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# **Separated, asylum-seeking children in European Union Member States**

Comparative Report

November 2010



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## Foreword

Every year, thousands of children arrive in the European Union separated from their parents or primary caregivers, often seeking asylum. In many cases, these children have fled their country of origin displaced by war, armed conflicts, for fear of persecution or to escape from abusive environments or extreme poverty. They may also have been trafficked for sexual or labour exploitation. Sometimes, they start their journey alone or they may have become separated from their family during the journey. Their precarious situation makes them vulnerable to human rights abuses rendering their protection critical.

This poses a serious challenge to European Union institutions and the authorities in its Member States, which have a duty to protect and care for these children. The European Council highlighted the urgency of this problem in the Stockholm Programme noting that “priority will be given to the needs of international protection and reception of unaccompanied minors”. In June 2010, the Council of the European Union invited the European Commission to assess whether current EU legislation on unaccompanied children offers them sufficient protection and agreed to ask Member States to monitor the quality of care for them.

In 2009, the FRA investigated the conditions of life and the experiences with legal procedures of separated, asylum-seeking children, engaging directly with them, as well as with adults responsible for their care. Drawing on evidence from interviews with 336 children and 302 adults, this report aims to provide a picture of the situation “on the ground” of separated, asylum-seeking children in 12 European Union Member States. The report complements FRA’s report on child trafficking and applies FRA’s child rights indicators.

The research found that many of the rights of these children, which are often not clearly reflected in EU legal provisions, are not always fulfilled. Although under state care, these children may live in accommodation that is not suitable for them – sometimes in detention or under strict curfew rules, even if they have not committed a crime; they are not always provided with quality medical care and do not always enjoy access to education and training that is appropriate for them. In addition, their religious needs are not always respected; they can be victims of discrimination or even mistreated with little opportunity for redress. Often they are insufficiently informed about legal procedures and opportunities available to them, which are crucial for their future, in such fields as education. Their views are frequently not taken into account, while their future depends on decisions, which are often taken after long and arduous processes that make the children feel insecure and unprotected.

Given the continuing conflicts in various parts of the world and the ongoing global economic crisis, separated, asylum-seeking children will continue to arrive in Europe. The challenge for the EU and its Member States will be to deal with this issue effectively, while fully respecting fundamental rights and acting in the best interests of the child.

Morten Kjærøum, Director

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## Executive summary

This report examines the experiences and views of separated, asylum-seeking children and those of adults responsible for their care across 12 European Union Member States. It addresses the need to incorporate children's views and accounts of their experiences into work that seeks to inform policy action. The FRA research results fill a gap in current knowledge about how separated, asylum-seeking children from different national, ethnic, religious and cultural backgrounds live in the European Union, by asking them directly about their opinions and experiences. It is based on fieldwork research which was outsourced to the International Organisation of Migration (IOM). The fieldwork research included 336 separated children from different countries – mainly originating from Afghanistan (22%), Morocco (just over 10%), Somalia (also just over 10%) and Iraq (9%) – as well as 302 adults responsible for assisting or working with these children, comprising care workers, social workers, teachers, psychologists, health specialists, legal guardians, legal practitioners, government officials – including law enforcement officers – interpreters and researchers. The fieldwork was carried out during 2009 in Austria, Belgium, Cyprus, France, Hungary, Italy, Malta, the Netherlands, Poland, Spain, Sweden and the United Kingdom.

According to the United Nations (UN) Convention on the Rights of the Child (CRC), a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the state. The latter shall ensure alternative care for such a child in accordance with national laws and, when considering solutions, due regard must be given to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. The CRC also requires states to take appropriate measures to ensure that asylum-seeking and refugee children, unaccompanied or accompanied by their parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of their rights.

On 3 June 2010, the Council of the European Union, in its conclusions on unaccompanied minors invited the European Commission to assess whether EU legislation on unaccompanied minors offers them sufficient protection. The Council asked the Member States to monitor the quality of care provided for them in order to ensure that "the best interest of the child is being represented throughout the decision-making process".

This report complements the parallel study of the European Migration Network (EMN) regarding policies on reception, return and integration arrangements for and numbers of unaccompanied minors; seen together, the ERN study and FRA report provide significant added value assisting ongoing policymaking at EU and national level.

## Key findings

### Accommodation

The children had experienced various forms of accommodation, but preferred smaller facilities. Adults agreed that these are better suited to their needs. Large centres are often overcrowded and do not always provide adequate living and sanitary conditions for children. Forms of closed accommodation and detention centres, as well as hotels and hostels, are not suitable, and mixing children with adults was seen by the adults interviewed as entirely inappropriate. The children's experiences of foster care varied; older children, however, preferred semi-autonomous living in small scale accommodation facilities. While children mostly preferred to stay in or close to a big city, most adults were concerned about the risks they could face in that type of location.

Children often complained about the quantity and quality of food, the inflexible timing of lunches and dinners, and their cultural appropriateness. In some countries, adults shared these concerns. Children liked to have access to kitchen facilities and pocket money to buy their own food.

### Social workers

Children were on the whole satisfied with the care and support provided by social workers, sometimes expressing great appreciation for the affection they showed towards them. Adults suggested that the number, qualifications and training of social workers should be improved.

