
ENOC

European Network of Ombudspersons for Children

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ENOC Statement on State Obligations for the Treatment of Unaccompanied Children

Approved in the Annual Meeting in Athens on 26-28 September 2006

Introduction

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. Among 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. This statement is addressed in particular to the governments of all member-states. We also support and commend to our governments the General Comment N.6 (2005) of the UN Committee on the Rights of the Child on "**TREATMENT OF UNACCOMPANIED AND SEPARATED CHILDREN OUTSIDE THEIR COUNTRY OF ORIGIN**".

Unaccompanied Children in Europe

By the term "unaccompanied children" (also called "unaccompanied minors"), ENOC refers to all persons under 18 years of age who are outside their country of origin unaccompanied by an adult responsible for them (whether by law or custom), and for as long as they are not effectively taken into the care of such a person.

In recent years all over Europe a growing number of children are forced by various circumstances to move from the country of their origin to other countries, looking for protection and/or better living conditions, occasionally becoming victims of trafficking and exploitation. Many of these children are "unaccompanied" or "separated" from their families and suffer from a lack of care. In addition there are serious shortcomings both in legislation and in administrative practices in most countries, regarding the treatment of unaccompanied children.

Therefore, considering member states' obligations deriving from the UN Convention on the Rights of the Child (1989), especially Article 2, on respecting and ensuring the rights of all children without discrimination of any kind, as well as from other relevant international Conventions, we, ENOC members, have decided to prepare and adopt this Statement, which summarizes the principles that we believe must be respected and included in national and international legal instruments, administrative practices and services.

Principles of treatment of unaccompanied children

1. Unaccompanied children **should not be prosecuted for illegal entry to the country or detained** solely because of their immigration status. The care arranged for them should be appropriate to their needs (placement in reception centres separately from adults and for the minimum possible period of time, appropriate conditions concerning nutrition, mental and physical health, hygiene, education, play and leisure, nurture and faith/religious needs, encouragement of foster care or appropriate residential care).

2. Clear rules, instruments and administrative systems, for the identification of the child, search for the family and investigation of the needs of every unaccompanied child should be established and applied in a respectful and child friendly manner by competent authorities well trained in international child protection and in techniques for interviewing children and young people. All those involved in the consideration of children's immigration or asylum status and its consequences should recognise that "childhood is entitled to special care and assistance".¹ Thorough examination of the conditions of entry as well as a confidential formal register of personal data should ensure protection from various forms of exploitation and assist the member states to have a clearer quantitative and qualitative picture of the presence of unaccompanied children within their borders.

3. **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. The child should be fully informed about the process of age assessment and its consequences. The child's views should be given due weight in accordance with their age and maturity. The age assessment should be carried out as soon as possible. In case of any doubt concerning the age of the involved person, the benefit of doubt should be given and work out in favour of his/her age declaration. All expenses related to age assessment and family identification should fall upon the state. Techniques for age assessment should respect the child's culture, dignity and physical integrity and should take into account that some physical assessments might be particularly stressful or traumatic for children who have suffered physical or sexual abuse. The age assessment should be open to revision if new evidence comes to light.

4. 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. The interview should be conducted in a language that the child understands and with consideration of the possible traumatic experiences the child may have gone through.

5. While in the hands of public authorities, all children should be **informed of their rights**, especially of the right to apply for asylum and its consequences and properly guided in how to exercise their rights in their own mother tongue or in a

¹ Preamble, Convention on the Rights of the Child and article 25, Universal Declaration of Human Rights

language that they can understand. Communication with the child should be done: a) individually, b) through an interpreter or a person trained to communicate with children including those with particular needs (rather than only through written material), and c) in the presence of a guardian (see para. 9).

6. In all relevant procedures and decision-making, public authorities should assure to all unaccompanied children the right to **express their views freely** in all matters affecting them. These views should be given due weight in accordance with the child's age and maturity (article 12 CRC).

7. 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. Professional and independent legal representation should be guaranteed during the examination of the unaccompanied child's case before any administrative and judicial authority examining their claim.

