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independent non judicial human rights structures

*“The protection of separated  
or unaccompanied minors  
by national human rights structures”*

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<sup>1</sup> *The electronic version of this publication is also available at [www.centrodirittiumani.unipd.it](http://www.centrodirittiumani.unipd.it)*

## *Contents*

	<i>page</i>
<b>INTRODUCTION</b> .....	5
<b>CHAPTER 1 - GENERAL CONTEXT</b> .....	9
A. Data and trends.....	9
B. Definitions .....	9
C. Legal framework.....	10
D. Major areas of concern .....	13
E. Long- term solutions.....	16
<b>CHAPTER 2 - The right not be detained and to be provided with a legal guardian</b> .....	19
International standards.....	19
Practices in Europe: Italy - Monitoring the reception of unaccompanied minors arriving from the sea .....	27
Practices in Europe: the reception and protection at local level of UAMs victims of trafficking.....	31
Practices in Europe: management and training of guardians .....	38
<b>CHAPTER 3 - The right to education and to health care</b> .....	43
International and European standards .....	43
The national perspective: a participative project with separated children seeking asylum.....	49
<b>CHAPTER 4 - The idea of a life project</b> .....	53
Council of Europe standards .....	53
Practices in Europe: The Separated Children in Europe Programme.....	55
<b>CONCLUSIONS</b> .....	61
<b>APPENDIXES</b> .....	65
List of background documents .....	65
Workshop programme.....	69
List of participants.....	72



## INTRODUCTION

The “*Peer-to-Peer Project*”, co-funded by the Council of Europe (CoE) and the European Union (EU), consists of a work programme run by the National Human Rights Structures Unit of the Council of Europe’s Directorate General of Human Rights and Legal Affairs and the Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua. It aims at setting up an active network of independent non-judicial national human rights structures (NHRSs) compliant with the Paris Principles. Workshops for specialised staff members of the NHRSs are organised in order to convey selected information on the legal norms governing priority areas of NHRSs’ action and to proceed to a peer review of relevant practices used or envisaged in Europe.

The fifth and last thematic workshop organised in 2009 by the NHRS Unit under the Joint EU-CoE “*Peer-to-Peer Project*” for the attention of heads and staff of ombudsman offices and national human rights institutions, took place in Padua (Italy) and was attended by 43 persons, including participants, experts and organisers.

The discussions were structured around the issues most relevant to unaccompanied and separated minors (UAMs) and to the role of NHRSs to protect their rights. This included:

- The UAMs’ right not be detained and to be provided with a legal guardian;
- The social rights of UAMs, especially the rights to education and to health care;
- The concept of a life project for UAMs and its limitations.

It was acknowledged that the timely provision of a proper guardianship is fundamental in order to ensure the protection of the above-mentioned rights. Guardianship is also pivotal for the concrete application of the best interests of the child and it is central to establishing appropriate action for resolving the situation for any UAM, including the balance of potentially conflicting rights. Best practices concerning the NHRS' s involvement in the selection, training, use and monitoring of guardians were shared among participants.

Additional examples of initiatives by NHRSs for the protection of UAMs rights included investigation on individual complaints from children or those representing children; initiation of or support to legal action on behalf of children, including UAMs; publication and dissemination of information to raise awareness among professionals about the treatment of unaccompanied and separated minors; visits of reception centres and police detention centres; organisation of meetings and seminars with professionals of relevant national agencies, issuing special reports on the situation of UAMs in the respective countries addressed to the parliament and the government; provision of comments on immigration laws in order to ensure their compliance with international standards related to UAMs.

Among all the important and relevant contributions, it is to be mentioned the first-hand experience shared with participants by a former separated child. She reported about her active participation in a project aimed at having a better understanding of the life and level of care afforded to separated or UAMs and facilitating the identification of key issues by separated children.

As a follow up to this event, it was decided to produce this workshop debriefing paper, which summarises the findings of the workshop and provides practical information to the NHRSs and references to documents concerning the role of national human rights structures in protecting UAMs. Each chapter lists points most relevant to the topics and discussions of the workshop, including summaries of experts' contributions.





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## CHAPTER I

*General context*<sup>2</sup>*A. Data and trends*

Recent years have seen a steady rise in the number of UAMs arriving in certain European countries. However, available statistics on UAMs are at best patchy or simply incomplete due to concerns surrounding confidentiality and legislation on access to personal information. In some receiving countries in Europe the UAMs represent an increasing phenomenon, in others they are decreasing in number. Causes for migration of UAMs, or for separation of minors, are directly related to the political and economic instability of the country of origin, in combination to the family environment, which is often characterised by extreme poverty, unemployment of the parents and high number of children in the family. In order to face this influx in a coordinated manner, recently EU member States requested that the European Commission puts forward an action plan to regulate the arrival of UAMs in Europe, with solidarity and the best interests of the children concerned as guiding principles.

*B. Definitions*

There are variation in how States define UAMs. However the General Comment n. 6 of the UN Committee on the Rights of Child refers to two types of minors, similarly to the CoE Recommendation CM/Rec (2007)9, which concerns “*unaccompanied migrant minors*”. Both definitions regard: **Unaccompanied minors** who are children (below 18) outside their country of origin and have been separated from both parents/other relatives and

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<sup>2</sup> Based on the presentation given by ROBERTA MEDDA-WINDISCHER, Senior Researcher, Institute for Minority Rights, European Accamedy Bozen (EURAC).

are not being cared for by an adult who, by law or custom, is responsible for doing so.

*Separated minors* who are children (below 18) outside their country of origin separated from both parents/previous primary caregiver, but not necessarily from other relatives, including children accompanied by other adult family members.

### *C. Legal framework*

Under public international law States have the exclusive competence to establish laws governing the conditions relating to the entry and residence of foreign nationals on their territory. However, states must also respect a number of norms regulating the access to their territories. As far as UAMs are concerned these rules can be found in the following instruments:

#### **HARD LAW**

##### **UN Convention on the Rights of the Child (CRC - 1989)**

The ratification of the CRC by almost all UN member States can be considered as the starting point of a systematic process designed to give new impetus to the range of measures and programmes for children that have been implemented to date, with the aim of aligning national legislation and policy more closely with the rules and principles set forth in the Convention and other related international instruments. The CRC main principles pertaining to the protection of children, including UAMs, are:

- **Best interests of the child** (Article 3): although it can prove very difficult, determining “best interests” must be central to establishing appropriate action for resolving the situation for any UAM. This may mean balancing potentially conflicting rights.
- **Right to participate** (Article 12): the child should have the opportunity to determine what those best interests are, on the condition that it is compatible with the law and interests of others and that it is not contrary to his or her self-interest in terms of physical or mental well-being and integrity.

- **Right to life, survival and development** (Article 6): it implies the obligation on States to ensure children's right to life, survival and development highlights, including the need to protect children from the risk of being involved in criminal activities. States have a duty to act *in loco parentis*. In this perspective, the Optional Protocol to the UN CRC on child sale, prostitution and pornography is particularly relevant.

Other principles derive from the following CRC Articles:

- Right not to be separated from their parents (Article 9);
- Right to non-discrimination (Article 2);
- Right to be protected from violence (Article 19);
- Right to health (Article 24);
- Right to education and leisure (Articles 28/31);
- Right to be protected from economic exploitation, sexual exploitation and violence (Articles 32/34/36).

### **COE Convention on Action against Trafficking in Human Beings (2005)**

The Convention is based on recognition of the principle, that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and integrity of the human being. The Council of Europe Convention is a comprehensive treaty, which aims to prevent trafficking, protect the human rights of victims of trafficking and prosecute the traffickers.

The Convention applies to:

- all forms of trafficking: whether national or transnational, whether or not related to organised crime;
- whoever the victim: women, men or children;
- whatever the form of exploitation: sexual exploitation, forced labour or services, etc.

### **EU Family Reunion Directive (2003); Asylum Directives (2003 and 2004); Returns Directive (2008)**

These legislative instruments create the basic legal framework for the admission and residence of third country nationals in the EU and are designed to harmonise existing national legislation within the EU member States as well as to counter irregular migration, while preserving the right to asylum. The next chapter will examine in detail standards contained in these Directives.

### **SOFT LAW**

A number of soft law instruments provide guidance to States on how to achieve the best protection of the rights of UAMs in the context of three different sets of hard law: the law on migration, the law on refugees and the law on children. The main soft law documents are:

- UN High Commissioner for Refugees (UNHCR) Guidelines on Unaccompanied Children (1997);
- EU Resolution on Unaccompanied Minors (1997);
- Separated Children in Europe Programme (UNHCR / Int. Save the Children Alliance)(2004);
- UN inter-agency Guiding Principles on Unaccompanied and Separated Children (2004);
- General Comment No. 6 of the UN Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin(2005);
- Twenty Guidelines on Forced Return (CoE CM/2005);
- UNHCR Guiding Principles on Formal Determination of the Best Interests of the Child (2006);
- CoE CM Recommendation on Life Projects (2007).

## *D. Major areas of concern*

In the implementation of these standards the main guiding principle should be the *best interests of the child*. This is particularly pivotal when balancing between potentially conflicting rights.

### **1. AGE DETERMINATION**

While UAMs need special protection measures, it is sometimes difficult to determine whether someone is over or under 18. Paragraph 3 of Article 9 of the Council of Europe Convention on Action against Trafficking in Human Beings requires Parties to presume that a victim is a child if there are reasons for believing that to be so and if there is uncertainty about the age. Until the age is verified, children must be given special protection measures, in accordance with their rights as defined, in particular, in the United Nations CRC.