### Healthcare

Children had mixed experiences of healthcare. Most were satisfied with the medical treatment and the behaviour of medical staff. However, problems identified included lack of medical screening upon arrival, insufficient attention to health complaints, and, in one case, denial of specialist medical treatment. A need for better interpretation was also identified, in particular concerning psychological support. Some girls noted that their preference for female doctors was not always accommodated. Interpretation and intercultural mediation often only relied on the support provided by social workers, foster parents and other persons of trust. Children had rarely asked for psychological support. Many children claimed that they were not aware of its availability and adults noted the need for better psychological support.



## Religion and cultural norms and values

Children's cultural norms and values were not always taken into consideration with regard to food, health and schooling, as well as in the context of the conduct of legal procedures concerning them, including the asylum interviews. For many children, religion was an important source of motivation and support, and they were satisfied to be in an environment where they could practice their religion freely. Some children complained, however, that their religious needs were neglected, for example, those regarding food or availability of spiritual support.

## Recreation and leisure

Children and adults saw recreational activities, and in particular sports, as vital activities and a source of strength, but opportunities for these varied between and within countries. Access to television and internet were mentioned as important and affordable sources of information and entertainment, allowing children to have news of their home country, but sufficient access was not always available.

## Education and training opportunities

Children appreciated education and wanted to attend school. Their experiences, however, varied; those who had learnt the language and attended normal classes with local children were more satisfied. Children complained about the limited information provided on educational possibilities. Adults noted difficulties in school enrolment and some schools were reportedly reluctant to take these children while lacking the resources to provide the special support the children needed. Adults were also concerned about regular school attendance, suggesting the need for better monitoring. They noted that special educational and psycho-social support was essential.

Children often asked for more intensive language tuition, so that they could transfer quickly to normal schools. Children who needed to support their families were sometimes frustrated attending school and preferred to work even in low-paid, unskilled jobs, although they were aware of the benefits of education. A number of children preferred vocational training, to "learn a trade", but in some countries access to training was prevented due to the requirement of a work permit. Most children wanted to work, mainly after finalising their education. Some children were or had been working irregularly in order to cover their own needs or to support their families, or simply "to take their mind off their problems". Some children were allowed to do chores for pocket money.

## Social interaction and experiences of racism

Children wanted to interact more with peers from the host country, because this gave them a sense of ‘belonging’ and improved their language skills. Some, however, indicated that they felt more comfortable with people from their own country or ethnic group.

It is important to note that children in foster families or living independently found it easier to develop relations with peers from the host country. Children in other placements complained of practical barriers, including lack of money for transport or leisure activities, or an early evening curfew. Many children had experiences of racist behaviour and discrimination, usually in public places, and according to adults, influenced by prejudice against migrants and asylum-seekers.

On the whole, adults considered children’s social integration as a positive step, although some were sceptical about the idea of integrating older children who may soon be entering adulthood and returned to their home country.

## Legal guardianship and legal representation

Many children were not fully aware of the responsibilities of a guardian or even whether they had one or who this was. Even some adult respondents – not guardians themselves – were unsure of a guardian’s role; for example, if this entailed only legal or also welfare support. There was often reference to delays in assigning a guardian.

The frequency and quality of contact between guardians and children varied. A significant number of children were satisfied and wanted a more personal relationship with their guardian – an issue that adult respondents also thought was important for a child’s well-being.

Children and adults were often critical of the role of legal representatives, advisers and counsellors, suggesting that they should be better trained and qualified, and stressing the need for adequate interpretation.

## Age assessment

Children feared and were critical of age assessment procedures. Some children had little information about them, others considered age assessment as unfair, and most wished that officials would “simply believe them”. Children were often distressed about the possibility of being perceived as “liars”.

Age assessment procedures are not standardised across the European Union. Adults noted that the conduct of age assessment examinations is not based on common standards within EU Member States; on the whole, they were not satisfied with current procedures, expressing doubts about their reliability and objectivity.

## Family tracing and reunification

Many children were in contact with family members and most said that they wish to be reunited with their family in their host country, although this rarely occurs. Some children, however, did not want to contact their families, because they had been mistreated or neglected by them in the past.

Not all children were aware of possibilities for family tracing or reunification or how or where to request them and most children who asked for family reunification were unhappy with the outcome due to a number of obstacles, including the length of the procedure.

Children and adults expressed reservations about family tracing considering, on the one hand, the possible negative impact on the asylum claim and, on the other hand, the risks family members may face. In addition, some children feared learning bad news about their families.

## The asylum procedure

The information provided to children was not always drafted or communicated in a child-friendly way. Children were frustrated by the limited time allocated to discussing their case with legal advisers and many said that they lacked information on the specific role of the different persons involved in the asylum procedure and, in particular, the interviews.

Most respondents claimed that the asylum process often takes a very long time to conclude due to the large number of asylum applications coupled with the limited availability of trained and qualified staff. Some adult respondents supported the idea of processing children's applications on a priority basis. However, accelerated procedures need to include procedural safeguards in regard to the quality of the examination.

The asylum interview was seen by most children as a form of "interrogation", despite steps to make them feel comfortable. The formality of the setting or the presence of unknown persons upset children and many expressed the wish to have a person they trust attend their interviews. Children also had negative experiences with interpreters, who did not always speak their dialect and, in some cases, expressed doubts about their impartiality. Adults noted that the selection of the interview questions or the assessment of the children's responses was not always sensitive to the children's cultural background and some children complained that questions were designed to "catch them out" rather than to establish facts. Some children said that they had been questioned about their own traumatic experiences in a way that frightened them.

