



KEEPING THEM SAFE; PRESERVING THEIR CHILDHOOD

Recommendations for the effective protection of the rights of unaccompanied asylum seeking children

1. RECOMMENDATIONS TO POLICY MAKERS

Do not detain asylum seeking children

Throughout the implementation of the project, partners gathered the opinion of asylum seeking children, legal guardians, lawyers, social workers, psychologists and other professionals working on the field of child protection. They agreed that detention can never be in the best interest of the child.

This practical observation is supported by law and the opinion of international bodies and human rights organisations. The detrimental effects of detention to children – both unaccompanied and arriving with families – are well-known. Detention in a migratory context is therefore not in the best interest of the child and should not be applied.

The project partners therefore strongly suggest the removal of the possibility to detain children within the scope of the EU asylum acquis that is currently under reform. Detaining children is in breach of the EU Charter of Fundamental Rights (EU CFR), the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (UN CRC).

European legislators shall abandon plans that may lead to increased detention on asylum seeking children.

Provide for a formalised best interest determination procedure

The best interest of the child is not just an interpretive legal principle, but a material and procedural right as well. States are under an obligation to give priority to the best interest of the child at all stages of the migration and asylum process. In order to do that, its elements need to be explored and carefully assessed throughout the asylum procedure and after as well.

European legislators shall therefore include the obligation to carry out a formal best interest assessment that allows all relevant actors, including the minor, to identify the best interest of the child and explore durable solutions in each individual case.

Provide clear legal provisions and safeguards for the age assessment

Age determination should be conducted only in cases when there are substantial grounds to doubt a child's age. It should not be used routinely in each case. National authorities must adopt an interdisciplinary approach and not focus solely on a medical examination. Age assessment must be carried out with full respect to the child's inherent human rights, using the least intrusive methods.

During the project, professionals highlighted that the principle of the benefit of doubt is rarely applied regarding age assessment; on the contrary, there is generalized suspicion about minors' age. Despite all the scientific reports about the inadequacy and the low reliability of bone screening tests, these continue to be used.

Nobody who claims to be a minor shall be treated as an adult until proven to be one.

Age assessment must not be carried out without the presence the child's legal guardian.

Ensure quick and effective access to guardians, child protection professionals and lawyers

Children, due to their age and personal situation, are amongst the most vulnerable persons in society and are in need of special protection. Where children are also seeking asylum their extreme vulnerability is compounded.

Asylum procedures can only be fair and humane when children are able to participate in them in a manner that enables them to effectively exercise their rights. For this end, children need to be given quick access to professionals – both state and civil society actors – who are able to guide them through their legal procedures and start the preparatory work for social integration.

European legislators shall therefore make it Member States' obligation to ensure a child's access to guardians, child protection professionals and lawyers as soon as possible after their arrival. States shall take all necessary measures to ensure the availability of sufficient numbers of trained representatives and professionals, and to ensure the prompt appointment of legal representatives.

In this context, cooperation between state and civil society actors shall be required in order to better guarantee independent and professional protection of the rights of children.

Ensure that asylum proceedings are dealt with in a fair, quick and effective manner

Asylum procedures need to be completed as soon as possible, in order to provide children with certainty and clarity regarding their legal status and allow them to start focusing on those elements of their life that constitute the other elements of durable solutions in their case, such as therapy and education.

Ensure the effective implementation of family reunification for unaccompanied children who apply for international protection or who have been granted international protection

EU law provides for reunification with some family members for unaccompanied children when they apply for international protection and once they have been granted international protection. However, these procedures remain unfamiliar to many professionals and few unaccompanied actually benefit from family reunification. Unaccompanied minors seeking asylum should be given accurate information in a child-friendly approach on their rights to benefit from family reunification allowing children participation in the procedure.

Policy-makers must ensure that the Dublin III Regulation and the Family Reunification Directive are fully implemented concerning unaccompanied children's family reunification rights. Cooperation among Member States should be enhanced to make the family procedures efficient in the best interest of each minor.