- The typical unaccompanied minor is a 15-17 year old boy;
- The main countries of origin, as far as Europe is concerned, are Afghanistan, Iraq, Morocco, Romania, Albania, Algeria, China and Somalia.
- UAMs could face risks such as:
  - Poverty;
  - Lack of schooling;
  - Deviant behaviour;
  - Economic exploitation;
  - Sale of children;
  - Child prostitution;
  - Child pornography;
  - Involvement in armed conflicts (including sexual service for army officers);
  - Trafficking;
  - Criminal activities;
  - Exclusion from asylum procedures.

Methods of age determination can be intrusive bodily examinations (x-rays on wrists hands and head). These methods are of no conclusive evidence

and have a wide margin of error. Therefore, a minimum set of guarantees should be established, such as:

- Benefit of the doubt;
- Not solely be based on appearance;
- Ethnic/cultural background should also be considered;
- Psychological maturity;
- Examination should be carried out by physicians with specific expertise;
- Physical integrity of the child should be respected.

## **2. ASYLUM PROCEDURES**

UAMs should have access to refugee status determination procedure immediately and not when they become adult. The obligation by States to take into consideration the special needs of unaccompanied asylum seekers children (UASC) were stressed in numerous visit reports by the Commissioner for human rights of the CoE. The Commissioner welcomes the creation by States of special administrative entities in charge of asylum applications lodged by children, in accordance to UNHCR guidelines on UAMs<sup>3</sup>. Caseworkers should undergo special relevant training. Social services have the duty to safeguard and promote the welfare of all children in need, irrespective of their immigration status.

## **3. USE OF DETENTION**

At European level there is a high variation about the use of detention of UAMs from rare to common practice. In his visit to the United Kingdom in 2008, Commissioner Hammarberg reminded the authorities that detention of UAMs is to be considered only in exceptional circumstances being detention a practice highly in contradiction to the “best interests principle”.

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<sup>3</sup> *These guidelines provide that “in the examination of the factual elements of the claim of an unaccompanied child, particular regard should be given to circumstances such as the child’s stage of development, his/her possibly limited knowledge of conditions in the country of origin and their significance to the legal concept of refugee status, as well as his/her special vulnerability”.*



- The main rule: detention should be only *exceptionally justified* (not justified by his/her being unaccompanied, used as a last resort and only for the *shortest appropriate time* - Article 37 CRC);
- Children should be placed in childcare residential facilities or other appropriate settings.

#### 4. GUARDIANSHIP AND LEGAL REPRESENTATION

Paragraph 4 of Article 10 of the Council of Europe Convention on Action against Trafficking provides for measures which must be taken by the Parties when they deal with cases of child victims of trafficking who are unaccompanied children. Hence, Parties must provide for the representation of the child by a legal guardian, organisation or authority which is responsible to act in the best interests of that child (a); take the necessary steps to establish his/her identity and nationality (b); and make every effort to locate his/her family (c), only when this is in the best interests of the child, given that sometimes it is his/her family who is at the source of his/her trafficking. Practical problems surrounding guardianship are the following:

- In principle the family member, who accompanied the minor should be the guardian unless there is evidence of abuse;
- Guardians are appointed for a very short time and they are not appointed very speedily;
- There is also a lack of familiarity with the country of origin;
- Relation between guardians and UAM is very often merely administrative;
- The UAM is often excluded from the consultation;
- Guardians often lack of specific guidance, expertise or awareness;
- Guardians lack of experience in representing children;
- Trained guardians are not in sufficient number;
- Constraints on access to free legal aid can be an additional problem.

In chapter 2 a number of good practices at national level on how to overcome these problems will be illustrated.

## *E. Long- term solutions*

### **1. TO REMAIN IN THE HOST COUNTRY**

The possibility to remain in the host country, especially after the majority age is reached, is one of the crucial issues. The so called “life projects” as a lasting solution for UAMs have been implemented by some CoE member States, that have already established criteria allowing to implement this solution. However, as it will be described in more details further, a number of principles should be taken into consideration:

- Best interests principle (Article 3 of CRC);
- Preservation family and nationality (Article 8 of CRC);
- Desirability of continuity` of culture and language (Article 20 of CRC).

### **2. TO RETURN TO THE COUNTRY OF ORIGIN**

Return to the country of origin is also an option but it is viable only if there are family members or a nominated guardian and adequate` reception facilities. The main obstacles in this case can be:

- Refugee status or a pending asylum procedure;
- Lack of adequate psychological preparation, which may cause violence and disarray;
- UAMs can suffer abuse due to the family situation in the country of origin.

In addition, there are other factors that authorities have to take into account before a UAM is repatriated:

- The length of time spent in the country of reception;
- The level of integration;
- The emotional ties of the child with the host family;
- The UAM’s` views.

### 3. ALTERNATIVE SOLUTIONS:

- a. **Family reunification in the host country or in a third EU country:** if the child remains in the host country then there is the possibility for family reunification. However, according to the 2003 EU Directive on Family Reunification EU member States<sup>4</sup> can restrict family reunification, rights for children, if they apply after the age of fifteen. Other receiving member States may also refuse the entry of children over the age of twelve, who travel separately from their family.
  
- b. **Adoption:** this is a very rare solution and needs to be based on serious grounds and thorough screening of the adopting family, solely based on the best interests of the UAM.

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<sup>4</sup> *This Directive does not apply in the United Kingdom, Ireland or Denmark.*

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## CHAPTER 2

*The right not be detained and to be provided with a legal guardian**International standards<sup>5</sup>*

This chapter addresses the issue of the UAMs' right not be detained and to be provided with a legal guardian. The biggest challenges UAMs can face when travelling from one country to another are: tough border controls; lack of child-sensitive reception procedures; insufficient legal representation and guardianship procedures, combined with accelerated or restrictive asylum procedures.

**A. UNITED NATIONS**

Human rights of children are generally applicable without distinction as to legal status and regular/irregular presence in the territory of the State. This non-discrimination principle is reiterated in:

- General Comment No. 15 of the UN Human Rights Committee on the position of aliens under the International Covenant on Civil and Political Rights, (1987);
- UN Committee on the Elimination of All Forms of Racial Discrimination General Recommendation No. XXX on Discrimination against non-citizens, (2005) (cf. § 3);
- Article 2 of the CRC which states that “*the convention is applicable to every child regardless of legal status, within the jurisdiction of a State*”.

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<sup>5</sup> Based on the presentation given by PAOLO DE STEFANI, Professor, Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua.

CRC provisions addressing the situation of minors entering a foreign country or resident in it, including S/UAMs are found in:

- Article 10 on family reunification: “... *applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner*”.
- Article 22 on asylum seeking children: “*States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties*”.

Additional provisions of the CRC concerning children on the move are related to protection from exploitation, inhuman treatments and detention measures and can be found in:

- Article 36: “*States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare*”.
- Article 37: a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. (...)<sup>6</sup>. (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time<sup>7</sup>. (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the

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<sup>6</sup> This principle is based on the extended non refoulement principle, protecting any individual, not only asylum seekers, according to the ECHR case law on Article 3.

<sup>7</sup> This provision is spelt more precisely in the Separated Children in Europe Programme’s guidelines of 2004 “Separated children should never be detained for reasons related to their immigration status”.

human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

## **B. COUNCIL OF EUROPE**

**The European Committee on the Prevention of Torture (CPT)** has dealt with the issue of reception conditions and accommodation, during its visits to police stations at the borders, or in detention centres for foreigners. The CPT has also pointed out that UAMs seeking asylum must be placed in residences or with host families in the UAMs country of destination. The CPT, for example, found in a number of visits to CoE Countries a total lack of legal guarantees for UAMs, who were housed with adults, usually women, as well as detained for too long.

**Commissioners for Human Rights**, Alvaro Gil-Robles and Thomas Hammarberg, also addressed the issue of detention of migrant children. They have, in many of their reports, criticised this practice as being contrary to the interests of the child and the UN CRC.

Beyond their opposition in principle, the Commissioners have often found that the detention or retention housing juvenile or family, were not adapted to the needs of minors. In 2001 Commissioner Gil-Robles has recommended to member States to avoid to retain in the waiting areas UAMs, and to place them, where appropriate, in specialized centres, to inform immediately the judicial authorities, and, when possible, never separate them from their family.

**The Council of Europe Convention on Action against Trafficking in Human Beings**<sup>8</sup>, in regard to guardianship, provides that, as already mentioned, Parties must arrange for the representation of the child by a legal guardian, organisation or authority which is responsible to act in the best interests of that child. The arrangement for guardianship is important in the asylum procedure of UAMs: Commissioner Hammarberg stated that “*a personalised concept of guardianship could help*” ... “*ensuring proper, quickly and detailed information about the processing of UAMs asylum claim*”<sup>9</sup>. Provision of proper guardianship is therefore necessary to avoid a feeling of “*extreme anxiety*” about the result of a UAM’s asylum request.

In 2005, the **Committee of Ministers** adopted “*twenty guidelines on forced return*”. This code of good conduct for expulsion procedures brings together the various principles developed by several organs of the CoE into a single text to guide member States in their return operations to ensure that any forced return of a migrant to be in compliance with fundamental rights.

### C. CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

#### **Mubilanzila Mayeka and Kaniki Mitunga v. Belgium**<sup>10</sup>

An issue related to detention is the UAMs forced or voluntary return to their country of origin.

The European Court of Human Rights addressed this issue in the case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* in 2006. The Court estimated that the Belgian authorities did not ensure that effective care of

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<sup>8</sup> *This CoE Convention is a comprehensive treaty mainly focussed on the protection of victims of trafficking and the safeguard of their rights; it places much emphasis on children and highlights both their need for protection and their vulnerability. The Convention provides also for the setting up of an independent monitoring mechanism guaranteeing parties’ compliance with its provisions.*

<sup>9</sup> *Report by Commissioner T. Hammarberg following his visit to Turkey on 28 June – 3 July 2009*

<sup>10</sup> *Application No. 13178/03, Judgment of 12 October 2006.*



a baby girl, then aged five, took place and did not take into consideration the real situation that might confront the child on her return to her country of origin.

