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**REGIONAL CONFERENCE ON  
“MIGRATION OF UNACCOMPANIED MINORS: ACTING IN THE  
BEST INTERESTS OF THE CHILD”**

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**EFFECTIVE RESPECT FOR THE FUNDAMENTAL RIGHTS OF  
UNACCOMPANIED MIGRANT MINORS**

**FINDINGS OF THE COMMISSIONER FOR HUMAN RIGHTS**

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## ***Introduction***

It is a great pleasure for me to contribute to this conference on unaccompanied migrant minors on behalf of the Council of Europe Commissioner for Human Rights.

I would like to begin by thanking the Spanish Ministry of Labour and Social Affairs and our colleagues from the Social Cohesion Directorate of the Council of Europe for providing this opportunity to express the views of the Commissioner for Human Rights and contribute to your discussion on the highly topical subject of protecting unaccompanied migrant minors.

The Commissioner's work varies, touching on all the human rights enshrined in the Council of Europe's conventions and taking diverse forms. His main task is to visit Council of Europe member states and identify shortcomings in law and practice. On his visits, he conducts detailed investigations in institutions and other places where people are particularly vulnerable to breaches of their fundamental rights, such as prisons, detention centres, holding centres, centres for young offenders, children's care institutions and hospitals. He meets the people held or accommodated in these places, and the staff and the management. He also meets the highest national authorities and representatives of civil society and human rights bodies. As well as highlighting problems and shortcomings, he tries to establish constructive dialogue with the relevant national authorities and contribute to a quest for solutions through opinions and recommendations. Lastly, he works to raise awareness of human rights through seminars and promotes the establishment and development of human rights bodies.

Throughout his term in office and particularly during his visits, the Commissioner, Mr Alvaro Gil-Robles, has set much store by the protection of children, taking the view that their situation is still a major problem in the 21<sup>st</sup> century. Too many children are confronted with poverty and destitution, are deprived of basic health care or become the victims of armed conflicts, slavery or sexual exploitation.

The aim of this presentation, therefore, is to put forward a number of ideas based on the outcome of the Commissioner's findings over the last six years. Since the late 1990s, the number of minors arriving in European countries without parents or legal guardians – “separated children” – has been steadily increasing. There is clearly a problem, but there is no commonly accepted definition of such children at European level. It is important therefore for us to endorse the definition arrived at by the joint UNHCR/Save the Children programme “Separated children in Europe”, which defines them as children under the age of 18, outside their country of origin, separated from their parents or their previous legal/customary primary caregiver.

The question is complex because these children have various intersecting legal statuses, which are difficult to reconcile. From a legal viewpoint, they are minors, aliens, persons without legal representation and sometimes even asylum-seekers. Legislation in some countries takes account of only one of these aspects, making the situation even more difficult for the children. Their origins, their past and their motives and goals are all different, but what they have in common is that they are all uprooted and in need of protection. Very often the authorities are unconcerned about their vulnerability or fail to take a consistent approach to them within one and the same territory. Irrespective of how they are defined, they are all likely to end up roaming the streets or falling victim to crime rings or violence before they are

identified by an association, social services or the police. The fact is that these children are victims of the clash between countries' ever tighter immigration policies and the principles of child protection.

### **The child's best interests and immigration policies**

Whereas all the Council of Europe member states have ratified the United Nations International Convention on the Rights of the Child, the Commissioner has noticed that the child's best interests are not always taken into account in policies for the reception and protection of immigrants.

During his visits, particularly his more recent ones to southern Europe, the Commissioner has noted a, to say the least, worrying change in the migration process. Governments are reporting that, as a result of restrictive admission policies and the fact that adult immigrants without official papers are automatically turned back, more and more children are arriving at their borders, particularly in boats from North Africa. The organisers are totally unscrupulous human traffickers, who now "recruit" ever younger children in remote, poverty-stricken villages, enticing them with the hope of a better life for themselves and a guaranteed income for their parents.

### ***Reception of minors***

The Commissioner's view is that repatriation should not be an unconditional goal and that other factors, such as the child's life and physical and mental well-being, should be taken into account.

Yet, while the reception and care system may well be able to deal efficiently with immigrant children who arrive with their parents, there are still enormous difficulties when it comes to the social and cultural integration and personal development of unaccompanied minors.

Some problems derive from a lack of co-ordination and/or co-operation between local and regional authorities, which are responsible for protecting minors, and central government, which is responsible for repatriation and minors' papers. Authorities at different levels sometimes pursue separate or even conflicting policies.

