover, to make up for the lack of data on the extent of the phenomenon, a procedure has been drawn to encourage member states to provide statistics, by means of specific methods, and will be put into practice in 2007.

Ms Goeminne said that a European fund for refugees has been assigned to train border guards with a view to harmonising practices. A system for assessing existing arrangements has also been established to ensure the protection and safety of young unaccompanied migrants and minors who are victims of trafficking.

Ms Margarita de la Rasilla, legal advisor for unaccompanied minors (UNHCR Spain), said that in Spain young unaccompanied migrants are entitled to seek asylum. They have the right to the same treatment as minors in the host country and must be entitled to seek asylum. However, as young unaccompanied migrants are sometimes given no information or misinformed, there are still very few applications for asylum. She stressed the difficulty of determining whether the migrants are under age, the relatively long time-limits and the risk of expulsion if applications for asylum are rejected. Good practices have been established to overcome these difficulties: children who can prove that they are minors or who have no legal guardian may apply for asylum on arrival at the border, and time-limits for the processing of applications have been shortened.

The representative of Angola, which was invited to the conference as an observer country, said that it is necessary to take a comprehensive approach to the problem of the migration of young unaccompanied migrants, involving the countries of destination, transit and origin. He also stressed the need to clarify the concepts used, to harmonise practices and establish effective co-operation with the countries of origin.

5. With regard to integration models, Ms Carmen Belinchón Sánchez addressed the issue of plans drawn up for young unaccompanied migrants. 1,884 minors are currently living in residential centres in Andalusia, the aim being to enable them to live their

lives, to develop as individuals and undergo training, and to facilitate family reunification if possible or, failing that, to place them in a foster family. Some of them are granted a residence permit when they reach the age of majority, provided they have a proper plan for their lives. The migration of unaccompanied minors is gradually changing in terms of age, background, language spoken, reasons for migrating, procedures used, and so on.

It is necessary to take account of their background, of family problems and of their migratory experience and to offer them a plan for their lives while working with the region or town of origin to ensure genuine, sustainable human development and maintain and strengthen family ties.

Staff must be given proper training so that they are able to respond appropriately to the problems encountered by young unaccompanied migrants.

Ms Belinchón said that family reunification is a serious matter requiring a great deal of work: the family has to be located and identified, assessed and involved in the process. The young migrants have to be assisted with their plans and sometimes the community of origin also requires assistance. She stressed that fact that, in order to eradicate trafficking networks, it is necessary to have a genuine participative policy of co-ordination and co-operation with the countries of origin.

In conclusion

The conference has given everyone the opportunity to take a critical look at the management of the migration of unaccompanied minors and to realise that account is not always taken of the best interests of the child: in some cases there is only a very limited and patchy awareness of the scale of the phenomenon; practices vary widely; reception and care facilities are often overcrowded; and expensive security arrangements are overused. There is therefore a need for an integrated and comprehensive strategy involving the countries of destination, transit and origin.

The real question is: do we want to protect and promote the rights of young unaccompanied migrants or do we want to put an end to migration?

The challenge to which we must rise is to act in the best interests of young unaccompanied migrants and at the same time make it unnecessary for them to migrate.