The Court found violation of Articles 3, 8 and 5 in respect of both applicants (daughter and mother) as per the following reasons:

**Violations of Article 3.** a) The 5-year-old applicant, who arrived in Belgium from the Democratic Republic of Congo (DRC) as a separated child (then unaccompanied, after she was removed from her uncle), was held for 2 months in detention under the same conditions as adults. Her mother, in Canada, also suffered considerable distress. b) After the 2 month detention, the girl was deported to the DRC without the Belgian authorities ensuring that there was a caregiver on the spot. The deportation caused considerable distress to the mother too (inhuman treatment).

**Violation of Article 8.** As a consequence of her detention and deportation, the girl was separated from her relatives (uncle and mother); her detention delayed her reunion with her mother in Canada violating her right to private life.

**Violations of Article 5.** Article 5.1 (f): the girl was detained in a closed centre for illegal foreign aliens under the same conditions as adults. Article 5.4 (habeas corpus): the State's decision on deportation was taken before the *chambre de conseil* had ruled on her application for release from detention.

This judgment is particular relevant on the matter of detention of a child in a centre for irregular migrants with no facilities specifically designed for children. The pertinent findings of the Court are:

*“101. In the instant case, the ground for the second applicant’s detention was that she had entered the country illegally as she did not have the necessary documents. Her detention therefore came within paragraph (f) of Article 5 § 1 of the Convention, which permits the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”*

102. However [this] does not necessarily mean that it was lawful within the meaning of this provision, as the Court's case-law requires that there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention ...

103. The Court notes that the second applicant was detained in a closed centre intended for illegal immigrants in the same conditions as adults; these conditions were consequently not adapted to the position of extreme vulnerability in which she found herself as a result of her position as an unaccompanied foreign minor”.

It could be said therefore that according to the case law of the Court:

- Children should only be detained as a measure of last resort and not for purely immigration reasons (art. 5.1(f) ECHR);
- Alternative arrangements should therefore be identified, including residency with other family members in the country, residential homes for children, or foster care arrangements;
- At a minimum, the children should be placed in centres separately from adults for the shortest possible time under appropriate material conditions.

#### **D. EUROPEAN UNION**

Policies and guidelines on how to develop age-sensitive procedures have been developed under international refugee law more than in other areas of law relating to migration. Such standards could be in principle extended to cases of Separated or UAMs and numerous examples can be found in EU law, such as:

- Council Directive 2003/9/EC of 27 January 2003 on minimum standards for the reception of asylum-seekers;
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted:

Article 30:

*“1. As soon as possible after the granting of refugee or subsidiary protection status Member States shall take the necessary measures, to ensure the representation of unaccompanied minors by legal guardianship or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or Court order”.*

*“3. Member States shall ensure that unaccompanied minors are placed either: (a) with adult relatives; or (b) with a foster family; or (c) in centres specialised in accommodation for minors; or (d) in other accommodation suitable for minors. In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity”.*

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status:

Article 17:

*“With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 12 and 14, Member States shall: (a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also be the representative referred to in Article 19 of Directive 2003/9/EC of 27 January 2003”.*

- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (“returns directive”)

Article 10 - Return and removal of unaccompanied minors:

*1. “Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child”.*

2. *“Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return”.*

#### Article 15 - Detention<sup>11</sup>:

5. *“Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a limited period of detention, which may not exceed six months”.*

6. *“Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to: (a) a lack of cooperation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from third countries”.*

#### Article 17 - Detention of minors and families:

1. *“Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time”.*

2. *“Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy”.*

3. *“Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education”.*

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<sup>11</sup> *It is useful to remember that the time limits set for in this directive are meant as maximum time limits and that that the EU States in transposing this Directive in the domestic law may not foresee even any period of detention. In any case the principle of “best interests” of the child has to prevail: this principle must supersede any national interest, as 6 months in the life of a 5 year old child is not at all a limited period of time.*

4. *“Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age”.*
5. *“The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal”.*

## *Practices in Europe: Italy - Monitoring the reception of unaccompanied minors arriving from the sea*<sup>12</sup>

### **GENERAL BACKGROUND**

Since May 2008, Save the Children<sup>13</sup> has been involved in “Praesidium”, a project jointly funded by EU and the Italian Government, together with the Italian Red Cross, International Organisation for Migration (IOM), UNHCR, and in agreement with the Ministry of the Interior. In this way, the organisation was part of a multiagency approach to mixed migration flow management, providing assistance to migrants arriving to Sicily by sea and initial accommodation, prior to their subsequent transferral to appropriate facilities on the Italian mainland. Based on its activities within the island’s migrant reception centre of the Sicilian island of Lampedusa, Save the Children published a monitoring report “Reception and Protection of Children’s Rights in the Lampedusa Centre”. The report clearly shows how minors, in particular UAMs, represent a significant share of the arrivals.

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<sup>12</sup> *Based on the presentation given by MARLA ANTONIA DI MAIO, Advisor on child protection, Save the Children Italy.*

<sup>13</sup> *Save the Children is the world’s largest independent organisation for children made up of an Alliance of 27 national organisations (24 full members and three associates).*  
[http://www.savethechildren.net/alliance/about\\_us/mission\\_vision/index.html](http://www.savethechildren.net/alliance/about_us/mission_vision/index.html)

## DATA AND TRENDS

Between the period monitored (May 2008 - February 2009) Minors arrived by sea to Lampedusa were 2.294, of whom 1.994 UAMs.<sup>14</sup> In the past 2 years data show that most of the children arriving to Italy were entering in Lampedusa. In fact the arrivals monitored by Save the Children represents a sudden increase of UAMs arrivals considering that all over Italy as of September 2009 there were a total 6.587 UAM of whom 77% (5.091) were not identified, being without an I.D. document. UAMs came mostly from Morocco, Egypt, Palestine, Afghanistan, Egypt, Somalia, Eritrea, as well as from other countries for a total of 18 countries, with UAMs males representing 90% of the total. Most unaccompanied children are between the ages of 16 and 17, but there are even some as young as 13 or 14 years old. Among UAMs there are identified victims of child trafficking and asylum seekers. Moreover, statistics indicate that the winter season is presumably becoming less of a deterrent to those children who are pushed to abandon their own country due to conflicts or in order to look for work, to support themselves and their families.

## ITALIAN LEGISLATION REGULATING UAMS ASYLUM SEEKERS<sup>15</sup>

It concerns citizens of countries not belonging to the European Union or stateless persons aged below 18 years who enter the national territory without being accompanied by an adult and as long as a person accountable for them actually takes them in charge or minors who are abandoned after entering the national territory. The competent juvenile court is informed about the submission of the asylum application and it adopts the relevant measures (legislative decree 39/90).

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<sup>14</sup> *All over Italy there is also a consistent number of UAMs from Romania who represent the biggest group of separated children. Since Romania has joined the EU these children are not included anymore in the category of UAMs or separated children by the Ministry of Interior. This is because the term UAM in Italy means a minor in the context of asylum procedure, who is not an Italian or other EU State's citizen, and is for any cause without assistance and representation by parents or other adult legally responsible for him.*

<sup>15</sup> *According to Legislative Decree No. 85 of 7 April 2003.*

Children are granted rights in accordance to Article 3 of the CRC: “*the best interests of the child*” must always be pursued. A specific Directive of 7th December 2006, issued by the Minister of the Interior jointly with the Minister of Justice, reinforces the responsibility of institutions in taking charge of minor aliens who are unaccompanied and who apply for asylum. According to Article 1, upon his/her arrival the minor must be given all necessary information on his rights and on the existing legal opportunities. After the minor is taken charge of by the guardianship judge, he/she is immediately committed specifically to the National System of Protection for Asylum Seekers and not to a more general type of facility, preventing him/her from becoming a victim of exploitation or from remaining without legal protection. Actually, the National System of Protection allocates each year a certain number of places to vulnerable categories and it has the capability and training to give support to minors and help them to integrate in a new cultural context.

### **INADEQUATE AGE ASSESSMENT PROCEDURES**

Despite the above-mentioned legal framework, in Lampedusa, the only age assessment method applied is a wrist x-ray. Medical certificates do not indicate the margin of error (usually 2 years), and in this way there is no possibility for a legal challenge of the child’s age assessment. Consequently, those who are found to be over 18 years of age are at risk of receiving deportation orders or being immediately returned. “*Save the Children recommends that a combination of methods be used for age assessment, and that it be applied only where there is reasonable doubt as to the child’s age. The margin of error should always be shown on medical certificates and children be consulted regarding the possibility of an appeal*”.

### **DETENTION AND RECEPTION**

In Italy, UAMs in principle are free from detention, but the above-mentioned faulty age assessment often leads to their placement in detention centres. Save the Children’s analysis of reception and protection standards found that despite a 48-hour limit imposed by the law, children have often had to remain in the centre for more than 20 days, with some remaining

for over 37 days, particularly in the month of December. In further contravention of Italian law, in very recent times, children have been transferred to reception centres for adults on the mainland, instead of residential care for minors. As a consequence, nearly two-thirds of UAMs arriving in Italy have fled care homes and are now at risk. Save The Children said that 60% of minors even if placed in Sicilian care homes after landing in Lampedusa had vanished in the period between May 2008 and February 2009. The organization believes that the missing children ran away from the care homes as a result of poor conditions.

### **ITALY'S "PUSH BACK" POLICY**

Save the Children remains highly concerned about the recent policy of the Italian government to push back boats carrying migrants from Libya without any prior assessment in the Italian territory of the protection needs of those on board, severely threatening the safety and lives of thousands of migrant children.

Save the Children fears that children using these boats to flee conflict and poverty in Africa – some as young as 14 - are now being sent straight back to Libya. This means they are denied the protection, healthcare and emotional support they need in Italy and are at risk of being locked up in Libyan detention centres when they are forced back. According to Save the Children, Italy's blocking of migrant boats breaks not only Italian law but also international law, especially the UN Convention on the Rights of the Child and refugee law.

