

# CALL FOR A EUROPEAN ASYLUM POLICY ADAPTED TO UNACCOMPANIED CHILDREN

Unaccompanied children without a legal representative are present in the 27 Member States. Like adults, an important part of these young people fled conflict and persecution in their country of origin: underage recruitment, trafficking of children for prostitution, sexual exploitation, subjection to female genital mutilation, child labour... There are indeed many reasons for children heading to the borders in order to seek asylum and protection. This question is of utmost importance for the European Union (EU) since 74 % of unaccompanied children claiming asylum worldwide lodged their application for asylum in Europe in 2010. At a time when Member States have committed to establishing a Common European Asylum System (CEAS), adapting the procedures and practices to unaccompanied children seeking asylum remains an important issue. As vulnerable persons, they are in need of standards adapted to their specific situation.

**In this context, several organizations involved in the field of migration or children rights are launching a call for a European policy adapted to unaccompanied children. Intended to be addressed to the EU institutions and the Member States, it is based on 8 recommendations.**

## 1 CALL, 8 RECOMMENDATIONS

- 1 The access of children to asylum procedures should always be guaranteed, in particular through adapted and systematic information.**
- 2 The issue of asylum for unaccompanied children should not be ignored; data must be collected and analysed statistically with breakdown by sex, nationality and age in order to improve knowledge on this phenomenon.**
- 3 A legal guardian with specific knowledge in the field of asylum procedures and child protection should be appointed for all unaccompanied children and during the whole asylum procedure.**
- 4 The Dublin II regulation should not be applied to unaccompanied children, except for the purpose of family reunification if it is in the best interest of the child.**
- 5 Legal support, access to medical and psychological care and suitable accommodation should be guaranteed for all.**
- 6 Substantive interview should be conducted in child-friendly conditions, by specially qualified and trained officials with appropriate knowledge of the development and behaviour of children.**
- 7 Considering the vulnerability of unaccompanied children, any decision regarding their application should be taken with a liberal application of the benefit of the doubt and taking into account child-specific forms of persecution. Unaccompanied children should never be prevented from appealing a negative decision.**
- 8 Unaccompanied children arriving at the border should be admitted to the territory in order to assess their situation regarding asylum. They should never be deprived of freedom.**

IN PARTNERSHIP WITH



# ORGANIZATIONS SUPPORTING THIS CALL



- |  |                       |
|--|-----------------------|
| <b>Terre des Hommes</b>                                    | <b>Germany</b>        |
| <b>Asylkoordination Österreich</b>                         | <b>Austria</b>        |
| <b>ACCEM</b>   | <b>Spain</b>          |
| <b>RESCATE Internacional</b>                               | <b>Spain</b>          |
| <b>France terre d'asile</b>                                | <b>France</b>         |
| <b>UNICEF FRANCE</b>                                       | <b>France</b>         |
| <b>Centre Français de Protection de l'Enfance</b>          | <b>France</b>         |
| <b>Institute for Rights Equality and Diversity (i-Red)</b> | <b>Greece</b>         |
| <b>Hungarian Helsinki Committee</b>                        | <b>Hungary</b>        |
| <b>Menedék - Hungarian Association for Migrants</b>        | <b>Hungary</b>        |
| <b>Refugee Mission, Reformed Mission Centre</b>            | <b>Hungary</b>        |
| <b>Consiglio Italiano per I Rifugiati</b>                  | <b>Italy</b>          |
| <b>Shelter, Safe House</b>                                 | <b>Latvia</b>         |
| <b>Caritas Luxembourg</b>                                  | <b>Luxembourg</b>     |
| <b>Defence For Children</b>                                | <b>Netherlands</b>    |
| <b>Helsinki Foundation for Human Rights</b>                | <b>Poland</b>         |
| <b>International Humanitarian Initiative Foundation</b>    | <b>Poland</b>         |
| <b>Portuguese Refugee Council</b>                          | <b>Portugal</b>       |
| <b>British Refugee Council</b>                             | <b>United-Kingdom</b> |
| <b>Organizace pro pomoc uprchlikum (OPU)</b>               | <b>Czech Republic</b> |
| <b>European Council on Refugees and Exilees</b>            | <b>Europe</b>         |

## APPENDIX: SITUATION IN THE EUROPEAN UNION

### PRESENTATION OF A COMPARATIVE STUDY ON THE RIGHT TO ASYLUM FOR UNACCOMPANIED MINORS IN THE EUROPEAN UNION

The 8 recommendations are supported by a comparative study coordinated by **France terre d'asile** in partnership with six European NGO: **Consiglio Italiano per i Rifugiati (Italy)**, **Institute for Rights, Equality and Diversity (Greece)**, **Helsinki Committee (Hungary)**, **Terre des Hommes (Germany)**, **Shelter Safe house (Latvia)** and **International Humanitarian Initiative Foundation (Poland)**. This work has been published in September 2012 and is available in 8 languages at <http://www.france-terre-asile.org/dam27>

For each of the various issues related to the right to asylum for unaccompanied minors, this project highlights a twofold observation. On the one hand, the right to asylum for unaccompanied children is not yet implemented in a harmonised way nor complies with the commitments of the States in line with international and European law. On the other hand, numerous good practices observed in all the researched countries show that ways of improvement are possible.

