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Undocumented migrant children in an irregular situation: a real cause for concern

Opinion¹

Social, Health and Family Affairs Committee

Rapporteur: Ms Tineke STRIK, Netherlands, Socialist Group

A. Conclusions of the committee

The committee would like to compliment Mr Pedro Agramunt Font de Mora on the very comprehensive report that he prepared on behalf of the Committee on Migration, Refugees and Population.

Nonetheless, the Social, Health and Family Affairs Committee would like to suggest a few amendments to the text, to ensure that the particular situation of separated children be fully taken into account.

B. Proposed amendments to the draft recommendation

Amendment A (to the draft recommendation)

In paragraph 1, replace the first sentence with the following sentence:

“A child is first and foremost a child, and only then a migrant.”

Amendment B (to the draft recommendation)

In paragraph 1, second sentence, after the words “the best interest of the child”, insert the following words:

“as stipulated by Article 3 of the United Nations Convention on the Rights of the Child,”

Amendment C (to the draft recommendation)

At the beginning of paragraph 3, add the following new sentence:

“The Assembly underlines that undocumented migrant children should benefit from the right to social security, if necessary, and an adequate standard of living, as stipulated by paragraphs 9 and 11 of the International Covenant on Economic, Social and Cultural Rights.”

Amendment D (to the draft recommendation)

In paragraph 4, second sentence, after the words “They may be with parents or family,”, add the following words:

“they may be unaccompanied,”

1. Reference to committee: [Doc. 12333](#), Reference 3708 of 4 October 2010. Reporting committee: Committee on Migration, Refugees and Population. See [Doc. 12718](#). Opinion approved by the committee on 4 October 2011.



Amendment E (to the draft recommendation)

In paragraph 4, delete the last sentence.

Amendment F (to the draft recommendation)

After paragraph 5, add the following new paragraph:

“Undocumented children who are separated from their parents (either because the parents do not accompany them or cannot take care of them) need particular protection and should be provided with a legal guardian. They should also receive continuous and reliable support beyond the age of majority, thus avoiding unnecessary psychological pressure caused by uncertainty about their future, which may otherwise already affect their development at an early age and deprive them of their right to development as protected by Article 6 of the United Nations Convention on the Rights of the Child.”

Amendment G (to the draft recommendation)

In paragraph 7.4.4, after the words “in separate facilities from adults”, insert the following words:

“or in facilities meant to accommodate children with their parents or other family members”

Amendment H (to the draft recommendation)

After paragraph 8.1.2, add the following new sub-paragraph:

“as already suggested by the Assembly in [Recommendation 1969](#) (2011) on unaccompanied children in Europe: issues of arrival, stay and return, set up a working group to draw up Council of Europe guiding principles on the protection of unaccompanied children in the form of a new recommendation of the Committee of Ministers, which would draw upon the Council of Europe 'Life projects for unaccompanied minors' as well as recent work undertaken by the European Commission on 'Core Standards for guardians of separated children in Europe';”

C. Explanatory memorandum by Ms Strik, rapporteur for opinion

1. A child is first and foremost a child, but it is not “only” a child. This term which seems to “reduce” children to smaller human beings with smaller human rights should be avoided to ensure that the text prepared by the Committee on Migration, Refugees and Population, from the very start, assigns the appropriate place and significance to children in our societies and sets out on a positive note (see Amendment A). This could be further underlined with a clear reference to the relevant article of the United Nations Convention on the Rights of the Child (see Amendment B).
2. Apart from this small amendment suggested to the first line of the draft recommendation, I very much welcome the way in which the report prepared by my colleague Mr Agramunt Font de Mora advocates the equal treatment of undocumented children with other children in the areas essential for their well-being and development. I also appreciate the comprehensive overview of detailed measures in favour of undocumented children in the fields of education (including practical training), health care and housing. However, before specifying some of the areas in which the rights of undocumented children need to be clarified and strengthened, a general reference should be introduced to the International Covenant on Economic, Social and Cultural Rights which guarantees the rights to social security and an adequate standard of living, respectively, in its Articles 9 and 11. In its concluding Observations and General Comments, the Committee on Economic, Social and Cultural Rights had made it very clear that these rights should also apply to non-citizens who are marginalised and extremely vulnerable, especially in emergency cases (see Amendment C).
3. However, the draft recommendation as it stands remains almost silent on undocumented children who are in need of a legal guardian, for instance because their parents do not accompany them or are not capable of taking care of them. The addition of references to children in this particular situation is therefore suggested in the appropriate paragraphs of the draft recommendation (see Amendments D and F). I am also suggesting the deletion of the very general reference to “unaccompanied children” in paragraph 4 (see Amendment E) to avoid confusion. Not all undocumented children are unaccompanied, and neither are all unaccompanied children undocumented. It is thus not clear to me in which way unaccompanied children “are generally treated differently by the authorities”.

4. The current paragraph 7.4.4 of the draft recommendation does not specify that children may be detained in facilities intended for adults if these establishments are meant to host adults and their children together; a relevant addition to the text is thus suggested (see Amendment G).
5. Regarding unaccompanied minors with a legal guardian, it is also important to keep in mind the psychological implications of their situation: the constant awareness of the fact that care and protection provided to them will end at the age of majority and that their future is not secured may already affect their well-being as minors and their personal development. Such children know that there is a high chance that they will end up living on the streets or being sent back to their country of origin where no one feels responsible for them either. In order to avoid the psychological pressure linked to such uncertainty, mechanisms should be set up to ensure that these children are given continuous and reliable support as soon as they have been provided with some kind of official status within a given country, also beyond the age of majority.
6. The association Defence for Children – ECPAT The Netherlands, jointly with other European child protection agencies, has recently undertaken comparative research on the situation of separated children which was aimed at “closing a protection gap” and proposes “core standards” for guardianship procedures based on eight distinct country reports which can also be consulted individually (Belgium, Denmark, Germany, Ireland, Italy, Netherlands, Slovenia, Sweden).² This most interesting project, financed by the Daphne III programme of the European Commission, could serve as a best practice example and model methodology.
7. As rapporteur for the present opinion, I furthermore fully agree with Thomas Hammarberg, Council of Europe Commissioner for Human Rights, who – in the Preface to the report mentioned in paragraph 6 above – points out that the new “Core Standards for guardians” drawn up at the level of the European Union add to the examples of good practice and international tools, such as the Life projects of the Council of Europe,³ which are already available to European, national and local authorities with a view to taking due care of separated children and their needs.
8. The Social, Health and Family Affairs Committee should therefore propose that a reference be made to these two important pieces of work and that the Council of Europe strengthen its work on undocumented separated children in the framework of its relevant intergovernmental activities, with a view to harmonising the standards for guardians of separated children at Council of Europe level, as already suggested by the Assembly in its [Recommendation 1969](#) (2011) on unaccompanied children in Europe: issues of arrival, stay and return. All these elements are reflected by Amendment D proposed above.

2. Defence for Children – ECPAT The Netherlands/Plate-forme Mineurs en exil – Service Droit des Jeunes/Save the Children/Defence for Children International (September 2011), “Core Standards for guardians of separated children in Europe. Goals for guardians and authorities”, Leiden, www.ecpat.nl.

3. Council of Europe (2010), Life Projects for unaccompanied migrant minors. A handbook for front-line professionals. Council of Europe Publishing, Migration Collection, Strasbourg.