### **CONCLUSIONS**

The best interests' principle cannot be overridden by migration control. While it is clear that migration is a very complicated area, in particular as concern irregular migration of UAMs, this should not be a valid reason to abandon the multidisciplinary/multi-agency approach of the "Praesidium" project. Save the Children is committed to continue to work to urge Italy and other Governments, as well as the EU, to adopt legal frameworks and administrative practices, which fully protect the rights of UAMs.



## *Practices in Europe: the reception and protection at local level of UAMs victims of trafficking*

### ITALY<sup>16</sup>

The operational practices adopted in the territory around the city of Venice (Italy) to fight severe forms of exploitation and trafficking and to protect the victims<sup>17</sup>, have been developed over the past 15 years by creating a very good co-operation between social workers of the City of Venice and the Italian State's Police. This co-operation resulted in the drafting of a memorandum of understanding, which is based on a multi-agency approach to the fight against trafficking and the formulation of best practices. Today, within the social policies department of the City of Venice, a team composed of 5 educators and 6 linguistic and cultural mediators is in a position to interpret and understand language and cultural background of nationals from Romania, Nigeria, Russian Federation, China, Albania and Bulgaria. This team operates 24 hrs a day together with a section of the State's Police under the command of the Police Headquarters of Venice. The operational modalities<sup>18</sup> of the fight against trafficking, involving women and minors, is therefore coherent with the implementation of the so called Palermo Proto-

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<sup>16</sup> Based on the presentation given by ROBERTO DELLA ROCCA, Representative of the Ministry of Interior of Italy.

<sup>17</sup> In Italy the definition of victim of trafficking is found in Article. 601 of Law No. 228 of 2003, which is in accordance to the victim's definition of the so called, Palermo Protocol.

<sup>18</sup> Within 2 hours of the news about an interception by the Police of a presumed victim of trafficking, the operating team meets in the place where the victim is brought (a "neutral" place within the police station). The first contact of the victim is with a cultural mediator and an educator, who is trained in order to assess the needs of the exploited victim. This first contact takes place without the presence of the Police. The cultural mediator and the educator inform the minor about his/her rights, possibilities and the eventual obligations deriving from collaborating with the Police. Then Police can start the proper investigation.

col<sup>19</sup>, as well as other international treaties, *in primis* the CoE Convention against trafficking aimed at countering trafficking while protecting women and minors from sexual exploitation. In particular, the multi-agency approach to the fight against trafficking has allowed for the successful implementation of a number of best practices in the following fields:

- Pre-identification and identification of a presumed victims of trafficking;
- Acquisition of depositions and subsequent investigations;
- Protection and defence of victims' safety during the cooperation with the justice in the different phases of the trial;
- Assistance and social protection of victims within the duty to cooperate with the law enforcement agencies.

The victim can choose to be either enrolled in a social integration program or to return to the country of origin, when this last solution is possible taking into account the results of the contact with the authorities of the country of origin of the victims (usually UAMs and/or women).

On the basis of Article 18 of the law decree no. 286/1998 ("Consolidation on provisions concerning immigration discipline and rules on the foreigner's condition" subsequently integrated by the Decree of the President of the Republic n. 394 of 31 August 1999), is possible for the State's Police headquarters to issue a special residence permit enabling the foreign citizen to escape from a situation of physical and psychological abuse, perpetrated by a criminal organisation and to participate in a social assistance and integration programme. The prerequisites for this residence permit are based on the existence of a situation of violence or serious exploitation and of concrete danger for the personal safety of the victim, related to his or her attempts to escape from the criminal organisation or because of statements made during the criminal proceedings.

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<sup>19</sup> *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as one of the Palermo Protocols) is a protocol to the Convention against Trans-national Organised Crime.*

The programmes of social integration, however, are not always successful. For example, a recent worrying phenomenon in the sexual exploitation of foreign minors concerns UAM girls from Hungary being exploited by an international criminal network operating in the Veneto Region. Unfortunately, in a number of cases these sexually exploited victims after cooperating for a while with the Police forces, in the context of this programme, have returned to the “street”. The project deals also often with UAMs of Roma origin, who are exploited in order to steal or beg. After being identified and after the intervention of the juvenile judiciary they are placed in reception communities, from where they often escape disappearing once again in the criminal ring. Despite these failures, in general the programmes have represented so far an enormous added value for a successful fight against sexual exploitation of foreign minors in the Veneto Region, balancing the protection of the victims’ rights with the need for an efficient investigative work by the Police in cooperation with the prosecutor’s office.

### SPAIN<sup>20</sup>

**Background.** Spain has been a significant destination country for unaccompanied migrant and refugee children for the past 10 years. The majority of these children are from Africa, especially Morocco and Senegal, as well as other West African countries. In 2009 there were approximately between 3,000 and 5,000 unaccompanied foreign children in Spain. Most of them were accommodated in the Canary Islands, Andalusia, Madrid, and Catalonia<sup>21</sup>. The Organic Law on the Legal Protection of Minors regulating the right of the minor to respect, intimacy, the right to control the use of one’s own image, right to information, freedom of opinion etc., estab-

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<sup>20</sup> Based on a paper prepared by EUGENIA RELANO, Office of the Ombudsperson of Spain.

<sup>21</sup> Official figures on the total number of unaccompanied migrant children in Spain are unreliable. Figures are compiled by regional authorities and are not recorded in a uniform manner; children may be recorded multiple times in various autonomous communities due to the lack of a functioning centralized registry. According to UNICEF, Spain reported 5,200 unaccompanied Moroccan children registered in Spanish residential centres at the end of 2007.

lishes the principle of the primary consideration of the best interests of the child in all actions by public authorities.

**Main areas of concern:**

1. Age assessment: there are a high numbers of complaints that point out the existing failures in determining the age and status of the UAMs, who, despite the youthful appearance of some, were treated as adults without having even been tested to determine their age, and were subject to deportation proceedings and placed in internment centres.
2. Guardianship/residence permit: The ongoing arrival of unaccompanied foreign minors in various autonomous regions is overwhelming their systems of protection. A common problem in each autonomous region is that the competent authority either does not declare the state of abandonment of many UAMs or simply does not start applying the procedures to obtain the residence permits for UAMs (or sometimes they do it too late).
3. Repatriation: According to the Ombudsperson, Spain has repeatedly sent UAMs back to situations of risk in their countries of origin. Numerous reports document repatriations that were not in the child's best interests, or cases in which children were returned without being reunited with their families or taken care of by child protection services.

**Recommendations:**

1. Age assessment: a recommendation was made to the Government Delegation in the Canary Islands for the adoption of measures to promote awareness among the police officers so that, if there is ever any doubt about the adulthood of a foreigner, a process of verification of age will be undertaken. To complete the reach of this recommendation, the General Council of the Judiciary has been notified that it would be opportune for all judicial bodies that order detentions to pay particular attention to such issues. The authority should not only take into consideration the physical appearance but also the psychological development of the child; when the age is assessed between 17-19 then always the lower estimate, i.e. 17 should be considered.

2. Guardianship/residence permit: worthy of mention in this area is the action taken by the Equality and Social Welfare Department of the Council of Andalusia, for which a recommendation was delivered urging them not to shirk the responsibility to declare the abandonment of unaccompanied foreign minors under their care.
3. Repatriation: the Spanish Ombudsman recommended that the government authority should legally notify each minor, according to their state of maturity and age, the resolution reached with the aim that the concerned party might legally appeal should he/she choose to do so. This implies the necessary treatment of the minor as the *subject* of the process and not merely an *object* of it.

## UKRAINE

- There are several thousands of UAMs;
- Unfortunately, lot of them are victims of sexual exploitation, such as child pornography;
- In the context of this problem affecting UAMs, in previous years the UN Committee on the Rights of Child, recommended that Ukraine implements its National Plan of Action and develops a specific plan of action aimed at measures needed to prevent and suppress the crimes of sale of children, child prostitution and child pornography.
- Following the above-mentioned recommendation, Ukraine Adopted in 2009 the Law of Ukraine National Plan of Action for Children to Implement the UN Convention on the Rights of the Child till 2016 and, in October 2009, the State Programme to implement the Law in 2010 was adopted by the Cabinet of Ministers. Adoption of these documents allows for the introduction of systemic, integrated approach to the protection of children's rights.
- There are talks about a network of Ukrainians living abroad, who could become potential guardians of abandoned Ukrainian minors illegally migrating abroad.

## **FYROM (MACEDONIA)**

- Since 1998 the National Ombudsman has given recommendations about the status of children and has taken up complaints concerning violation of rights of the child.
- It is reported that the best interests of the child are often not taken into account by the authorities.
- The Ombudsman's office requested the establishment of a centre for children and the competent authorities opened a centre. However, later on it was realised that a centre was not the best option, as the child was basically detained, so the Ombudsman Office requested for the speedy appointment of legal guardians for UAMs.
- The law on UAMs is in line with the UN Convention of the Rights of the Child, but practice for its implementation is still lagging behind.
- Until now, Macedonia was a transit country, now it is also becoming a country of origin for UAMs.
- Recently, raising awareness campaigns among children were organised in order to alert them how to avoid to become victims of trafficking.

