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ACTING IN THE BEST INTERESTS OF THE CHILD »

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EUROPEAN UNION POLICY TOWARDS UNACCOMPANIED MINOR
MIGRANTS

Mr George MOSCHOS

Deputy Ombudsman, Head of Children's Rights Department, Greece

Honourable conference participants,

First of all, I would like to thank warmly the Council of Europe for honouring me with the invitation to make a keynote speech in this conference, and the Spanish government co-organisers for generously hosting this important event.

Please, allow me to start my presentation with a few words about the institution, which I represent, and which will contribute to explaining the reason for my presence in this conference.

I am the Deputy Ombudsman, Head of Children Right' Department at the Independent Authority of the Greek Ombudsman. Our institution was established in 1998, but a special Department for Children's Rights was only created in 2003, with a special Law amendment voted by the Greek Parliament, following the Standards set by the **European Network of Ombudsmen for Children** and thus becoming one of Europe's Children's Ombudsmen.

The institution of the Children's Ombudsman

The Children's Ombudsman is an independent mediating institution, on the basis of the general tradition of Ombudsmen, but specialising in the protection and promotion of children's rights. The first ever Children's Ombudsman was established in Norway (1981). "Ombudswork" for children was spread around Europe, especially after the adoption of the Convention for the Rights of the Child (CRC) by UN member states (1989).

The European network of Ombudsmen for Children (ENOC), which was created in 1997, to link, coordinate and empower the activities of its members, set out a number of requirements, called the "ENOC Standards" ⁱ(2000) that had to be fulfilled by any institution wishing to be regarded as a Children's Ombudsman. Among else, these standards included a requirement that the institution would be:

- Founded by legislation and be independent from government*
- Specially focussing on children's rights*
- Investigating violations after complaints or on its own initiative*
- Accessed by children*
- *Listening to children's voice*
- Presenting Annual Reports to the parliament*
- Observing the implementation of CRC*
- Promoting children's rights*

Nowadays there are two kinds of independent institutions in Europe acting as Children's Ombudsmen:

- Independent Children's Rights offices (Ombudsmen or Commissioners for children's rights)
- Special Departments for Children's Rights operating within Human Rights Institutions or General Ombudsmen.

ENOC holds an annual conference where its members meet, exchange information and produce common statements. Currently there are 29 different institutions participating in ENOC activities, coming from various countries of the Council of Europe. Unfortunately not every member state in the region has yet a Children's Ombudsman.

The experience of the Greek Ombudsman in unaccompanied minors' issues

For more than two years, since my appointment as a Deputy Ombudsman for Children's Rights in the independent authority of the Greek Ombudsman - in July 2003 - our Department has been involved with a large number of cases and activities regarding the protection of unaccompanied children's rights, as I will later explain to you in more detail.

Coming from that part of Europe that neighbours to Asia and to northeast Africa, but also to those countries of southeast Europe that have witnessed enormous political and socio-economic changes in the last two decades, Greece is a country that has received a large number of immigrants. Nowadays it has the largest percentage of immigrants in EU reaching around 10% (perhaps even more) of its total population.

Before moving further on with my subject, and speaking from the point of view of a Children's Ombudsman, I would like to share with you an experience I had, in the past year, with a group of unaccompanied children, who had been trafficked to Greece.

In September 2004, six children from Albania were identified by the police in Athens, as exploitation and trafficking victims. The trafficker was arrested. The prosecutor for minors placed the children initially into a hospital and then into the shelter of a Greek non governmental organisation. I visited those children twice, and spoke with them, in an attempt to follow up the implementation of a recent law, regarding the treatment of trafficking victims (law 3064/02). They were frightened after their experience, and they were really worried about their future. These children were the first ones to be repatriated to the country of their origin according to the provisions of the new law and the international standards on repatriation of minors. A few months later, while visiting Albania, in co-operation with the institution of the Albanian Ombudsman, and the international N.G.O. "Terre des Hommes", I had the opportunity to visit some of these children in their family environment and to talk with them and with their parents. This time, I could see a completely different picture. The children were back at their homes; they were going to school and were meeting regularly with social workers. Of course they were living in poverty, as they were in the past, but this time they were together with their parents. They told me that they planned and wished to come back to Greece one day, but this time with legal papers, with work and stay permits.