The "final decision" is a very emotional issue for the children and, according to several adult respondents, a negative decision is experienced as a real trauma. Many children believed that decisions are subjective and arbitrary, and some interpreted a negative decision as a personal failure.

## Detention

Five children were interviewed while in detention in the Netherlands. Others spoke of their experiences of detention for minor offences or to check their identity, and some children were detained upon arrival until their age was established. Some of the children, whose movement was restricted on grounds of their own protection against trafficking, also said that they felt 'detained'.

## Maltreatment and abuse

A small number of respondents spoke about maltreatment or abuse in rather general terms. Some children spoke about specific experiences of physical abuse during their journey and some considered 'not being taken seriously', being pressured by officials or considered 'liars' as forms of abuse.

When asked about help and support in cases of maltreatment or abuse, most children said that they would turn to a social worker, but could not say if and how they were encouraged to report abuse cases. Many adults were satisfied that existing general complaint and support provisions for abused children would protect them adequately. Some adults, nonetheless, questioned if these children would report abuse, fearing how it may impact on the outcome of their asylum claim.

## Turning 18

The transition from childhood to adulthood is a difficult process particularly for separated, asylum-seeking children who have to struggle with many problems. Provision of care, living conditions and legal options change significantly from the moment they legally become adults, but practices differ between EU Member States in the management of this transition phase. Young people whose legal status was not decided by the time they turned 18 and those whose application for asylum was rejected face a great risk of drifting into an irregular status.

Children who had received a positive decision on their asylum application were more optimistic about their future options. A significant number of children were unaware of the consequences of reaching the age of majority and how this would affect their housing, support, living conditions, education and work opportunities. However, most children expressed concern and anxiety about where they would stay after turning 18 and whether they would be able to continue their education or find work. Many adults shared the same concerns.

## Opinions

The following opinions highlight key aspects of protection regarding the living conditions, as well as legal issues and procedures concerning separated, asylum-seeking children in EU Member States identified in this report. These and other important aspects are outlined in greater detail in the concluding considerations of each section.

### Accommodation and social workers support

Separated, asylum-seeking children should be placed in adequate accommodation and under care in accordance with their best interests, identified on the basis of a thorough assessment of their needs, which must be regularly reviewed. Younger children should preferably be placed in the care of adult relatives or with foster families from their own culture, following a thorough assessment of their suitability. Older, more mature children should be placed in suitable, preferably semi-autonomous small group accommodation, with due regard to their need for privacy, under the supervision of adequately trained social workers. The placement of separated children together with adults not responsible for their care is not suitable, including placement in hotels and hostels, or other forms of rented private housing. The provision of adequate facilities is particularly important with respect to children requiring special care, and particularly the protection or treatment of their physical or mental health.

The care provided to separated, asylum-seeking children should be comparable to that provided to children holding the citizenship of the host country, including the appropriate ratio of qualified social workers to allow for individualised care.

### Access to health and education

A thorough health assessment of separated, asylum-seeking children to attend to their health needs should be conducted as soon as possible upon their entering into contact with authorities, while ensuring their informed consent. The results of this assessment should in no way influence or affect negatively the outcome of the asylum claim. Access to adequate healthcare must be guaranteed to all children without discrimination and irrespective of their legal or other status.

In compliance with the relevant EU legislation, access to education must be guaranteed to separated, asylum-seeking children under similar conditions as for country nationals. In order to be able to make adequate choices, child-friendly information on educational possibilities should be provided as soon as possible to these children in a language that they understand. The children should be consulted on educational possibilities.

Educational authorities and schools should be adequately resourced to provide special educational and psychosocial support to separated, asylum-seeking children, particularly as regards language training.

Separated, asylum-seeking children should benefit from appropriate access to vocational education and training; a flexible approach to work permit requirements should be applied, in so far as the children can meet educational and language requirements.

## Legal guardianship and representation

Every separated, asylum-seeking child and his/her carers should receive adequate and easy to understand information about the possibilities to complement the child's limited legal capacity and the various forms of representation of the interests of the child available under the domestic legal system. A legal guardian should be provided to every separated, asylum-seeking child as soon as possible.

Persons assigned legal guardianship duties, as well as any other persons in charge of safeguarding the child's best interests, should be provided with appropriate training and support to carry out their functions adequately. Where necessary, the support of professional interpreters should be provided in order to facilitate close and frequent communication between the child and his/her legal guardian or other representative.

Adequate legal representation, advice and counselling, as well as free legal aid, as appropriate, should be provided to separated, asylum-seeking children and their legal guardians or other representatives, in the context of legal procedures, as soon as possible, in order to ensure fair access to justice.

The exercise of legal guardianship and other representation functions should be monitored through regular and independent assessments, by judicial authorities for instance.

## Detention

Separated, asylum-seeking children should never be detained for reasons relating to their residence status, or their lack of it, or the conditions of their entry in an EU Member State. Detention should only be applied where this is in the child's best interests, and with similar conditions and safeguards as for children having the citizenship of the respective state.

In EU Member States where detention is used for the purpose of removal, there is a need to scrupulously respect all safeguards provided for in Article 17 of the Return Directive, that is, to: apply detention only as a measure of last resort and for the shortest appropriate period of time; provide accommodation in institutions provided with personnel and facilities that take into account the needs of children; offer the children the possibility to

engage in leisure activities, including play and recreational activities; and provide the children with access to education.

## The need for child-centred evidence

### United Nations Convention on the Rights of the Child

#### Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

[...]