Another problem is that of actually identifying minors, that is to say determining the immigrant's age. Often age is determined using what are commonly known as bone examinations, but there are problems with the reliability of these tests, which have been highlighted both by NGOs and by the UNHCR. They have been criticised because of their inaccuracy, the scarcity of professionals with proper training to carry them out and the lack of proper supervision throughout the process.

One of the greatest difficulties with the identification of real minors is the frequent lack of co-operation by the consular authorities of the immigrant's country of origin. This makes it more difficult to protect minors and increases the risk that they will become victims of human trafficking rings.

In response to policies aimed at excluding unaccompanied minors over 16 who arrive in European countries from child protection systems, the Commissioner would draw attention to the international rules on the subject (the Convention on the Rights of the Child and the European Charter on the Rights of the Child), which place the child's best interests above any other legitimate interest. Any foreigner without papers

who is under 18 – or about whose age there is any doubt – must be considered a minor and must be placed at the disposal of the services for the protection of minors.

### ***Waiting zones***

During his visits, the Commissioner has often encountered both accompanied and unaccompanied minors who are held with adults. To justify this, the authorities say that they lack reception facilities or that they have to keep certain minors under strict police supervision. It is clear, however, that the situation is changing in a growing number of states and fewer children are being detained. The Commissioner was still concerned, however, about the number and the length of child detentions in the United Kingdom. In most cases children are held with their parents, but special provision is made for separated children, who can be detained overnight pending transfer to a suitable institution.

In France, children under thirteen are separated from adults and held in hotels near the airport, but older children are held in the same place as other foreigners and no special arrangements are made for them.

States should offer special protection to children deprived of the support of their families and provide them with a substitute family or place them in a specialised institution. As the Commissioner says, *“Member States should avoid holding unaccompanied minors, pregnant women, mothers with young children, the elderly, and people with disabilities in waiting areas. Where appropriate, unaccompanied minors must be placed in specialised centres, and the courts immediately informed of their situation. Members of the same family should not be separated.”*

Under the guidelines on forced return, adopted by the Committee of Ministers on 4 May 2005, unaccompanied minors who have to be detained may only be placed in centres with staff and facilities suited to persons of their age (Guideline 11, § 4)

The Commissioner is in favour of the idea of building reception centres, with the co-operation of the host countries, in the countries from which most unaccompanied foreign minors come. This would reduce the influx of unaccompanied minors and prevent overcrowding in centres. The Moroccan government’s recent decision to build reception centres in Morocco, with Spanish assistance, for Moroccan minors repatriated by the Spanish authorities is a step in the right direction.

### ***Applications for asylum***

In April 2005 the Parliamentary Assembly of the Council of Europe adopted a recommendation on protection and assistance for separated children seeking asylum. The recommendation highlights the fact that asylum procedures often fail to meet the specific needs of separated children as a result of factors such as a lack of specific training, preconceptions about the truth of events recounted by children, excessive delays and the absence of legal representatives.

Because of restrictive immigration measures, the need for migration sometimes finds expression through the prism of asylum. In other words, the only way for some immigrants to gain protection is to apply for asylum. Unfortunately this also applies to many unaccompanied immigrant children.

As there is no specific legal status of separated child, both children and social services are in the habit, in some countries at least, of making an application for

asylum simply in order to gain time, put a situation in order or ensure that a child can go to school, find a home or be given medical treatment. Yet the asylum procedure should not be used for such purposes, especially in view of the fact that, according to the UNHCR, only a small proportion of children are granted refugee status.

### ***Family reunion***

Like Article 10 of the Convention on the Rights of the Child, Article 8 of the European Convention on Human Rights and the case law of the European Court recognise the right to respect for children's families. In its decision in *Sen v. the Netherlands*, the Court confirmed that children have the right to live with their parents and their families.

Against the current background of restrictions on immigration, family reunion is becoming increasingly difficult. The official procedure for family reunion is often so long and arduous that parents sometimes decide to have their children join them unofficially in the hope that they will be able to put their situation in order afterwards. On his visits, the Commissioner met many unaccompanied minors whose goal was to join a parent or relative in another country.

During his visit to Denmark, the Commissioner noted that stricter requirements for family reunion had been introduced in 2004: the age limit for reuniting children with their families had been reduced from 18 to 15. Only under exceptional circumstances may children over the age of 14 be granted a residence permit so that they can be reunited with their family if it is in their best interests, as defined in the Convention on the Rights of the Child. Yet, as the Commissioner points out, "*family reunion will in fact be in the best interest of the child in the great majority of cases. It is rather incongruous therefore ... to establish a general rule presuming the contrary*".

