

## Migrant, refugee or minor? It matters for children in Europe.

Kevin Byrne

**The capacity of child-rights institutions and children's services in many European countries needs to be strengthened considerably if governments are to meet their commitments to refugee and migrant children.**

Child-rights and migration and asylum agencies in the European Union (EU) are now working actively together to redress the acknowledged lack of child focus and gender mainstreaming in the initial responses to a steep rise in the number of children arriving in Europe. These rose from about 20% of all arrivals in 2015 to 35% by March 2016. But because EU provisions and safeguards for children are spread across different, often disconnected, directives and regulations, children in host countries can find themselves subject to a diverse and inconsistent set of national laws, policies and entitlements at different stages of the asylum and migration process, although their needs, interest and rights remain the same throughout.

Furthermore, the importance assigned by national legislation to the child's migration or asylum status in determining their entitlement to services is at odds with the proven effectiveness of the holistic, child-centred approach generally adopted by children's agencies.

The generic term 'migrant' is increasingly used in public discourse to describe children who crossed the Mediterranean to Europe in 2015-16 as part of the justification for this approach to children's rights. It not only reflects and reinforces a change in public attitude that enables a less compassionate response but also downplays children's experience of displacement and conflict and thus, by implication, their host countries' obligation to offer protection. Using 'migrant' as a blanket description also obscures their primary status as a child, with all that that implies in terms of their needs, rights and entitlements to the basic services required for safe, healthy development.

The principle of 'a child first and foremost' is still not being enforced consistently or comprehensively across Europe. Despite a supportive framework of EU legislation and policy, and numerous models of good practice in some countries, there are still chronic deficiencies in most European countries' migration, asylum and child-rights structures, systems and services. These deficiencies impede their ability to provide the support and protection that refugee and migrant children need and are entitled to under international and EU law.

For children, the distinction between 'migrant', 'refugee' and 'asylum seeker' is not just a matter of semantics. The accumulated legislation, legal acts and court decisions which constitute the body of EU law – known as the *acquis* – in the field of asylum and migration are open to an interpretation at national level that allows children to be streamed into categories that in practice confer different levels of legal status and entitlement. Placement in a particular category remains a major determinant of a child's access to health, protection and education services in their host country. As a result, families have to negotiate an unpredictable system of access to children's services as they move (or are moved) within and between migration and asylum processes, and their children are denied the kind of consistent, coherent and integrated support available to other children living in the country.

### Education and health care

For instance, the right of all children to basic education is recognised under EU migration law but the amount, type and quality of schooling offered to refugee and

migrant children depend more on where they are at in the migration or asylum process than on their educational needs.

In the case of asylum seekers, national education authorities can legally postpone children's access to school for up to three months after their application for asylum, and/or provide classes – that may not meet the same teaching standards as that provided by local schools – in reception or accommodation centres. The situation is even worse for undocumented children. Only ten EU Member States have explicitly recognised undocumented migrant children's entitlement to basic education, while five explicitly exclude them from schooling. In other States, their entitlement to education is uncertain. Access to non-compulsory education, early childhood education, vocational training, further learning and higher education is particularly difficult.

While refugees and migrants are guaranteed access to emergency health care all across Europe, access to general child health services tends to be ranked by legal status. Children of parents from outside the EU may have to acquire permanent residence before they can access health services, and even then their entitlement may be restricted.

Under EU law, Member States have to provide access for refugee and asylum-seeking children to appropriate health care on an equal basis as nationals but, again, this can be limited to 'core benefits'. Unaccompanied children are entitled to emergency treatment and medical care in 25 EU States but not necessarily to child health, development or vaccination services. Undocumented migrant children are also legally entitled to emergency health care in all EU States but only eight grant them the same level of health care as the children of its own citizens. Six restrict their entitlements to emergency care only and twelve allow undocumented migrants limited access to specialist services like maternity care and treatment of HIV and/or infectious diseases. Some countries also grant extra entitlements to certain categories of undocumented children but in others the legal entitlement to health care is de facto negated by health insurance

requirements or other administrative barriers. Housing and employment restrictions imposed on migrant and asylum-seeking families affect children too, and national social welfare systems frequently do not provide an adequate safety net.

States' duty to assure the effective protection of children implies a responsibility to adopt special measures and safeguards to that end but migrant and refugee children's differential entitlements to services based on their legal status leave many of them at risk. The EU has enacted measures in relation to cross-border crimes, specifically against violence, child pornography, child trafficking and forced labour.<sup>1</sup> But, despite their acknowledged vulnerability to violence, exploitation, sexual abuse and trafficking, migrant and refugee children are not classified as a particularly high risk group under EU child protection legislation (except for unaccompanied children), although all children are defined as vulnerable under the migration *acquis*.

## Conclusions

The hardship, trauma and sometimes abuse suffered by children on their journey to Europe, and the continuing stress and uncertainty of their lives after arrival, should clearly qualify them for additional support and protection, but this needs to be translated into national child protection strategies and action plans. In principle, migrant and refugee children are not excluded from national child protection systems; however, the policies, regulations and resources are not always in place to ease their access to mainstream protection services. In most EU countries, for instance, shelters for the homeless are only accessible to those who have a residence permit or social security registration and this can leave refugee and migrant women and children trapped in violent or abusive relationships.

Despite some inherent weaknesses, the *acquis* provides a good option for promoting fair and equitable access to services for all children, regardless of their legal status. Although it was not specifically designed as a child rights framework, the *acquis* is

underpinned by the UN Convention on the Rights of the Child and the EU's own commitment to children's rights as laid down in the EU Agenda for the Rights of the Child.<sup>2</sup> It promotes and supports an integrated, coherent, consistent and child-centred approach to migration and asylum at the national level by laying down a series of minimum standards to be met, and by providing a framework of support and guidance in relation to development, implementation, enforcement and enhancement of child-related laws, policies, structures and practice.

Perhaps because it has not developed to date in a logical and coherent manner across the various policy domains or statuses that child migrants and refugees

pass through, the impact of the *acquis* has been fragmented and diluted. The options for establishing a specific child-oriented set of policies across Europe could include a significant rewrite of the present asylum and migration *acquis*, development of a separate asylum and migration framework solely for children, or incremental reform of the existing *acquis* through a planned, prioritised upgrade and expansion that target those areas where migrant and refugee children are most vulnerable.

Kevin Byrne [kbyrne381@gmail.com](mailto:kbyrne381@gmail.com)

Independent Expert – Child Rights

1. For full details of EU legislation in these areas see EU Agency for Fundamental Rights (2015) *Handbook on European law relating to the rights of the child* <http://bit.ly.com/FRA-child-rights>
2. <http://bit.ly/EUagenda-child-rights>