The European Union Agency for Fundamental Rights (FRA) examines the perspectives and experiences of children in the context of one of its nine thematic areas of work for the period 2007-2012: the rights of the child, including the protection of children. This thematic area cross-cuts with others, namely: asylum, immigration and integration of migrants; access to efficient and independent justice; racism, xenophobia and related intolerance; and discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination).

Children's views and accounts of their experiences are often not incorporated into work that seeks to formulate policy responses and action plans for children, particularly in fields covered by areas in the Stockholm Programme. The results of FRA's research serves to fill a gap in current knowledge about how separated children from different national, ethnic, religious and cultural backgrounds experience their lives as asylum seekers in the EU, by directly asking them about their opinions and experiences.

The fieldwork for this research was based on interviews with the children themselves in 12 EU Member States building on the need for child-centred research. The importance of directly engaging with children is highlighted in FRA's ongoing work on the rights of the child, for example, its work on child rights indicators<sup>1</sup>, and reflected in its work involving school-based surveys of children's experiences of racism and social marginalisation.<sup>2</sup>

The results of this research were initially presented in a summary report, entitled *Separated, asylum-seeking children in European Union Member States* and published on 30 April 2010. This aimed to provide valuable first-

<sup>1</sup> FRA (2009) *Developing indicators for the protection, respect and promotion of the rights of the child in the European Union*, Vienna: FRA, available at: [fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/publications\\_per\\_year\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/publications_per_year_en.htm) (all hyperlinks referenced in this report were accessed on 20 October 2010).

<sup>2</sup> FRA (2010) *Experience of discrimination, social marginalisation and violence: A comparative study of Muslim and non-Muslim youth in three EU Member States*, Luxembourg: Publications Office of the European Union; available at: [fra.europa.eu/fraWebsite/research/publications/publications\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_en.htm).



hand evidence for the European Commission Action Plan on Unaccompanied Minors (2010-2014), and to incorporate the separated, asylum-seeking children's perspectives, so that they could positively contribute to future policy development and action regarding their protection.

## Background to the report

The rights of the child, including the protection of children, constitute one of the main thematic areas of work of the FRA under its Multi-annual Framework 2007-2009.<sup>3</sup> In March 2009, the FRA published a report on indicators for the protection, respect and promotion of the rights of the child in the EU<sup>4</sup>. A core indicator group concerned the "rights and welfare of children separated from their family due to migration". Following international practice,<sup>5</sup> the FRA child rights indicators are divided into:

- **structural** indicators that reflect the existence of legal instruments as well as basic institutional and budgetary mechanisms necessary for facilitating the realisation of a particular children's rights provision;
- **process** indicators that reflect the efforts made at national and local or regional level to implement the structural provisions; for example, national strategies, policy measures and action programmes;
- **outcome** indicators that reflect individual and collective attainments in reference to the fulfilment of children's rights.

The study carried out by the European Migration Network (EMN)<sup>6</sup> in parallel to the FRA research dealt with the legal and policy dimensions corresponding to the 'structural' and 'process' indicators outlined above (for example, motivations for entering the EU, entry procedures, reception arrangements including integration, detention, return practices, statistics and identified best practices). The FRA research corresponds to the outcome indicators and collected data through cross-national qualitative child-centred participatory research carried out by the International Organisation of Migration<sup>7</sup> (IOM Vienna), which is also the National Contact

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<sup>3</sup> Council Decision of 28 February 2008 implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:063:0014:0015:EN:PDF>.

<sup>4</sup> See FRA (2009) *Developing indicators for the protection, respect and promotion of the rights of the child in the European Union*, Vienna: FRA, available at: [fra.europa.eu/fraWebsite/research/publications/publications\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_en.htm).

<sup>5</sup> United Nations International Human Rights Instruments (2008) *Report on Indicators for Promoting and Monitoring the Implementation of Human Rights*, 6 June 2008, HRI/MC/2008/3, available at: [www2.ohchr.org/english/bodies/icm-mc/docs/HRI.MC.2008.3EN.pdf](http://www2.ohchr.org/english/bodies/icm-mc/docs/HRI.MC.2008.3EN.pdf).

<sup>6</sup> The European Commission established a European Migration Network in order to address the need to exchange information on all aspects of migration and to contribute to a common asylum and immigration policy. More information at: <http://emn.sarenet.es/html/index.html>.

<sup>7</sup> For further information, see: [www.iomvienna.at](http://www.iomvienna.at).

Point for EMN. The EMN research covered 22 EU Member States<sup>8</sup> while the FRA research covers 12 EU Member States, namely Austria, Belgium, Cyprus, France, Hungary, Italy, Malta, the Netherlands, Poland, Spain, Sweden and the United Kingdom. Seen together, the present FRA report<sup>9</sup> and the EMN study<sup>10</sup> fill a significant knowledge gap and provide significant added value assisting policymaking at EU level in the field of migration and asylum.

The FRA work in relation to asylum, based on primary fieldwork research engaging directly with people on the ground, was expanded through two reports published in September 2010, namely *The duty to inform applicants about the asylum procedure: the asylum-seeker perspective*<sup>11</sup> and *Access to effective remedies: the asylum-seeker perspective*,<sup>12</sup> both of which are based on interview research with 877 asylum applicants of 65 different nationalities across all 27 EU Member States. In addition, the FRA published a report on *Detention of third country nationals in return procedures*<sup>13</sup> in September 2010, which examines current practices of detention of irregular migrants in the 27 EU Member States in light of the relevant international human rights law framework. This report includes a section on irregular migrant children.