2. RECOMMENDATIONS TO SPECIFIC STAKEHOLDERS

2.1. Asylum and Immigration Authorities

Enhance child friendly communication

In the experience of the organisations carrying out the project, children were not always fully aware of the content of their procedures. Information materials and oral explanations provided by case officers were often not adequate for children to understand. Without a competent guardian or legal representative, children could easily get lost in their asylum procedures.

Asylum authorities are therefore recommended to review their information materials and communication methods with children with the help of civil society and other professionals. The information provision and communication should become child friendly and ensuring adequate participation of children in the procedures affecting their future.

Cooperate with civil society

Asylum authorities play a crucial role in guaranteeing the rights of unaccompanied asylum seeking children. To better ensure that they are able to fulfil their obligations under the UN CRC and the EU CFR, they shall cooperate regularly with public authorities charged with the protection of children, NGOs and other civil society actors working with asylum seeking children. Through dialogue and an exchange of views, asylum authorities may be better placed to make lawful and high quality decisions that

respect the best interest of the child.

Provide regular trainings to staff members with the help of civil society

Staff members, especially case officers need continuous training on several fields, including recent developments in international, EU and domestic law, child friendly decision making, intercultural and child friendly communication. Owing to the burdensome nature of their work, they are also in need of continuous psychological supervision in order to prevent burnout.

Civil society organisations and professionals often have the necessary expertise to assist asylum authorities with professional training and psychological supervision as well. Not making use of this capacity would eventually harm children, who depend on the quality of work conducted by national asylum authorities. Relying on such assistance would contribute to the well-being and efficiency of these authorities.

Good practice / In France, the French Office for the protection of refugees and stateless persons (OFPRA) has a team of officers specifically trained to manage unaccompanied asylum-seeking children's protection claims.

2.2. Guardians

Cooperate with civil society

Guardians play a central role in guaranteeing the rights of children, and in particular during their asylum proceedings. They are tasked with both representing children and guaranteeing that their rights are respected by all.

To this end, cooperation with civil society is crucial, since guardians need to be in a possession of all relevant information to best carry out their obligations.

Training in asylum law and the sociology of migration

To better understand the legal concepts and principles guiding the EU law and the international law obligations concerning children in need of international protection, guardians shall be given the opportunity to frequently participate in trainings and refreshing courses in these subjects. To this end, cooperation with civil society is essential, since NGOs may provide the necessary and high quality training needed.

In the framework of the UPRIGHTS project, working with guardians was beneficial not only to provide them with useful knowledge asylum law but also to allow them to build better connections with other professionals working with unaccompanied minors.

Trainings on the reasons for fleeing, child-specific forms of persecution, the social aspects behind irregular migration, economic and social rights children are entitled to, as well as child friendly communication would also be beneficial, so that guardians have a holistic understanding on the situation of children they work with.

3. RECOMMENDATIONS TO ALL STAKEHOLDERS

Cooperation

State actors and members of civil society should cooperate to the highest extent possible to ensure the most efficient protection of the rights of unaccompanied minors. Exchanges on views and information is essential to give all relevant actors the full picture on the individual situation of unaccompanied minors. This is an irreplaceable element of an effective best interest determination procedure.

Good practice / In Italy, some Institutional roundtables were set up by local Prefectures that organise on a regular basis meetings among Police authorities, Municipalities, Public local Health Units, Asylum Determining authorities, Ombudsman for Childhood and Adolescence, specialised NGOs in child protection, managers of accommodation centres and other relevant actors in order to monitor the correct implementation of current laws and promote good practices.

Training

All professionals and individuals who work with unaccompanied children shall be given regular trainings. Children cannot benefit from their rights when the professional charged with helping them cannot carry out their obligations in an effective manner. To this end, trainings should cover at least children's procedural rights, as well as the most important topics relating to child-friendly and intercultural communication.

Good practice / In Hungary, guardians, the children's home housing unaccompanied minors and civil society members hold regular roundtable discussions to share their experience working with the children who have pending asylum cases in Hungary. Discussions also extend to recipients of subsidiary protection and systematic questions. These discussions guarantee that relevant information flows continuously between the key actors, better enabling them to act on behalf of the children.

Co-funded by the Rights,
Equality and Citizenship (REC)
Programme of the European Union