## **CROATIA**

- Since 2004 the Government of the Republic of Croatia has adopted a whole series of strategic and operational documents in the field of combating trafficking in human beings.
- Croatia has recently adopted a second national plan for the prevention of trafficking of human beings covering the period 2009-2011;
- Croatia used to be primarily a transit country and, to a lesser extent, destination for trafficking in women. The situation has gradually changed with Croatia becoming a destination country in which victims are exploited. From 2003-2008 there have been 74 identified victims of human trafficking, mainly women. In 2009, according to the Children's Ombudsperson, 5 persons were identified as victims of trafficking, of whom 4 are women aged between 18-26 victims of sexual exploitation and one man aged 40, victim of forced labour abuse;

- While there is no officially recorded child case of victim of trafficking, NGO PETRA reported that in Croatia Children of the Roma are potential victims of trafficking.
- Faced with this new trend in trafficking, efforts are being made to raise awareness among stakeholders, such as journalists, with an emphasis on the protection of personal information of the victims, preventing sensationalism and secondary victimization of the victims; tourism sector workers, and children and the youth in juvenile correctional facilities as a particularly sensitive and vulnerable group.
- According to the Ombudsperson for Children, certain mendacious advertisements should be banned because they can attract UAMs, who can be easily fooled. This is because children's have limited understanding of what trafficking means, since they receive contradicting messages from parents, police, etc., and they consider trafficking to be something that can never happen to them, until when they realise that they actually have been already trafficked.

## **FINLAND**

- A revised "National Plan of Action against Trafficking in Human Beings" was adopted in 2008;
- The Ombudsman for Minorities was appointed as the national rapporteur for trafficking in human beings, acting as an independent authority;
- The number of identified victims is quite low with respect of what is sensed to be the real dimension of the phenomenon. Victims are clearly not recognised as such by all authorities;
- Only one trafficking case was registered concerning a minor, a woman with disabilities.

## *Practices in Europe: management and training of guardians*

### **ITALY - THE EXPERIENCE OF THE OMBUDSMAN FOR CHILDREN OF THE VENETO REGION<sup>22</sup>**

**Background** Despite the legal provisions in place in Italy regulating guardianship, it often happens that in practice there is a conflict of interests between the guardian and a separated child or UAM. This is due to the fact that in most cases the mayor of the municipality where the UAM is accommodated is appointed almost automatically as his/her guardian, without considering that the Mayor represents the municipality which bears the financial burden for the child accommodation.

**Good practices** To overcome this practice, the Ombudsperson for Children of the Veneto Region, with the so called “tutors project”, has sought an active cooperation and participation among the public institutions and the civil society, in order to create a new guardianship resource, practical and viable, which can enrich the landscape of those who deal with children in need. Today in Veneto there are more than 700 persons who have attended a special training course in order to become a legal guardian of children. Half of these guardians, after a formal appointment by the juvenile judiciary or the judiciary, have taken up at least one guardianship. 60% of these guardians are being used for UAMs.

**The project** The project has been run already for 8 years, resulting in 31 training courses for guardians. The main features of this project funded by the Veneto Region are:

- Guardians’ training;
- Awareness raising for the public at large on the issue of UAMs;
- Management of the roster of available guardians;
- Monitoring, supporting and advising guardians.

The final aim is to appoint the most appropriate legal guardian to the minor in need (i.e. the one that is the most adequately trained for that particular

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<sup>22</sup> Based on the presentation given by LUCIO STRUMENDO, Ombudsperson for Children of the Veneto Region (Italy) <http://tutoreminori.regione.veneto.it>



child): in other words, to match at best the available resources in terms of guardians with the needs of the child in terms of age, sex, country of origin, language, etc. The Ombudsperson for Children Office of the Veneto Region facilitates the link between the guardians and the children in order not to delay in the guardians' appointment. Despite this project, the same Ombudsperson for Children was recently appointed the guardian of 45 UAMs in a particular emergency case.

### **BELGIUM<sup>23</sup>**

In Belgium, the protection of children's rights is primarily a community-level competence, although the federal and regional authorities are responsible for a number of crucial issues such as youth justice and the detention of minors. Guardianship matters are dealt at federal level by the Ministry of Justice in the following ways:

- The domestic law regulates the conditions for the implementation of sustainable solutions regarding guardianship, adapted to safeguard the best interests of the UAM;
- Guardianship is a 24 work a day, which involves guardians being available to the UAM, contacting authorities for housing, working on identification of age, parental links and country of origin, as well as dealing with the status of UAM and possible requests for asylum;
- While the guardian is a legal representative, he/she should also take care of the welfare of the UAM;
- Guardians receive training and a very minimal token sum of 500 Euro per year per guardianship and an insurance against civil responsibility;
- Altogether Belgium is hosting or dealing with 2,000 UAMs requiring the work of 200 guardians;
- Guardians' selection: basic competences are checked through a CV and an interview; a letter of motivation is required, since motivation is the most important requirement. Guardians are obliged to report 4

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<sup>23</sup> *Based on the presentation given by BERNARD GEORIS, Counsellor-Head of Service, Federal Ministry of Justice, Belgium.*

times a year. About 3000 reports arrive per year to the competent service of the Federal Ministry of Justice. If complaints are received from the UAMs side, the justice of the peace is usually involved.

- Guardians are slowly being professionalized with the aim to attain the ideal profile of a guardian who should be motivated; open to other cultures; prone to take initiative; competent in guiding youngsters; sensitive to issues relating to asylum and access to the territory; capable of self-developing (training).



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## CHAPTER 3

*The right to education and to health care*

This chapter addresses the issue of the social rights of UAMs. Denial of rights to education and access to health to UAMs are the direct consequence of the situation prevailing in their countries and likely to continue in the country of migration.

*International and European standards<sup>24</sup>*

The so called international bill of rights (Universal Declaration of Human Rights and two UN Covenants - ICCPR and ICESCR) recognises, within the minimum floor of human rights to which all human beings are entitled without any discrimination, a number of social and economic rights. UAMs, like all other individuals, enjoy these minimum standards, including housing, health care and education. In addition, specific conventions, related to children (CRC) and/or related to specific countries (ESC), contain more explicit obligations for States. A specific monitoring system The European Committee of Social Rights (ECSR) has expanded through its case law the application *ratione personae* of certain rights relevant to UAMs. Last but not least, soft law such as good practices, elaborated jointly by IGOs and NGOs, or recommendations addressed by IGOs to member States, have filled gaps between international law standards and their implementation.

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<sup>24</sup> Based on the presentation given by STEFANO VALENTI, Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua.

## ADEQUATE STANDARD OF LIVING

- **The International Covenant on Economic, Social and Cultural Rights (ICESCR)** in Article 11 recognizes the *“right of everyone to an adequate standard of living including adequate housing, and to the continuous improvement of living conditions”*.
- **The Convention on the Rights of Child (CRC)** in Article 27 contains more explicit obligations on states to *“assist parents and others responsible for the child to implement [the right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development] [and to provide where necessary] material assistance and support programs, particularly with regard to nutrition, clothing and housing”*.
- **The European Social Charter (ESC)** in Article 17 recognises the specific right of children to appropriate social, legal and economic protection.
- **The European Committee on Social Rights (ECSR)** has interpreted Article 17 of the ESC as directly inspired by the CRC, which protects in a general manner the right of children and young persons, including unaccompanied minors, to care and assistance.
- **The EU Directive on Reception** in Article 17(1) provides that member States shall take into account the specific situation of vulnerable persons such as minors and unaccompanied minors.

## HEALTH CARE

- **ICESCR Article 12** provides that *“every person has the right to enjoy the highest attainable standard of physical and mental health”*.
- **CRC Article 24** contains an obligation undoubtedly broader, encompassing *“the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care”*.
- **ESC Article 11** establishes a right to protection of health, which has a specific relevance to children. In particular, education at school must be a priority of public health policy. It should be provided throughout schooling and should form part of the curricula. Medical services should exist at school and periodical medical examinations should be carried out throughout schooling. Immunisation programmes must be widely accessible and there must be high vaccination coverage rates.

- **The EU Directive on Reception**, Article 13(2) provides that *“Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence. Member States shall ensure that standard of living is met in the specific situation of persons who have special needs”* Article 17(1) *“such as minors and unaccompanied minors”*.
- **Statement of Good Practice on Separated Children in Europe (SCEP)**, states that *“Separated children should have access to health care on an equal basis with national children. Particular attention should be paid to their health needs arising from previous physical deprivation and ill health, disabilities, and from the psychological impact of violence, trauma and loss as well as the effect of racism and xenophobia that may be experienced abroad. For many separated children access to counselling is vital to assist their recovery”*.

## EDUCATION

- **ICESCR Article 13** requires states parties to *“recognize the right of everyone to education” and in particular to ensure that primary education is free and available to all, that secondary education, including technical and vocational education, is “made generally available and accessible to all by every appropriate means”, and that “higher education is equally accessible to all, on the basis of capacity”*.
- **CRC Articles 28 and 29** reinforce these obligations in identical terms by containing an obligation for States to direct education to *“the development of the child’s personality, talents and mental and physical abilities to their fullest potential”*.
- **Convention for the Protection of the Rights of Migrant Workers (CPRMW)** in Article 30 prohibits refusal of access to schools on the basis of a child’s irregular status. *“Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child’s stay in the State of employment”*.
- **ESC Article 17** includes a general right to education (in addition to

Article 10 and 15). It requires states to establish and maintain an education system that is free of charge. The education system must also be both accessible and effective.

- **Statement of good practices of the SCEP recommends that** *“Separated children should have access to the same statutory education as national children. Schools need to take a flexible, welcoming approach with separated children and provide second language support. In order to preserve their cultural identity separated children should have access to mother tongue teaching. Vocational and professional training should be available to older separated children. It is likely to enhance their life chances if they return to their home country”.*

#### **CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS**

The European Committee of Social Rights (ECSR) has developed a substantial case law on Child rights and their enjoyment by all children without discrimination, including children of illegal or undocumented migrants. The ECSR has concluded that the Revised Charter is directly inspired by the CRC and that therefore Article 17 of the Revised Charter protects in a general manner the right of children and young persons to care and assistance. Later on the ECSR also noted that the CRC is one of the most ratified treaties, and has been ratified by all member states of the Council of Europe, and therefore it was entirely appropriate to have regard for it<sup>25</sup>.