## Methodological considerations

The FRA work is guided by the UN Convention on the Rights of the Child (CRC),<sup>14</sup> which sets out a full range of human rights, including civil, cultural, economic, political and social rights of children. In addition, two optional protocols to the CRC have been adopted dealing with the specific issues of the involvement of children in armed conflict and the sale of children, child

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<sup>8</sup> Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

<sup>9</sup> The results of this research were initially presented in a summary report, see FRA (2010) *Separated, asylum-seeking children in European Union Member States*, Conference Edition, Luxembourg: Publications Office, available at: [fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/pub\\_sep\\_asylum\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_sep_asylum_en.htm).

<sup>10</sup> European Migration Network (2010) *Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors – an EU comparative study*, available at: <http://emn.sarenet.es/Downloads/download.do;jsessionid=1D977494D2D5567DFA14973967C0EA7C?fileID=1020>.

<sup>11</sup> FRA (2010) *The duty to inform applicants about the asylum procedure: the asylum-seeker perspective*, Luxembourg: Publications Office, available at: [fra.europa.eu/fraWebsite/attachments/asylum-access-info-report-092010\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum-access-info-report-092010_en.pdf).

<sup>12</sup> FRA (2010) *Access to effective remedies: the asylum-seeker perspective*, Luxembourg: Publications Office, available at: [fra.europa.eu/fraWebsite/attachments/asylum-access-remedies-report-092010\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum-access-remedies-report-092010_en.pdf).

<sup>13</sup> FRA (2010) *Detention of third country nationals in return procedures*, Luxembourg: Publications Office, available at: [fra.europa.eu/fraWebsite/attachments/detention-third-country-nationals-report-092010\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/detention-third-country-nationals-report-092010_en.pdf).

<sup>14</sup> The CRC was adopted on 20 November 1989 by the UN General Assembly into international law. Full text available at: [www2.ohchr.org/english/law/crc.htm](http://www2.ohchr.org/english/law/crc.htm).

prostitution and child pornography.<sup>15</sup> All 27 EU Member States are parties and have acceded to the CRC, which is one of the most widely ratified international human rights instruments.<sup>16</sup> The CRC is guided by four fundamental principles: the best interests of the child, non-discrimination, the right to survive and develop, and respect for the views of the child.<sup>17</sup>

The FRA research on children is particularly guided by Article 12 of the CRC that requires the participation of children in decisions which affect them. Children's views, perspectives and interests often differ from those of adults and therefore this research explored directly their views and experiences as a critical means to assess the effectiveness of current practices in order to identify the changes necessary so that they are appropriately tailored to the children's needs. In this sense, the research can also be seen as a means for empowering these children to engage more actively in shaping their future.

The research has followed a qualitative approach which, while allowing for differences between countries, ensures that the data produced are as much as possible comparable. The fieldwork was carried out in 2009 in Austria, Belgium, Cyprus, France, Hungary, Italy, Malta, the Netherlands, Poland, Spain, Sweden and the United Kingdom, representing a diverse sample with regard to such aspects as population size, geographical location, socio-economic characteristics and length of EU membership.

It was based on semi-structured individual, face-to-face interviews with 336 separated children and 302 adults responsible for, assisting and working with such children, including care workers, social workers, teachers, psychologists, health specialists, legal guardians, legal practitioners, government officials – including law enforcement officers – interpreters and researchers. The children interviewed were aged between 14 and 18 years, and every effort was made to interview girls and boys with different ethnic, religious and cultural backgrounds. All children took part in the research voluntarily. They were assured that their responses were anonymous so that no single child could be traced from the research findings. Accordingly, direct quotes of children as well as those of adults that are used in the report to illustrate some of the most relevant findings normally mention the

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<sup>15</sup> Texts adopted by General Assembly resolution A/RES/54/263 of 25 May 2000: Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, available at: [www2.ohchr.org/english/law/crc-conflict.htm](http://www2.ohchr.org/english/law/crc-conflict.htm); and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, available at: [www2.ohchr.org/english/law/crc-sale.htm](http://www2.ohchr.org/english/law/crc-sale.htm).

<sup>16</sup> Some 193 states have acceded to the CRC so far, through ratification, acceptance, accession or succession. This information is available at: [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en). In addition, all 27 EU Member States are also parties to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography – although three Member States (the Czech Republic, Luxembourg and Malta) have not yet ratified it. Similarly, all EU Member States have signed the Optional Protocol on the involvement of children in armed conflict. Only one EU Member State (Estonia) has not yet ratified it.

<sup>17</sup> These principles have been reiterated by the Committee on the Rights of the Child in several General Comments, setting out with CRC General Comment No. 1: The Aims of Education (see paragraph 6 of the General Comment); available at: [www2.ohchr.org/english/bodies/crc/docs/GC1\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC1_en.doc).

sex, age and Member State or the function/type of organisation and Member State, unless by providing this information the source could be identified. The children were clearly told that they have the right not to respond to questions or withdraw from the process altogether at any time, if so they chose. Where interpreters were used, they were briefed on the research and its aim.