Unaccompanied children and the Convention for the Rights of the Child

We all know well that there are thousands of children in all European countries, originating from different countries of Europe or from other continents, who have been separated from their parents and from those people who were responsible for them by law, for various reasons, moving to another country and looking for a better future in life.

Since the early 90s the number of these children has increased sharply in the European countries, along with the social and political developments in our region, as well as in other neighbouring regions of the world, and the rise of immigration.

Immigration laws and policies have become stricter, in order to restrict and discourage the immigrants' movements. However, all governments committed themselves to protecting the rights of children, especially of those who have been separated from their families. Their rights derive mostly from the **UN Convention for the Rights of the Child**, but also from other national and international legal texts, producing an obligation for all member states to take special measures for the unaccompanied and separated children. In particular, the CRC establishes national governments' obligations through the following articles (among others):

Articles: 2: *on avoiding discrimination*
 3: *on considering the best interest of the child*
 10: *on the right for family reunification,*
 12: *on the right of children to be heard,*
 20: *on the right to special protection, when the child is deprived of his/her family,*
 22: *on the rights of children refugees,*
 19 and 32: *on protection from exploitation.*

This conference brings together the point of view from various countries in our region, regarding national legal and institutional frameworks, good practices, positive steps, shortcomings and needs for restructuring of national policies. But most importantly it contributes to the strengthening of an international approach to the protection of the rights of unaccompanied children.

Although so far there have been some important legal texts concerning unaccompanied minors, both binding and non binding, everyone involved directly in the existing institutional frameworks, knows well that there is a need for re-examination of some existing provisions on a national level and for the improvement and harmonisation of others. And in order to promote such changes, one needs **strong international support**.

The evidence brought in this conference and the discussions about to take place in the following two days are expected to contribute to the production of new tools that we all need.

In my presentation I will try to illustrate the Children's Ombudsman point of view, our powers and efforts to contribute to the improvement of services provided for unaccompanied minors.

Definitions and categories

Firstly, let me refer to the **definition** of the term *unaccompanied minors*. In law, in international reports, guidelines and bibliography, there have been various definitions of the term. Actually the term is even defined differently in the context of various national legal frameworks in the countries of the Council of Europe!

Also, may I note that recently, the term "separated children" has been introduced alternatively or additionally to refer to "*children under 18 years of age who are separated from both parents or from their previous legal or customary primary caregiver.*" (definition used by UNHCR).

To skip the questions about the correct definition, I have chosen to use in my presentation the definition used by E.U. legal texts, included in the recent Council DIRECTIVE 2004/81/EC:

"Unaccompanied minors are third-country nationals, below the age of 18, who arrive on the territory of the Member State 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, or minors who are left unaccompanied after they have entered the territory of the Member State".

Some children are totally alone, while others may be living with extended family members, friends, other adults or groups of peers, who, however, are not responsible of them by law or custom.

All such children are entitled to **international protection** under a broad range of legal provisions.

Some particular categories of unaccompanied children are:

- Unaccompanied children **refugees**, (who have left their countries of origin, because their or their families' freedom was threatened on account of their race, religion, nationality, membership in a particular social group or political opinion;)
- Unaccompanied children **immigrants** (moving deliberately to a foreign country, alone or with friends / relatives, in order to find work, to look for a new fortune or to escape from an unwanted – but not threatening for their freedom - situation).
- Unaccompanied children victims of **trafficking** (who have been forced or misled to move to another country, where they are exploited by third persons).

As a particular category we can also mention the unaccompanied young offenders, who may belong to one of the above categories, but they are faced with special provisions regarding their treatment, especially if they have been imprisoned.

International legal provisions

Following these definitions, I would like to summarise the existing international legal provisions, binding and non binding, on unaccompanied minors.

We could thus refer to the following texts:

- International Law for Refugees (Geneva Conventions and Protocols I and II)
- CRC (followed by recommendations of UN Committee for Children's Rights to member states) and Optional Protocol 2000 on the sale of children, child prostitution and child pornography.
- E.U. Conventions, Regulations and Directives (e.g. Dublin Regulation II on the examination of application for asylum, Directives: 2002/90/EC, *defining the facilitation of unauthorised entry, transit and residence*, 2003/9/EC *laying down minimum standards for the reception of asylum seekers*, 2004/81/EC *on the residence permit issued to third-country nationals who are victims of trafficking in human beings*) Council of Europe Recommendations (e.g. 1596/03, 1703/05) and Convention on Action against Trafficking in Human Beings (2005) Non-binding Guidelines: E.g. Inter-agency Guiding Principles on Unaccompanied and Separated Children (2004), UNICEF Guidelines for Protection of the Rights of Children Victims of Trafficking in SE Europe, (2003), etc.