### **Integration in the host country: education and training**

Separated children should be entitled to the same level of assistance and protection as children with the nationality of the host country, in accordance with the principle of non-discrimination. Irrespective of their legal status, young immigrants should have access to compulsory schooling catering for their specific situation and needs (language support, assistance from psychologists, social workers, etc.).

Accordingly, it is essential to provide access to existing integration schemes or, when setting such schemes up, ensure that they are geared to young immigrants. The schemes should include language courses and vocational guidance and/or training.

Enforcing such rights is often a difficult task. Teachers are faced with problems of communication, integration and cultural background and these difficulties are compounded by the fact that, generally speaking, the resources placed at their disposal are inadequate. Lastly, for older children who have come to find work, school is often of little benefit.

The other question that needs to be addressed is what to do with these children once they have become adults. Even if children have been able to go to school and successfully integrate into the host country, there is practically no legal provision for what will happen to them when they become adults. This can lead to totally absurd situations in which children reaching adulthood lose their education and health rights overnight.

During his recent visit to Italy, the Commissioner took note of the system whereby these children are issued a residence permit if they have been resident in Italy for three years and taking part in an integration scheme for at least two. However, from discussions with Italian social workers, it became clear that the measure actually applied to very few children because it was rare for children to arrive and be legally registered in the country before the age of fifteen.

### ***Preparation for return***

In many cases, repatriation to the country of origin – and the family reunion that this entails – is actually the step that is in the best interests of children who are sent away by families driven desperate by poverty, in search of any type of income or relatives who have already emigrated, and then take up begging on behalf of third parties who exploit them, or enter the labour market too early, leaving themselves prone to exploitation and financial insecurity. The Commissioner believes that, in such cases, it is the host country's duty to take all the appropriate measures to help the child return to the country of origin in decent conditions. He was very encouraged by the measures taken in Andalusia in co-ordination with the relevant Moroccan authorities to provide immigrant minors with training intended to help them to return to their country of origin and find jobs on the labour market there.

### **Human trafficking**

In January 2004, the Commissioner's concern about the growth in human trafficking, particularly trafficking in very young people, prompted him to hold a seminar in Albania on measures to combat trafficking in children in Europe. The conclusions of this seminar highlighted the overriding need to protect the best interests of the children who are the victims of trafficking. Owing to a lack of resources, facilities or suitable programmes, they are treated as ordinary illegal immigrants once they have been arrested. The priority should probably be to set up special centres providing medical and psychological assistance for children who have had a traumatic experience of this kind.

Trafficking can only be successfully prevented through better education and awareness-raising campaigns in countries of origin, transit countries and countries of destination, so the Commissioner was glad to note that governments are putting more and more resources into prevention and education. Romania, for example, has set up programmes to facilitate access to employment for potential victims in certain regions.

Even where there are proper reception facilities and children are able to live in almost normal conditions, dangers persist. During one of his visits, the Commissioner learnt that a large number of separated children disappeared from the centres in which they had been placed. Some were in fact falling into the clutches of procurers who operated in the vicinity of the centres, as children were free to come and go as they pleased, regardless of their age. While these child victims need to be given as normal a life as possible, it is also the state's duty to act *in loco parentis* and protect the children from such dangers.

Trafficking in children is a global scourge and, to combat it, international, national and local co-operation will have to be improved. Agreements should not be restricted to the re-admission of separated children to their country of origin but cover every aspect of the problem, including the pooling of information, the funding of projects and co-operation between institutions.

As far as conventions are concerned, a mention should be made of the optional protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography. In May 2005, the Council of Europe also adopted a legal instrument on the subject in the form of the Convention on Action against Trafficking in Human Beings, which places much emphasis on children and highlights both their need for protection and their vulnerability.

Under Article 10 of the Council of Europe convention, when unaccompanied children are identified as victims of trafficking, steps must be taken to ensure that they are provided with legal representation and that their identity is established and, where it is in their best interests, to locate their families. Children's best interests must also be considered when deciding whether to issue them with a residence permit or whether to send them back to their country of origin.

In view of these provisions, which do at least protect unaccompanied children, it can only be hoped that the convention will come into force as soon as possible.

### **Conclusions**

These findings reflect only a tiny part of the complex circumstances in which unaccompanied minors find themselves. What we have to bear in mind at all times is that, whatever these children's origins, status or goals, they are, first and foremost, vulnerable children, whom we have a duty to protect. Our future depends on the means that we give them to develop their personalities, flourish and build the Europe of the future. Some progress has been made, but there is still an enormous amount of work to do and this will require a huge effort from everyone involved, including national parliaments, international organisations and field workers.

Thank you.