Under the guidance of the FRA, interviewers took all necessary steps to ensure that interviews with children were culturally, age and gender appropriate, while taking appropriate respondent validation measures to verify the reliability and accuracy of the interviewer's interpretations. The research methodology applied was sufficiently malleable to accommodate the diverse range of variables that shape the experience of these children, while also accounting for the different linguistic and cultural contexts.<sup>18</sup> Particular attention was paid to the circumstances and history of the children interviewed to ensure that no harm was done to them as a result of the research.

We would like to express our sincere thanks to these children and adults who agreed to share with us their experiences and perceptions, as well as the researchers who conducted this challenging fieldwork.

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<sup>18</sup> Direct quotes are taken from the interview transcripts in original language or in English translation.

## The children covered by the research

### **Convention on the Rights of the Child (CRC)**

#### **Article 1**

“For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

### **UN Committee on the Rights of the Child**

#### **General Comment No. 6**

“Separated Children are children, as defined in article 1 of the Convention, who have been separated from their parents, or from their legal or customary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.”

### **Inter-Agency Guiding Principles on Unaccompanied and Separated Children**

(adopted by the International Committee of the Red Cross (ICRC), International Rescue Committee (IRC), Save the children UK (SCUK), United Nations Children’s Fund (UNICEF), United Nations High Commissioner for Refugees (UNHCR) and World Vision International (WVI))

- Separated children are those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.
- Unaccompanied children (also minors) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

This research focuses on children, who are third-country nationals, **separated** from both parents, or from their ‘primary’ legal or customary care-giver, but not necessarily from other relatives or adults in the 12 EU Member States covered. Separated, foreign children do not always apply for asylum but may stay in the country under the supervision of the host state without undergoing asylum procedures. Therefore, children who had not applied for asylum were also included in this research, if they were under host state care.

The 336 separated children included in this research originated from 48 countries, with a majority coming from Afghanistan (22%), Morocco (over 10%), Somalia (over 10%) and Iraq (9%). The 302 adults responsible for assisting or working with these children are care workers, social workers, teachers, psychologists, health specialists, legal guardians, legal practitioners, government officials – including law enforcement officers – interpreters and researchers.

Separated, asylum-seeking children arriving in the European Union have very diverse national, ethnic, cultural, religious and social backgrounds. Despite improvements in data collection over the past 10 years, particularly through the implementation of Council Regulation (EC) No. 862/2007 of 11 July 2007 on Community statistics on migration and international protection, accurate statistics are still difficult to develop. For example, a failure to recognise children as separated at the time of arrival can lead to under-reporting; conversely, children recorded upon arrival as separated may subsequently be reunited with their parents, which may lead to over-reporting. Furthermore, difficulties in assessing age, when in doubt, add to the problem of compiling accurate figures.

According to Eurostat data, in 2009 across the EU 12,210 asylum applicants were considered to be unaccompanied minors, of whom 38% came from Afghanistan (see Table below).

According to data published by the UN High Commissioner for Refugees (UNHCR), in 2008 just over 13,100 unaccompanied and separated children applied for asylum in Europe, mostly in the UK (possibly reflecting the efficiency of the UK data collection system). This figure corresponds to about 80% of the number of claims made globally by separated children in 2008 and around 4% of the total number of asylum claims made within Europe. This is consistent with recent statistics showing that the proportion of separated children claiming asylum in Europe has, over the past 10 years, remained at about the same level at 4%-5% of the total number of all asylum applications. Globally, around 6,000 separated or unaccompanied children were recognised as refugees or granted a complementary form of protection in 2008; Europe accounted for 65% of all positive decisions rendered.<sup>19</sup>

The nationalities of separated children vary between EU Member States. The origin of separated children is usually based on the presence of established communities and transport links, all of which are interrelated: for example, high numbers of separated children from Morocco arrive in Spain (where relatively low numbers of children apply for asylum),<sup>20</sup> but few Moroccan children arrive elsewhere in Europe. Over the past decade, separated children arriving in Europe have mainly originated from countries such as Afghanistan, Angola, the Democratic Republic of Congo, Eritrea, Iraq and Somalia.

According to data provided in the national reports of the EMN,<sup>21</sup> an increasing number of separated asylum-seeking children arrive in the EU.

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<sup>19</sup> UN High Commissioner for Refugees (UNHCR) (2009) *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, Geneva: UNHCR, available at: [www.unhcr.org/4a375c426.html](http://www.unhcr.org/4a375c426.html).

<sup>20</sup> During 2009 only 19 unaccompanied minors applied for international protection in Spain, Gobierno de España, Ministerio del Interior (2009) *Asilo en Cifras 2009*, p.52, available at: [www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/Asilo/Asilo\\_en\\_Cifras\\_2009\\_web/files/asilo\\_en\\_cifras\\_09\\_baja.pdf](http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/Asilo/Asilo_en_Cifras_2009_web/files/asilo_en_cifras_09_baja.pdf).

<sup>21</sup> European Migration Network (2010) *Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU comparative study*, pp. 122-141, available at: <http://emn.sarenet.es/Downloads/download.do?jsessionid=1D977494D2D5567DFA14973967C0EA7C?fileID=1020>.

The majority of these children are aged 14 years and over, and about two third of these children are boys.