#### **FIDH v. France (2003)**<sup>26</sup>

In this case the ECSR affirmed that the ESC must be interpreted so as to give life and meaning to fundamental social rights. It follows inter alia that restrictions on rights are to be read restrictively, i. e. understood in such a manner as to preserve intact the essence of the right and to achieve the overall purpose of the Charter.

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<sup>25</sup> *OMTC v. Ireland, Collective Complaint no. 18/2003, Decision on the Merits of 7 December 2004, §§ 61-63*

<sup>26</sup> [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp)



As concerns the present complaint, the ECSR had “*to decide how the restriction in the Appendix ought to be read given the primary purpose of the Charter as defined above. The restriction attaches to a wide variety of social rights in Articles 1-17 and impacts on them differently. In the circumstances of this particular case, it treads on a right (to health) of fundamental importance to the individual since it is connected to the right to life itself and goes to the very dignity of the human being. Furthermore, the restriction in this instance impacts adversely on children who are exposed to the risk of no medical treatment*”.

According to the ECSR human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the ESC or under the ECHR and health care is a prerequisite for the preservation of human dignity.

Legislation or practice, which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if these persons are there illegally, is contrary to the ESC. For these reasons, France was found in breach of the ESC because:

- a) medical assistance to the above target group in France was limited only to situations that involve an immediate threat to life;
- b) children of illegal immigrants were only admitted to the medical assistance scheme after a certain time.

#### **DCI v. The Netherlands (2008)**<sup>27</sup>

Recently a complaint was introduced before the ECSR alleging that Dutch legislation deprives children residing illegally in The Netherlands of the right to housing (Article 31 ESC).

While this complaint focuses on the right to housing. According to the principle of indivisibility of human rights housing is seen by the complainant as a prerequisite to other Revised Charter rights: without adequate housing people have difficulty achieving the various rights granted by the Revised Charter. In this sense the right to housing is a prerequisite to the achievement of other rights such as the right to health (Article 11 ESC),

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<sup>27</sup> [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp)

the right to the full development of the family (Article 16 ESC) and the right to an environment that guarantees a full development of mental and physical capacities (Article 17 ESC).

In particular, as concern Article 17, the reasoning of the claimant is that by ratifying Article 17 ESC the Netherlands government has made a pledge to undertake to take measures that ensure the effective right of children to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities. In order to achieve this the Netherlands government has a duty to ensure that children have the care and the assistance they need for this purpose. This care and assistance cannot be achieved without access to adequate housing.

Given the fact that Article 17 ESC, in the interpretation of the ECSR, is inspired by the CRC it stands to reason to look at the provisions that should be guaranteed by the CRC, i.e. its Article 27.

The reason to refer to Article 27 of the CRC lies in the fact that this article mentions the minimum provisions ('material assistance') that should be provided by the State if the parents cannot; nutrition, clothing and housing. Given the fact that the CRC is intended to include all persons under the age of 18 the Netherlands government wrongfully excludes children not lawfully present from social assistance benefits.

It is clear from both Article 17 ESC and Article 27 of the CRC that the parents are primarily responsible to provide for their children. The problem arises when, as is the case in the Netherlands, the residence status prohibits people to work and excludes people from social assistance benefits. This exclusion marginalizes people and leaves them with no legal means of earning an income. In the perspective of DCI exclusion of unlawful aliens can be a choice based on political motivation, but this choice should never lead to poverty, malnutrition and homelessness of children.

The scope of the CRC is broader than the scope of the Revised Charter. The CRC is aimed to protect all persons under the age of 18 within the jurisdiction of the State Party. Discrimination on any ground in exercising the rights set forth in the CRC is prohibited (Article 2 CRC). This prohi-

bition of discrimination includes discrimination of children who are non-nationals, migrants, refugees and asylum-seekers.

The Government argues that the complaint is unfounded on the basis of *ratione personae*. The Appendix to the Revised Charter which excludes non-nationals who reside illegally on the territory of a Member State in very clear wording referring that “foreigners” are covered by the ESC provisions “*only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned*”.

The complainant disagrees and has rebutted the Government’s observation by arguing that the Appendix may be clear and obvious in excluding the children DCI tries to protect, but it should be read in light of the French case (see above). This implies that children without a legal residence permit can be brought within the scope of the Revised Charter.

### *The national perspective: a participative project with separated children seeking asylum*<sup>28</sup>

In 2009 there were approximately 180 separated children in Ireland, who were accommodated in 10 hostels around the greater Dublin area. The idea of the project emerged in 2006 when Ireland was reporting to CRC. The aim of the project was to have a better understanding of the life and level of care afforded to separated or UAMs and to facilitate the identification of key issues by separated children. The objectives were to develop recommendations for relevant authorities and to undertake project work of interest to or suggested by the separated children and UAMs.

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<sup>28</sup> Based on the presentation given by LEYLAH MOHAMMED, former separated child.

## RUNNING THE PROJECT

*35 separated children were involved as advisors on the project and organized the open day. Each young person received a personal invitation: of 128 invited, 48 came to the open day. Discussions were held on human rights (on the positive issues and on their positive and negative side in their life). 26 volunteered to take part in the project and there were 3 meetings with them. The project became so popular the numbers grew to 35.*

## PROJECT OUTPUT

*An Orientation Book (Your Guide) was developed and served as an introduction to Dublin for separated children that come to Ireland. The young people working on the book developed 6 sections on education; religion and spirituality; support groups; top tips on leisure; transport.*

*The book is based on the idea that many people have no idea about the background of separated children. Young people chose how they wanted to share their experiences: they worked with a professional writer, wrote or recorded their own story. Through this story book the separated children gained a face, they were not anymore a number for the general public, but had their personalities.*

*Creative Art: young people worked with an artist from the Hugh Lane Gallery in Dublin and developed materials for the Story Book. They made a model of an ideal city. It was very satisfactory to see all the bright colours and the structure of an ideal city.*

## PROJECT FOLLOW-UP

*Ombudsman for Children's Office (at the request of the children) pressured the government to re-examine the substandard hostels where separated children were accommodated. Young people met with the government's working group on Trafficking to present the outputs. Launch of the guide and book was done at the end of 2009 thanks to a cross-party political support.*



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## CHAPTER 4

### *The idea of a life project*

Chapter 4 addresses the “*idea of a life project*” and its limitations, in relation to the critical period for a UAM: the transition to 18. As no legal instrument regulates the transition to 18 for an UAM, a number of policies have been conceived and implemented, as well as recommendation have been addressed to States in order to seek for a solution about this critical turning point for a UAM.

#### *Council of Europe standards*

#### **RECOMMENDATION ON LIFE PROJECTS FOR UNACCOMPANIED MIGRANT MINORS<sup>29</sup>**

##### **Concept**

Life projects aim to develop the capacities of minors allowing them to acquire and strengthen the skills necessary to become independent, responsible and active in society. They consist in individual tools, based on a joint undertaking between the unaccompanied migrant minor and the competent authorities for a limited duration. They define the minor’s future prospects, promote the best interests of the child without discrimination and provide a long-term response to the needs of both the minor and the parties concerned.

##### **Life projects: an integrated policy tool**

In order to understand what is the UAM’s best interest the project has to become “holistic”, i.e. it should be based on a multi- disciplinary approach, which takes into account several elements:

- the personal profile of the child (background, maturity, country of origin, etc.);

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<sup>29</sup> Recommendation CM/Rec(2007)9 of the Committee of Ministers of the Council of Europe.

- the migration itinerary;
- existing family relations;
- the expectations of the UAM;
- the situation in the country of origin and host country.

### **Mutual commitments among the parties**

Life projects should be formalised by written agreements setting out the commitments of both parties and signed by them and/or by their guardian.

### **The conditions required to implement life projects**

The competent authorities should undertake to ensure that the life project comprises measures to protect the minors in order to help him/her achieve the aforementioned objectives. These measures should include access to:

- appropriate accommodation;
- specialised support provided by properly trained personnel;
- appointment of specially trained guardians and/or legal representatives;
- clear and full information about his/her situation in a language that he/she understands;
- basic services, including food, medical care and education.

### **Rewards for UAM's commitment to the life project**

Where a minor involved in the implementation of his/her life project attains the age of majority and where he/she shows a serious commitment to educational or vocational career and a determination to integrate in the host country, he/she should be issued with a temporary residence permit in order to complete the life project and for the time necessary to do so.



## FOLLOW UP ON THE IMPLEMENTATION OF LIFE PROJECTS AT NATIONAL LEVEL

*Two workshops were organised in 2009 in Rome by the Council of Europe and Italian authorities aimed at sharing information on how to implement life projects as well as on questions of reception and assistance. Pilot life projects were set up by the participants during the first workshop and the results evaluated at the second workshop.*

*The main problematic areas for the implementation of such projects are lack of cooperation among the national authorities involved and a too low co-operation with countries of origin. There is a need to develop better knowledge of legal procedures and existing good practices for the care of unaccompanied migrant minors and the development of their life projects.*

*It was proposed to set up a permanent structure composed of professionals in charge of unaccompanied migrant minors. Its main tasks would be the observation, comparison and monitoring of the assessment and support of unaccompanied migrant minors in the various countries. The implementation of life projects at national level is organised with the financial support of Andorra, Belgium (Walloon Region), France and Italy. A training manual on best practices is to be shortly finalised.*

*[http://www.coe.int/t/dg3/migration/default\\_en.asp](http://www.coe.int/t/dg3/migration/default_en.asp)*

## *Practices in Europe: The Separated Children in Europe Programme*

The Separated Children in Europe Programme (SCEP) was established in 1997 as a response to a steady rise in the numbers of separated children arriving in European countries combined with the inadequacy of the treatment they receive upon and after arrival. The programme seeks to improve the situation of separated children through research, policy analysis and advocacy at the national and regional levels. It is a joint initiative of UNHCR and Save the Children, and is based on the complementary mandates

and areas of expertise of the two organisations. UNHCR's responsibility is to ensure international protection of refugee children and of those seeking asylum; Save the Children is concerned to see the full realisation of the rights of all children. The main features of the SCEP can be described as follows:

### **THE OVERALL AIM**

- To promote a greater recognition and realisation of the right of separated children<sup>30</sup>;
- To support the raising of standards in all policies, practices and services that impact upon them.