#### I. DIVERGING IMPLEMENTATION OF THE RIGHT TO ASYLUM FOR UNACCOMPANIED CHILDREN IN EUROPE

This study highlights that procedures regarding asylum are generally not adapted to children. Indeed, the implementation of the asylum legal framework is often the same as for adults. The absence of detailed statistics on this population in a large number of countries illustrates the scant attention paid to the status of children.

From their arrival onwards, unaccompanied children are confronted to the difficulty to understand the asylum legal framework and sometimes give up applying for asylum because of a lack of child-specific information.

Several countries operate returns without a full assessment of the situation of the child regarding asylum. For example, in the United Kingdom unaccompanied minors encountered inside Dover harbour may be sent back to France or Belgium before their need for protection is duly assessed.

The need for a legal guardianship with knowledge on those issues is imperative necessity that is too often neglected by Member States. In Cyprus, because the legal guardianship system is defective, in practice no representative is appointed and therefore no asylum application made by minors is processed. In some countries, such as Germany, Ireland and Slovakia, the asylum application has to be lodged with the approval of the legal guardian who may consider, without taking into account his/her opinion, that it is unnecessary or not in the best interest of the child.

The Dublin II regulation, allowing the transfer of asylum applicants from one European country to another, generally does not consider the best interest of the child. In Germany, transfers take place with no assistance nor information on reception conditions provided to children.

Throughout the asylum process, accommodation and legal, social, medical and psychological support are sometimes inappropriate. In Romania for example, children over 16 are accommodated in governmental centres for adult asylum seekers that do not provide food or specific support.

It can happen that unaccompanied children seeking asylum are deprived of freedom. In Greece, unaccompanied children can be detained, whether they are asylum seekers or not. In France, minors can be detained up to 20 days in the so-called "zone d'attente" upon arrival at the airport, in conditions making it difficult to assess their situation regarding asylum.

The substantive interview, main step in the asylum procedure, is generally conducted in the same conditions as for adults (for example in Austria, Denmark or Malta). In this case, it will be very difficult for the minor to speak out his/her story.

Child-specific forms of persecution are rarely taken into account in the decision-making process. In many countries, such as Bulgaria or Portugal, no national law or guidelines mention child-specific forms of persecution and, in practice, no case where a child was granted protection on those grounds is known. Finally, it is not always ensured that children have a sound understanding of the decision when it is communicated to them.

In spite of the statement of a globally unsatisfactory, numerous good practices exist in Europe. In all Member States, whether they welcome few or many unaccompanied children seeking asylum, good practices are observed regarding reception, information, and processing of the asylum application of unaccompanied children.

In Austria for example, the United Nations High Commissioner for Refugees – UNHCR – has the possibility, in border procedures at Vienna airport, to veto the rejection of asylum applications made by unaccompanied children, and as a result, to allow their entry to the territory.

Regarding access to information, the Swedish Migration Board provides minors with a document specifically designed for children containing general information about the asylum process of applying for refugee status. In addition, the Swedish Red Cross provides “asylum information workshops” in youth centres where unaccompanied minors live.

In the Netherlands, a Bachelor’s Degree in social work is needed to operate as a guardian. To support guardians, workshops and seminars are organised by an organisation in charge of coordinating their activity (called NIDOS).

Unaccompanied children seeking asylum need specific support and adapted follow-up.

In France, a national centre was specially set up for them, offering adapted legal and educational support. This reception centre for minors seeking asylum (called “CAOMIDA”) is located near Paris. A psychologist and a legal expert support children throughout their asylum application.

In Belgium, the French speaking Bar of Brussels created a specialised “unaccompanied minors pool” with 15 lawyers who train themselves and consult one another on all procedures concerning unaccompanied minors.

Regarding the processing of the asylum applications, in Ireland, the UNHCR provides training on key principles for interviewing children and covering the whole protection assessment process (credibility assessment, burden of the proof, child-specific forms of persecution...). In Belgium, unaccompanied minors are interviewed in special rooms. The Commissioner General for Refugees and Stateless Persons adopted a specific technique called “dialogical communication method”. This technique is designed to be specifically tailored to children’s memory. A specificity of this interviewing technique is to let the child talk freely about his/her experience on a given subject first, before asking specific questions.

In the Czech Republic, the child and his/her guardian are both informed about the date of delivery of the asylum decision and the Ministry of Interior official comes to the centre to deliver the decision on the announced day. The guardian must come too, in order to accompany the child.

## III. TOWARDS A HARMONISED EUROPEAN SYSTEM FOUNDED ON HIGHER STANDARDS OF PROTECTION

The comparison of these positive examples should guide national stakeholders and European institutions to improve the situation of young people who suffered from persecution and now need to see their fundamental rights respected and to build their life in Europe.

The implementation of a Common European Asylum System should particularly take into account the specific situation of unaccompanied children. In this context, it is interesting to see that this issue is acknowledged by European institutions and agencies such as the Commission, the European Agency for the Management of Operational Cooperation at the External Borders (Frontex), the European Asylum Support Office (EASO) and the Fundamental Rights Agency. This issue needs to be comprehensively and consistently addressed by the European Union so that Member States implement relevant measures, with the support of the civil society. Although they represent a small number among asylum applicants, unaccompanied children heading to Europe to flee persecution are the future of a continent which should ensure they are protected on a high standard basis, in accordance with EU’s commitments and traditions.