#### Unaccompanied minors in the EU-27 by citizenship of origin, 2009

Country	Total	0-13 years	14-15 years	16-17 years	Unknown
<b>Non-EU</b>	<b>12,210</b>	<b>1,255</b>	<b>3,295</b>	<b>6,565</b>	<b>1,095</b>
Afghanistan	4,600	365	1,690	2,010	535
Russia	470	275	55	135	*
Somalia	1,800	230	535	955	80
Iraq	830	30	125	565	110
Kosovo**	110	20	25	70	*
Georgia	90	15	15	60	*
Nigeria	330	5	60	255	15
Pakistan	75	10	20	40	5
Iran	315	10	70	165	70
Zimbabwe	50	10	5	25	5
Sri Lanka	130	35	30	60	5
Turkey	120	10	25	80	*
Armenia	30	5	5	20	0
Bangladesh	80	25	15	35	5
China	120	5	15	80	25
Serbia	70	10	15	45	0
Eritrea	410	25	70	260	50
Democratic Republic of	195	20	25	155	0
Syria	75	5	15	45	15
Guinea	320	15	50	240	10
Algeria	150	5	40	75	30
India	95	*	25	55	15
Azerbaijan	20	*	5	15	0
Vietnam	165	5	45	95	25
Albania	95	5	20	50	20
Mongolia	55	5	20	30	*
Ivory Coast	55	5	5	45	*
Sudan	55	*	10	35	10
Ghana	45	0	5	40	5
Mauritania	10	0	5	5	*

Note: \* One or two applicants; \*\* Kosovo (under UN Security Council Resolution 1244).

Source: Eurostat, *Statistics in focus* 27/2010, p. 6<sup>22</sup>

<sup>22</sup> Eurostat (2010) *Statistics in Focus: Characteristics of asylum seekers in Europe*, Luxembourg: Publications Office, available at: <http://epp.eurostat.ec.europa.eu>.

## EU policy background

According to Article 3 of the Treaty on European Union (TEU), the Union shall promote the protection of the rights of the child. Article 24 of the Charter of Fundamental Rights of the European Union, which is devoted to the rights of the child, states that “children shall have the right to such protection and care as is necessary for their well-being”, while requiring that “in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration”. The Court of Justice of the European Union, in its judgment in the case *European Parliament v. Council of the European Union supported by Commission of the European Communities and by Federal Republic of Germany* noted that the Convention on the Rights of the Child, which binds each of the EU Member States, is one of the international instruments for the protection of human rights “of which it takes account in applying the general principles of Community law”.<sup>23</sup>

European Union institutions are particularly concerned about the rights of children, and in particular, those who are in a vulnerable situation, such as separated, asylum-seeking children. In its Communication on Strategic Objectives 2005-2009, the European Commission identified the respect, protection, promotion and fulfilment of the rights of the child as one of its main priorities. In 2006, the European Commission Communication *Towards an EU strategy on the rights of the child* signalled the start of a process to develop a coherent, considered approach to the development, monitoring and review of EU law and policy affecting children. Noting that the EU has made significant progress in this area in recent years developing various concrete policies and programmes on children's rights under different existing legal bases, the Communication states that “[...] another challenge is to ensure that the rights of children as immigrants, asylum seekers and refugees are fully respected in the EU and in Member States' legislation and policies.”<sup>24</sup>

Concerns over the situation of separated, asylum-seeking children in the EU were debated in the context of the EU's Stockholm Programme for an open and secure Europe serving and protecting the citizen. The European Parliament in its Resolution of 25 November 2009 on the Stockholm Programme considered it essential that all EU measures respect and promote children's rights as set out in the CRC and recognised in the European Union Charter of Fundamental Rights, calling for enhanced EU action on child protection. In particular, the Parliament considered that there is an urgent need to address the question of protection of unaccompanied and separated children, given the special risks to which they are exposed. In this light, the Parliament urged Member States to

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<sup>23</sup> CJEU, Case C-540/03, *European Parliament v. Council of the European Union*, judgment of 27 June 2006, paragraph 37.

<sup>24</sup> European Commission, *Towards an EU strategy on the rights of the child*, COM (2006)367 final, Brussels, 4 July 2006.



ensure that EU asylum, migration and trafficking policies treat migrant children as children first and foremost, and to ensure that they benefit from their rights as children without discrimination, especially the right to family reunification.<sup>25</sup>

The Stockholm Programme,<sup>26</sup> as adopted by the European Council in December 2009, provides a framework for EU action on citizenship, justice, security, asylum and immigration for the next five years, and contains a number of relevant points:

*“The rights of the child – i.e. the principle of the best interests of the child being the child’s right to life, survival and development, non-discrimination and respect for the children’s right to express their opinion and be genuinely heard in all matters concerning them according to their age and level of development as proclaimed in the Charter and the United Nations Convention on the Rights of the Child, concern all EU policies. They must be systematically and strategically taken into account with a view to ensuring an integrated approach.*

*[...] The European Council calls upon the Commission [...] to identify measures in order to protect and promote the rights of the child. Children in particularly vulnerable situations should receive special attention, notably children that are victims of sexual exploitation and abuse as well as children that are victims of trafficking and unaccompanied minors in the context of immigration policy.*

*[...] The strengthening of border controls should not prevent access to protection systems by those persons entitled to benefit from them and especially people and groups that are in vulnerable situations. In this regard, priority will be given to the needs of international protection and reception of unaccompanied minors.”*

Furthermore, the European Council recognising that unaccompanied children from third countries represent a particularly vulnerable group identified a number of areas as “requiring particular attention”. These include: the exchange of information and best practice; the smuggling of minors; cooperation with countries of origin; age assessment; identification and family tracing; and the need to pay particular attention to unaccompanied children in the context of the fight against human trafficking.