Some facts and figures concerning Greece

In Greece, the estimated population of immigrants is over 1.000.000 persons, representing 10% of the total population. Less than half of them have official stay permits.

The number of asylum applications during the last years varied between 6.000 and 8.000 annually. 200 – 350 applications are made by unaccompanied minors (these are unofficial figures provided by UNHCR).

More than 99% of the applications are finally rejected by the Greek state. However, a considerable number of asylum applicants are provided with a “pink card” while waiting for their application to be examined by the authorities. This card operates as a temporary stay and work permit. Asylum applications may be rejected very quickly, if they are considered to be excessive. Otherwise it may take even a few years, including the time of the examination of the applicant's appeal against a rejection decision. When an application and appeal against it are both finally rejected, then asylum applicants have to leave the country, otherwise they may be arrested and imprisoned. There are no special provisions for minors regarding these procedures.

Refugees entering Greece and not applying for asylum (either because they do not know the procedure or because they want to move to another country and submit their application there) are estimated to be more than double than the official applicants. They

are all treated like illegal immigrants, whether adults or minors, (if they are arrested, they are deported with an administrative order, or, alternatively, if they come from a country where they cannot be officially expelled, they are asked to leave the country by a set date).

The Greek police arrest every year at least around 200 – 300 unaccompanied minors aged 12-18 for being illegally in the country (these are the officially provided numbers).

When an unaccompanied minor is arrested by immigration authorities for entering illegally the country, he/she is detained in “reception – holding centres” for up to 3 months. There are no special arrangements for children (they are only occasionally separated).

There is no official mechanism of age assessment.

No guardian is appointed (the prosecutor acts as such, according to the law).

Children asylum seekers are rarely sent to special shelters (only 25 places are available in a shelter run by a semi-public authority).

Unaccompanied minors over 12 years old, when identified by the police, will be arrested, detained and deported.

Children under 12, which are characterised as victims of trafficking, are placed in care institutions under protection. The law provides for the victims’ repatriation, according to a minors’ prosecutor decision.

Activities of the Ombudsman of Greece for unaccompanied minors

In order to depict how an Ombudsman can act for the protection and promotion of unaccompanied children’s rights, I will set as an example a number of activities that have been undertaken by the Greek Ombudsman, Department for Children’s Rights, during the last 2 years:

- Following submitted complaints or investigations carried out by the Ombudsman’s own initiative, visits have taken place and conditions have been investigated in reception and detention centres, in hospitals, in shelters and in care institutions. The results of these investigations were submitted to the government and to particular administrative authorities (such as police departments, care institutions or local authorities sharing responsibilities for reception centres) in the form of recommendations. Such an example is a case examined after a submitted complaint regarding the operation of a public care institution (“Agia Varvara”), where street children had been placed, but eventually a large number of them had escaped due to functional inefficiencies. The Ombudsman’s report to the government included observations and proposals and led to the government’s commitment to revise and reorganise the system of care provision for children victims of exploitation.

- We have prepared Special Reports which were submitted to both the parliament and to the government (e.g. “Detention and Deportation of unaccompanied minors”, 2005, “Care and welfare services for unaccompanied children refugees” – *under preparation*). We have contributed to monitoring of CRC implementation and other legal provisions on children’s rights, by collecting, elaborating and presenting data on unaccompanied minors, in co-operation with public agencies and N.G.Os.
- We have participated in an open dialogue (through conferences, working groups, articles, etc)
- We have co-organised seminars for professionals (in co-operation with appropriate agencies, such as UNHCR and Greek N.G.Os)
- We have issued and publicised directives – guidelines for the treatment of unaccompanied minors (in 2005 together with UNHCR)
- We have presented legislative proposals to the parliament and the government (Comments on new immigration law, 2005)
- We have issued press releases and given press conferences. Media coverage of the Ombudsman’s Special Reports contributes to sensitisation of the public and acts as a pressure to the government.