### **FOUR KEY GOALS TO ACHIEVE THE OVERALL AIM**

1. To raise awareness among relevant decision makers and practitioners as well as civil society;
2. To influence existing and emerging legislation and policy by advocating for the rights of separated children;
3. To develop skills necessary for effective, rights based work with separated children and to increase the knowledge base of relevant practitioners;
4. To increase the recognition of and consideration given to the views of separated children as well as their meaningful participation and empower them to contribute actively in processes that affect them.

### **STATEMENT OF GOOD PRACTICE<sup>31</sup>**

The Statement aims to provide a straightforward account of the policies and practices required to implement and protect the rights of separated children in Europe. The Statement is principally informed by the UN Convention on the Rights of the Child and two documents, the UNHCR's

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<sup>30</sup> *The programme defines UAMs with an own, broader definition, which also includes children living with extended family.*

<sup>31</sup> *A revised fourth edition of the "Statement of good practice" is to be published soon.*

Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum of February 1997 (HCR Guidelines) and the European Council on Refugees and Exiles Position on Refugee Children of November 1996, (ECRE). Throughout the Statement are references to relevant international and regional law, policy and guidelines. These are listed in full in an appendix.

### **THE CRITICAL PERIOD FOR A UAM: THE TRANSITION TO 18**

Turning 18 is a challenging time for everyone, not only for separated children. No legal instrument deals with the transition to the majority age. Therefore the guardian should be appointed until a durable solution is met, even if it goes beyond the 18<sup>th</sup> birthday.

Separated children who become adults during the course of the asylum status determination process, sometimes referred to as ‘aged-out’, should continue to benefit from the same special determination procedures as those who are under 18 years of age. However, States should eliminate unnecessary delays that can result in a child reaching the age of majority during the process.

Temporary residency is not a durable solution and must not be granted merely as an administrative procedure that will be interrupted abruptly upon the child turning 18. Individuals who arrived as children and were allowed to remain for humanitarian or compassionate reasons or who received any other kind of temporary status expiring at the age of 18, must be treated in a generous manner when they reach the age of majority and full regard should be given to their potential vulnerability. They must not receive lesser treatment than national children leaving care and should be offered support via an after-care programme, to assist their transition to living independently<sup>32</sup>.

Separated children who arrived as minors but who have reached the age of 18 and have not been allowed to remain in the receiving country must

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<sup>32</sup> *Good Practices: in the Czech Republic a young person formerly UAM can maintain contact with the childcare facility until the age of 26.*

be treated as vulnerable and consulted on the conditions required for a successful reintegration into their country of origin or resettlement in, or transfer to, a third country.

There are two main problematic areas which affect the UAM becoming an adult:

1. Welfare support and services available to children under national legislation:
  - 'primary' support under child welfare legislation stops;
  - it remains a limited access to after care;
  - guardianship support is terminated;
  - transfer from children' services to immigration authorities takes place;
  - transfer from accommodation and foster care takes place;
  - financial support is reduced;
  - access to education is reduced as well.
  
2. Impact on the immigration determination system:
  - Former UAM can no longer benefit from procedural safeguards;
  - He/She has no entitlement to family reunification;
  - UAMs are exposed to an increased risk of detention;
  - There are no safeguards regarding return;
  - More likely the former UAM is going to be treated as an adult under the Dublin Regulation's Regime.

### THE DUBLIN REGULATION REGIME AND THE UAMS

*The Dublin Regulation is an agreement between the EU member States, which ensures that an application for asylum submitted in a EU country is handled by one, and only one, country. In the case of a UAM's application for refugee status, the Dublin Regulation allows the country to exercise discretion under an "opt out" clause, and choose to consider the application for refugee status, rather than removing the UAM to the EU country where he/she first made an application. However, this may imply for a UAM, who becomes an adult before the claim is decided, to be transferred to another EU country on the basis that he/she made previously an application in that country.*

*The problem is that EU member States do not have a common list of "safe countries" where a person can be returned without fearing persecution. Thus, a former UAM removed to another EU country can have his/her refugee claim refused and returned to the country of origin. On the contrary, if he/she would have stayed in the previous EU country where he/she resided as UAM, that country could have recognised the same UAM as a refugee and granted status.*

*Another problem is that the regulation in itself does not address the issue of young people who claim the refugee status as minors but they are believed by the State to be adult. In this case there is not a common procedure under the "Dublin Regime" to resolve an age dispute, before the State decides whether to apply the Dublin Regulation or to opt out and determine the refugee claim in loco without removing the applicant to another EU state, where he/she had made a refugee claim or passed through before reaching the state in question.*

### RECOMMENDATIONS

- To fully implement all provisions within SCEP's statement of Good Practice;
- To avoid delay in making decisions;
- To create individual transitions plan as soon it is known how much time it is left until the child turns 18;
- To adopt flexible approach to family reunification;
- To recognise the vulnerability and develop "interim provisions" such as
- Establishing a "buffer age" between the age of majority and when a solution is found.



## CONCLUSIONS<sup>33</sup>

The workshop's discussion indicated that initiatives by NHRs for the protection of UAMs rights might include investigation on individual complaints from children or those representing children; initiation of or support to legal action on behalf of children, including UAMs; publication and dissemination of information to raise awareness among professionals about the treatment of unaccompanied and separated minors; visits of reception centres and police detention centres; organisation of meetings and seminars with professionals of relevant national agencies, issuing special reports on the situation of UAMs in the respective countries addressed to the parliament and the government; provision of comments on immigration laws in order to ensure their compliance with international standards related to UAMs.

The active participation in this workshop of members of the European Network of Ombudspersons for Children (ENOC), widened the exchange of experiences among peers and enriched the discussion on the above mentioned issues<sup>34</sup>. ENOC's aims are to promote and safeguard children's rights, to work on strategies for the fullest possible implementation of the Convention on the Rights of the Child and to act as a collective voice advocating for Europe's children. ENOC is committed to working closely with the Council of Europe, whose strong human rights mechanisms have already done much to assert children's rights, and with the European Union. The priorities of independent institutions for children vary from State to State according to differences in the situation of UAMs and according to the variety of governmental and non-governmental institutions and structures affecting children and promoting human rights.

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<sup>33</sup> *Based on the presentation given by EMILY LOGAN, Ombudsman for Children of Ireland.*

<sup>34</sup> *The European Network of Ombudsmen for Children (ENOC) was formed in 1997 and consists of Independent Children's Rights Institutions active in member states of the Council of Europe. At present there are 34 institutions across 26 COE member states.*

5 key areas of ENOC's work are relevant to the protection of UAMs' rights:

1. **Independent complaints handling:** their comparison allows to spot systemic violations and to make the voice of the children heard collectively.
2. **Advice on legislation at national level:** this implies consulting children, finding out about their problems and bringing their solution into the legislation, bridging law and practice.
3. **Reporting to parliament:** ENOC describes it as a special report focusing on specific cases, identifying gaps, revealing problems and suggesting solutions.
4. **Education of the public opinion:** the media is very much used and is helpful to the cause of minors. This is a quite easy part, because the public is interested. But UAMs receive little attention by the media since the public opinion is more interested in missing children of its own country.
5. **Direct participation of children themselves:** possibly there should be children working directly with the NHRS' s office. Discussion's panels should be organized with them. It is also important to be aware of the practical constraints since there is no institution that can address all the needs of UAMs. Children are very motivated to share their stories, to help, and they are full of ideas. It is therefore encouraging and rewarding to involve children.

A statement on UAMs was adopted at the 2006 ENOC's Annual Meeting. Based on that statement one can compile a checklist of actions that committed governments ought to take to better protect UAMs:

1. UAMs *should not be prosecuted for illegal entry to the country or detained* solely because of their immigration status.
2. *Age assessment* should only take place in cases of serious doubt and should be systematic, using independent experts and modern technological tools and include a combination of physical, social and psychological maturity assessments.



3. Every *interview* on personal details and background of an unaccompanied child should be conducted by staff, fully trained and instructed to respect international children's rights standards.
4. All UAMs should be *informed of their rights*, especially of the right to apply for asylum and its consequences.
5. Public authorities should assure to all unaccompanied children the right to *express their views freely* in all matters affecting them.
6. Free *interpreters and specialized legal advisers*, trained in working with children and young people, with cultural and gender sensitivity, should be made available by the state throughout the examination of the child's case.
7. An efficient credible *procedure for appeal* against administrative and judicial decisions should be available and accessible to children, with implementation of decisions suspended until the appeal has been decided.
8. Immediately after arrival every unaccompanied child should be *referred to the relevant judicial or other competent authorities* and a *skilled guardian* should be appointed without delay.
9. UAMs should *never be deported/expelled*.
10. When children are not repatriated, special long-term *residence permits* should be provided and integration into the hosting society should be facilitated.
11. UAMs should have *access to education, vocational training and health* provisions, on an equal basis to other children within the jurisdiction of the state.
12. *Personnel* dealing with UAMs (interviewers, interpreters, social and youth workers, guardians, legal representatives etc) should be properly trained and informed to respect children's rights.

Based on the above-mentioned checklist, NHRs should commit themselves to continue to work in the context of the UN CRC, as well as other international and regional human rights instruments, and to urge their governments to adopt legal frameworks and administrative practices which fully protect the rights of UAMs.