8. 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. There should be an unconditional right of appeal; this should not be compromised by procedures or rules related to the child's legal immigrant and residence status or to the perceived strength of their claim. Children should be able to appeal against an administrative decision on any ground covered by the Convention on the Rights of the Child and the European Convention on Human Rights, irrespective of any temporary permission to stay until adulthood.

9. 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** and continue until the child is reunified with his/her family or receives an appropriate care placement, which identifies the carer as a guardian. The guardian, who is appointed to serve the child's best interests, should ensure that the rights, welfare and care needs of the child are properly safeguarded and met by the responsible agencies. Each child should be offered a confidential psychological assessment at an appropriate time.

10. Unaccompanied children should **never be deported/expelled**. Re-integration into their social environment of origin (family, care institution or other) should be sought only through assisted voluntary repatriation², and only if this is considered to be in their best interests, after careful assessment including due consideration of their views.

² "Assisted voluntary repatriation of unaccompanied children implies their participation in decision making with the assistance of a tutor / guardian and their informed decision depending on the degree of their maturity. Children should not be returned where this would be against their best interests, taking account of their views. Paragraph 86 of the General Comment on Unaccompanied and Separated Children sets out limited circumstances in which other considerations may apply."

Where a child has claimed fear of persecution by the public authorities, additional safeguards need to be considered, including keeping their identity and personal data confidential at all stages. Confidentiality is particularly important for these children and those who are victims of trafficking and exploitation.

All the above must be guaranteed by an efficient and competent system of management of unaccompanied children's cases.

11. **International co-operation** should assist quick and efficient family tracing and social investigation of the background of unaccompanied children, to examine whether safe **repatriation, family reunion and reintegration** is appropriate in the best interests of a child. If it is decided by the responsible services that family reunion through repatriation is in the child's best interests and should proceed, then the child should be accompanied to his/her country of origin by specialised staff and be handed to the appropriate public authorities there. Counselling should be provided prior to repatriation and during initial contact with the family. The responsible services should also maintain effective monitoring to ensure the safety of the child after repatriation.

12. When children are not repatriated, special long-term **residence permits** should be provided and integration into the hosting society should be facilitated, by appropriate educational and welfare placements (social services, integration projects, educational and training programmes, homes, shelters, foster families, etc.), responding to the child's social and cultural needs. Children who stay for a long time in the country of destination should be offered residence permits when they reach adulthood. Authorities should recognise that a child's well-being can be threatened by uncertainty about their status and ongoing support once they reach the age of 18.

13. From their arrival, unaccompanied children should have **access to education, vocational training and health** provisions, on an equal basis to other children within the jurisdiction of the state. Access to employment should also be allowed to children with a temporary or permanent residence permit, according to the age limit set in national legislation,. Special measures should be taken to support unaccompanied children within these processes and to assure that they are protected from any kind of discrimination or exploitation.

14. **Personnel** dealing with unaccompanied children (interviewers, interpreters, social and youth workers, guardians, legal representatives etc) should be properly trained and informed to respect children's rights, including their communication and cultural needs and to be able to respond appropriately to signs of fear or distress-. The assessment of their suitability to work with children should include safety considerations, such as checks for convictions for crimes against children. . Issues such as the arrangements for caring for the child, providing them with appropriate adult support or guardianship and determining their age should be addressed *before* any attempt is made to assess their case.

ENOC commitment to action

We, ENOC members, commit ourselves to continue to work in the context of the UNCRC as well as other international and regional human rights instruments, to urge our governments to adopt legal frameworks and administrative practices which fully protect the rights of unaccompanied children. We encourage any governments who have made reservations to articles of the UNCRC relevant to nationality and immigration to withdraw them. We will also strengthen our efforts to increase the role of the Council of Europe and of the European Union in guaranteeing the protection of all the rights of all unaccompanied children within their jurisdictions.

ENOC's position statements and all details of the Network and its member-institutions are at www.ombudsnet.org.