The recent Special Report of the Greek Ombudsman, which revealed that unaccompanied minors were treated like adults and were – according to current legal provisions - detained (in inappropriate cells) and deported (they were handed to foreign immigration authorities without any mediation of social services and any contact with their families), opened a public debate, and there are currently discussions taking place on changing the existing legislation and adjusting it to the requirements and provisions of CRC.

Principles to be adopted by every member state

In the last ENOC Conference (September 2005 in Poland) we held a discussion about guidelines and principles, regarding the treatment of unaccompanied minors, which should be applied in all our countries. During this conference, I explained the Greek Ombudsman’s views concerning a number of **principles**, based on CRC provisions, on guidelines (mentioned above) and on recommendations of the Council of Europe, that should be supported by ENOC and promoted in all European member states, and be incorporated in their legal and institutional framework. Within ENOC we have decided that we are going to open a discussion forum among members, so that a relevant statement would be produced in next years’ conference and be promoted internationally later.

In this final part of my presentation I will display you briefly the basic principles that have been included in my proposals.

- Detention of unaccompanied minors for reasons other than committing criminal acts should be abolished. Detention should be replaced with hosting in appropriate reception centres, with living conditions suitable for children’s needs (concerning nutrition, health, hygiene, education, leisure, etc) and for the minimum of time needed. Children should be placed in reception centres separately from adults.

- Clear rules, instruments and systems of identification and investigation of needs of every unaccompanied minor should be established. The conditions of entering the country of destination should also be examined. A formal register of personal details should ensure their protection from the various forms of exploitation and assist the member states in having a more clear picture of the phenomenon.
- *Age assessment* should be systematic, using experts and modern technological tools. Any doubt concerning the age of the involved person, should result in favour of his/her age declaration.
- *All interviews* concerning information on personal details and background of an unaccompanied minor should be conducted by specialised staff.
- While in the hands of public authorities, all minors should be informed about their rights in a language that they can understand. All unaccompanied children should be informed about their right to apply for asylum and its consequences (*Dublin II regulation*).
- In all relevant procedures, the child's opinion should be heard and taken into consideration, in accordance to his/her age and maturity.
- Free interpreters and legal advisers should be provided by the state during the period that the minor's case is under examination by the judicial and police authorities.
- A reliable procedure of appeals against authority decisions should be available and accessible to children.
- Every case of unaccompanied minor should be notified to the respective judiciary authorities and a temporary skilled guardian should be appointed for every minor, until he/she is reunited with his/her family or receives an appropriate care placement.
- Unaccompanied minors should never be deported / expelled from the country of destination. The only procedure to return them to the country of origin, if this is considered to be the best solution according to their interests, is the assistant voluntary repatriation.
- International co-operation should assist quick and efficient family tracing and background social investigation, if needed, of all unaccompanied minors, aiming at their safe family reunion and reintegration.
- If it is decided by the competent services that family reunion is possible and intended, and children can be repatriated, they should be accompanied to the borders by special staff and be handed to the respective public authorities of the country of origin.
- When children are not repatriated, following their asylum application or a decision according to their best interest, special residence permits should be provided and integration into the hosting society should be facilitated, by appropriate educational and welfare placements (in social services, integration projects, educational and training programmes, homes, shelters, foster families, etc. as needed), responding to the children's social and cultural needs. Long term residence and social support provisions should encourage the minors' social integration. Children who stay for a long time in the country of destination should be offered residence permits when they reach adulthood.
- Personnel dealing with unaccompanied children (interviewers, interpreters, social and youth workers, etc) should be properly trained and informed to respect children's rights.

ENOC actions to support international principles

As I mentioned earlier, the European Network of Ombudsmen for Children is committed to steadily protect and promote children's rights. In particular, regarding unaccompanied children's rights we continuously co-operate through:

- Exchanging information between national children's ombudsmen
- Collaborating in handling cases of international character
- Investigating available data and defining needs and deficiencies in national policies/practices
- Preparing a public statement of policy principles for unaccompanied minors to be adopted in the forthcoming annual conference (Athens, September 2006)

After all, as Ombudsmen for Children, we should strengthen our efforts to make sure that the rights and interests of each and every child separated from his family should be safeguarded by the state!

ⁱ The whole text of ENOC Standards can be found on the ENOC website, www.ombudsnet.org.