## APPENDIXES

### *List of background documents*

#### UNITED NATIONS

- UN Convention on the Rights of the Child (UN CRC)  
[http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/UN\\_Convention\\_Child\\_en.pdf](http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/UN_Convention_Child_en.pdf)
- Optional Protocol to the UN CRC on child sale, prostitution and pornography  
[http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/UN\\_Opt\\_Protocol\\_Convention\\_Child\\_en.pdf](http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/UN_Opt_Protocol_Convention_Child_en.pdf)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict  
[http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/UN\\_Opt\\_Protocol\\_armed%20conflict\\_Convention\\_Child\\_en.pdf](http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/UN_Opt_Protocol_armed%20conflict_Convention_Child_en.pdf)
- Committee on the Rights of the Child - General Comment NO. 6(2005) - Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 39th Session, 3 June 2005  
<http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/GC6.pdf>
- Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, UNHCR, February 1997  
<http://www.unhcr.org/refworld/docid/3ae6b3360.html>
- Statement of Good Practice, Separated Children in Europe Programme, 3rd edition, 2004, by International *Save the Children* Alliance in Europe and the United Nations High Commissioner for Refugees  
[http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/Statement%20of%20Good%20Practice,%20Separated%20Children%20in%20Europe%20Programme\\_3ed\\_en.pdf](http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/Statement%20of%20Good%20Practice,%20Separated%20Children%20in%20Europe%20Programme_3ed_en.pdf)

#### EUROPEAN UNION

- Summary of EU legislation on UAMs including Council Resolution 97/C 221/03 of 26 June 1997 on unaccompanied minors who are nationals of third countries.  
[http://europa.eu/legislation\\_summaries/other/l33041\\_en.htm](http://europa.eu/legislation_summaries/other/l33041_en.htm)

- EU Directive 2003/9/CE (2003) on minimum standards on asylum.  
This directive provides, inter alia, that member states must adopt, as soon as possible, measures aimed at arranging the legal representation of UAMs.  
<http://eur-ex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>
- Charter of Fundamental Rights of the European Union – Art 24 The rights of the Child  
[www.europarl.europa.eu/comparl/libe/elsj/charter/art24/default\\_en.htm](http://www.europarl.europa.eu/comparl/libe/elsj/charter/art24/default_en.htm)

## **COUNCIL OF EUROPE**

### **Treaties / Conventions**

- European Convention on Human Rights  
<http://www.echr.coe.int/ECHR/EN/>
- European Social Charter
  - Children Rights Under the European Social Charter  
<http://www.coe.int/t/dghl/monitoring/socialcharter>
  - Article 11 (right to health)
  - Article 13 (right to social and medical assistance)
  - Article 16 (right to appropriate social, legal and economic protection for the family)
  - Article 17 (right of children and young persons to appropriate social, legal and economic protection)
  - Article 30 (right to protection against poverty and social exclusion)
  - Article 31 (the right to housing for children)
- Convention on Action against Trafficking in Human Beings  
[http://www.coe.int/t/dghl/monitoring/trafficking/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp)

### **Committee of Ministers**

- Recommendation CM/Rec. (2009)7 on life projects for unaccompanied migrant minors
- 20 Guidelines on Forced Return adopted by the Committee of Ministers of the Council of Europe on 4 May 2005 (with comments by the Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons - CAHAR)  
[https://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2005\)40&Language=lanEnglish&Ver=addfinal](https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2005)40&Language=lanEnglish&Ver=addfinal)

### **Parliamentary Assembly**

- Recommendation 1703 (2005)1 Protection and assistance for separated children seeking asylum  
<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta05/EREC1703.htm>

### **Venice Commission**

- Migration of unaccompanied minors in the light of the Italian experience (R. Medda-Windischer)
- CDL-UDT(2006)021 UniDem Campus Trieste Seminar “Management of irregular migration in Europe and strategies to combat trafficking in Human Beings” (Trieste, Italy 9 – 12 October 2006):

### **Directorate General of Social Cohesion**

- Regional Conference on “Migration of Unaccompanied Minors: acting in the best interest of the child” Malaga, 27-28 October 2005  
[www.coe.int/t/dg3/migration/Regional\\_Conferences/Malaga\\_Conf\\_en.asp](http://www.coe.int/t/dg3/migration/Regional_Conferences/Malaga_Conf_en.asp)

### **Selected judgments of the European Court of Human Rights**

- Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (2006)  
<http://www.unhcr.org/refworld/docid/45d5cef72.html>

### **Selected decisions from the European Committee of Social Rights**

- International Federation of Human Rights Leagues (FIDH) v. France (Decision No. 14/2003)
- Defence for Children International v. The Netherlands (Complaint No. 47/2008)  
[www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp)

### **European Committee for the Prevention of Torture (CPT)**

- The CPT standards “Substantive” sections of the CPT’s General Reports, Chapter VI. Juveniles deprived of their liberty (pp. 69-75)  
<http://www.cpt.coe.int/en/documents/eng-standards.doc>

### **The Commissioner for Human Rights**

<http://www.coe.int/t/commissioner/>

- Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June – 3 July 2009 Issue reviewed: Human rights of asylum seekers and refugees  
[The Commissioner - CommDH\(2009\)31 / 01 October 2009](#)
- Memorandum by the Council of Europe Commissioner for Human Rights, following his visits to the United Kingdom on 5-8 February / 31 March-2 April 2008. Issues reviewed: asylum – immigration  
[The Commissioner - CommDH\(2008\)23 / 18 September 2008](#)
- Effective respect of the fundamental rights of unaccompanied migrant minors - the findings of the Commissioner for Human Rights, by Manuel Lezertua  
[http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/MG-RCONF\\_2005\\_15\\_Lezertua\\_en.pdf](http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/MG-RCONF_2005_15_Lezertua_en.pdf)
- Recommendation CommDH(2001)19 of the Commissioner for Human Rights concerning the rights of aliens wishing to enter a CoE member State and the enforcement of expulsion orders  
<http://wcd.coe.int/ViewDoc.jsp?id=980219&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

### **European Commission against Racism and Intolerance (ECRI)**

- ECRI Report on Greece (Published on 15 September 2009) (pp 44-45)  
GRC-CbC-IV-2009-031-ENG -

### **OTHER USEFUL LINKS AND DOCUMENTS**

- European Network of Ombudsperson for Children (ENOC)  
<http://crin.org/enoc/index.asp>
- Save the Children  
[General Recommendations on Unaccompanied and Separated Children In EU Policy](#)
- Separated Children in Europe Programme (SCEP)  
<http://www.separated-children-europe-programme.org>

## *Workshop programme*

### **TUESDAY, 20 OCTOBER 2009**

Arrival of participants in Padua

18.30 – 19.00 Welcome reception

19.00 – 20.30 **Opening session**

**Words of welcome and introduction to method and the theme of the workshop**  
by MARKUS JAEGER, Head of Co-operation with National Human Rights Structures, Directorate-General of Human Rights and Legal Affairs (DG-HL), Council of Europe

**The protection of separated and unaccompanied minors: definitions, methods of age determination, relevant international standards and actors involved**  
by ROBERTA MEDDA-WINDISCHER, Senior Researcher, European Academy-Bozen

**The role of NHRs including Children's Ombudsmen**  
by EMILY LOGAN, Ombudsman for Children, Ireland

20.30 Dinner

### **WEDNESDAY, 21 OCTOBER 2009**

9.30 – 11.00 **Working session 1 – The right not be detained and to be provided with a legal guardian**

#### **International Standards**

by PAOLO DE STEFANI, Professor, Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua

#### **Practices in Europe:**

**Monitoring the reception of unaccompanied minors arriving from the sea**  
by MARIA ANTONIA DI MAIO, Advisor on child protection, Save the Children Italy

**Unaccompanied minors victims of trafficking: practices for their reception and protection at local level**

by ROBERTO DELLA ROCCA, Representative of the Ministry of Interior of Italy

11.00 – 11.30 Coffee break

11.30 – 13.00 Discussion and exchange of experiences with contributions namely from the NHRs and/or Children’s Ombudsmen of Croatia and Veneto Region (Italy)

13.00 – 15.00 Lunch break

15.00 – 16.15 Working session 2 – The social rights of separated or unaccompanied minors, especially the right to education and to health care

**International and European standards**

by STEFANO VALENTI, P2P Project Manager, Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua

**The national perspective: a participative project with separated children seeking asylum living in Ireland**

by LEYLAH MOHAMMED, former separated child

16.15 – 16.45 Coffee break

16.45 – 18.00 Discussion and exchange of experiences with contributions namely from the NHRs and/or Children’s Ombudsmen of Ireland and Spain

20.30 Dinner

**THURSDAY, 22 OCTOBER 2009**

9.00 – 10.30 Working session 3 – The “idea of a life project”, but what happens when the minor reaches majority age?

**Council of Europe standards**

by BERNARD GEORIS, Advisor - Head of Service, Directorate General of Human Rights Law, Federal Ministry of Justice, Belgium

**Practices in Europe**

By TERRY SMITH, Adviser and Consultant, Separated Children in Europe Programme (SCEP), International Save The Children Alliance / UNHCR



**Discussion and exchange of experiences with contributions namely from the NHRSs and/or Children's Ombudsmen of FYROM (Macedonia), Ukraine and Finland**

- |               |   |
|---------------|---|
| 10.30 – 11.00 | Coffee break  |
| 11.00 – 13.00 | <b>Dicussion and exchanges of experience continued</b>  |
| 13.00 – 13.45 | <b>Winding-up of the workshop</b><br>by STEFANO VALENTI |
| 13.45         | <b>Close of the workshop</b><br>by MARKUS JAEGER        |
| 14.00 – 15.00 | Lunch   |
| 15.00 – 19.00 | Guided tour of the city of Padua or transfer to Venice  |
| 20.30         | Dinner  |

**FRIDAY, 23 OCTOBER 2009**

Departure

## *List of participants*

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<sup>35</sup> All reference to Kosovo, whether to the territory, institutions or population, in this document shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.



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