Separated and unaccompanied children in the EU

Rebecca O’Donnell and Jyothi Kanics

A growing body of EU law, policy and practical measures address the situation of separated and unaccompanied children who arrive in the EU. However, in the current sensitive political climate, there is a risk of attention and resources being diverted from building on progress.

An increasing number of children are migrating to Europe on their own in order to escape persecution, conflict, violence and poverty or seeking family reunification, educational or economic opportunities. Many are making very dangerous voyages, across land and sea, and once in Europe they may then move, or be moved by traffickers or smugglers, from one country to another. Many have claims for international protection, and many are at risk of discrimination and exploitation.

According to Eurostat, the number of separated and unaccompanied children seeking asylum in the European Union (EU) has been on the increase since 2010. Between January and October 2015, the number of unaccompanied child asylum seekers in Sweden alone (23,349) exceeds the total EU figure in 2014. There are no complete statistics regarding unaccompanied children who do not apply for asylum but the figure is likely to be significant.

In recent years, the EU established some specific obligations for Member States as regards unaccompanied children, including in the revision of the Common European Asylum System, the EU Directive on trafficking in human beings and the EU Return Directive. Although there are still

IFA as an independent test puts Ukrainian asylum seekers in a very vulnerable position. The repeated application by the Polish authorities of this concept requires some liberalisation in the light of the absence of a real possibility for Ukrainian asylum seekers of such relocation inside Ukraine.

Marta Szczepanik m.szczepanik@hfhr.org.pl
Researcher, Legal Assistance to Refugees and Migrants Programme, Helsinki Foundation for Human Rights, Warsaw www hfhr.org.pl

Ewelina Tylec ewelina.tylec@gmail.com
Human Rights Expert, Institute for Law and Society (INPRIS) www.inpris.pl

3. Article 18.1, Act of 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland
www.refworld.org/docid/44a134a44.html
5. European Court of Human Rights, Salah Sheekh v. The Netherlands (Application no. 1948/04), 11.01.2007 www.refworld.org/docid/45cb3dfd2.html
differences in treatment of unaccompanied children depending on the different instruments which apply to them, the EU also made serious efforts to emphasise their common rights first and foremost as children through the implementation of an EU Action Plan on Unaccompanied Minors 2010-2014 which also sought to address some of the more difficult issues concerning all unaccompanied children, such as guardianship, age assessment, family tracing and durable solutions.

Currently, the Member States are at an early stage of implementing and applying EU common obligations into national law and practice and there are both good practices and enduring challenges for Member States in identifying, receiving and caring for separated and unaccompanied children in Europe. In the current situation, it is vital to respect the new EU safeguards and involve child protection actors alongside immigration and law enforcement actors to identify risks to children in transit and to work to restore them to safe situations. Particular difficulties also arise for children who are not seeking asylum, or children who are approaching the age of eighteen, when migration and crime control concerns still appear to take precedence over child protection and humanitarian imperatives in some Member States.

A fundamental challenge – common to all separated and unaccompanied children – is how to find a ‘durable solution’ for them, defined as a sustainable solution that ensures that the unaccompanied or separated child is able to develop into adulthood in an environment which will meet his or her needs and fulfil his or her rights as defined by the Convention on the Rights of the Child and will not put the child at risk of persecution or serious harm. It is an approach which may require Member States to contemplate and implement outcomes that may not be obvious in the context of migration control but which aim to fulfil the best interests of the child.

For instance, a durable solution may include local integration on humanitarian grounds, even in the absence of a claim for international protection. Ultimately, it may require Member States to cooperate more fully with each other in order to identify the most appropriate care arrangement and location for the child to develop, for example by allowing transfers of children to another Member State through relocation schemes and more generous family reunification provisions. Moreover, putting in place proper measures to find durable solutions is the only appropriate route to achieving an objective which many Member States emphasise, that is, the return of unaccompanied children to their country of origin, when this is determined to be in their best interests.

Best interests of the child

Several Members States report having Best Interests Determination procedures in place to support their competent authority’s decision making on durable solutions for separated children. There are also ongoing EU-funded projects concerned with the better definition, identification and implementation of durable solutions in line with the child’s
Removing ‘non-removables’

Katharine T Weatherhead

EU law and policy on non-removable irregular immigrants – such as unsuccessful asylum seekers who cannot be returned to their country of origin – have political and humanitarian consequences.

In the European Union (EU), regular immigrants receive a residence permit and irregular immigrants receive a return order, an order to leave the country. Irregular immigrants “whose presence in the territory is known to the immigration authorities, but who, for a variety of reasons ... are not removed” are termed non-removables, non-returnables or non-deportables. The barriers to their removal may be related to legal or humanitarian considerations, practical obstacles or policy choices.

Legal barriers include the humanitarian situation in the state of origin, humanitarian considerations in cases of serious illness, obligations to protect family and private life, and obligations to protect the best interests of the child.

Practical barriers include the lack of identification of the immigrant, the lack of travel documents, or refusal by the state of origin to readmit the individual.

Policy-based barriers include safeguarding national interests, such as public...