On 6 May 2010 the European Commission in its effort to create a common European approach adopted an Action Plan on Unaccompanied Minors

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<sup>25</sup> European Parliament, Resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm Programme, Section „Protection of the child“ (P7\_TA(2009)0090), available at: [www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0090&language=EN&ring=B7-2009-0155](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0090&language=EN&ring=B7-2009-0155).

<sup>26</sup> European Council, The Stockholm Programme – An open and secure Europe serving and protecting the citizens, Brussels, 2 December 2009, 17024/09.

(2010–2014)<sup>27</sup> in order to improve the protection of children entering the EU. The EU Commissioner for Home Affairs Cecilia Malmström emphasised that “Europe must take immediate action to look after unaccompanied minors, who are the most exposed and vulnerable victims of migration [...]. It is paramount that all Member States commit to grant high standards of reception, protection and integration for unaccompanied minors. The principle of the best interests of the child should always form the basis for any action taken. We must focus on tracing the families of minors entering the EU territory alone and we must grant return conditions allowing them for reunifying with their relatives”.<sup>28</sup>

The Commission’s Action Plan highlights that all children should be treated first and foremost as children and in accordance with the principle of the ‘best interests of the child’, which “must be the primary consideration in all action related to children taken by public authorities”. The Action Plan does not propose a specific common method for establishing the best interests of the child, and in terms of respecting and protecting child rights makes reference to the rules and principles followed in the European Union and its Member States, in particular the Charter of Fundamental Rights of the European Union, the United Nations Convention on the Rights of the Child and the European Convention on Human Rights.

The Action Plan covers several key issues, including family reunification, guardianship and legal representation, return procedures, as well as child care and protection in the EU. With regard to reception measures and procedural guarantees in the EU, the Action Plan states that they should apply from the moment an unaccompanied minor is detected at external borders or on EU territory until a durable solution is found. In addition, the European Commission undertakes to ensure that EU legislation is correctly implemented and, on the basis of an impact assessment, to evaluate whether it is necessary to introduce targeted amendments or a specific instrument setting down common standards on reception and assistance for unaccompanied minors regarding aspects such as guardianship, legal representation, access to accommodation and care, initial interviews, education services and appropriate healthcare. Furthermore, EU Member States are invited to consider introducing review mechanisms to monitor the quality of guardianship in order to ensure that the best interests of the child are represented throughout the decision-making process and, in particular, to prevent abuse.

Regarding age assessment, the Action Plan recognises that “age assessment procedures and techniques vary and concerns on their reliability and proportionality often arise. The possibility of appeal is not

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<sup>27</sup> European Commission, *Action Plan on Unaccompanied Minors (2010–2014)*, COM(2010)213 final, Brussels, 6 May 2010, p.9, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>. Also of relevance is the *Action Plan implementing the Stockholm Programme*, COM(2010)171 final, Brussels, 20 April 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0171:FIN:EN:PDF>.

<sup>28</sup> European Commission Press Release, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/534&type=HTML>.

always guaranteed.” In this respect, the Commission will issue best practice guidelines, in collaboration with scientific and legal experts and in cooperation with the European Asylum Support Office (EASO) – the latter becomes responsible for preparing technical documents on age assessment. Furthermore, EASO is invited to organise training activities on age assessment, prepare a module within the European Asylum Curriculum and a best practice handbook.

In regard to the asylum procedure, the Action Plan calls for decisions to be taken “[...] within the shortest possible period (if possible maximum six months) taking into account the obligation to try to trace the family, explore other possibilities for reintegration in their home society and assess which solution is in the best interests of the child”. In cases where it is in the best interests of the child to be reunited with his/her family and to grow up in his/her own social and cultural environment, the Action Plan states that “in all cases the return must be conducted in a safe, child appropriate and gender-sensitive manner”. It further encourages Member States “[...] to develop innovative partnership solutions with third countries of origin and transit, for example through funding a range of educational and training activities” to ensure that “[...] the minors are returned in full respect of international standards and that they will be accepted in their home environment”. The Action Plan addresses also the issue of children who have not been granted refugee or subsidiary protection status, but at the same time cannot be returned. In these cases, the Action Plan states that

*“[...] a legal status should be granted to unaccompanied minors entitling them to at least the same rights and protection as beforehand and suitable accommodation should be found. The minors should be supported in their path toward successful integration in the host society”.*

On 3 June 2010, the Council of the European Union<sup>29</sup> in its conclusions on unaccompanied minors, welcomed the Commission’s Action Plan and encouraged Member States to cooperate with EU Agencies, including the FRA, in order to improve data analysis and exchange of information in

*“stressing the importance of finding durable solutions based on an individual assessment of the best interests of the child consisting of return and reintegration in the country of origin or [...] granting international protection status or granting other status according to national law of the Member States”.*

In regard to reception and procedural guarantees in the EU, the Council invited the European Commission to assess whether the relevant EU legislation offers sufficient protection in order to ensure adequate standards on reception and procedural guarantees for all unaccompanied minors, “[...] regardless of whether they are asylum seekers, victims of trafficking or

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<sup>29</sup> Council of the European Union, Council conclusions on unaccompanied minors, 3018th Justice and Home affairs Council meeting, Luxembourg, 3 June 2010, available at: [www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/114887.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114887.pdf).

illegal migrants, to guarantee that minors are treated as such until proven otherwise.”<sup>30</sup> Furthermore, the Council invites Member States “[...] to monitor the quality of care for unaccompanied minors in order to ensure that the best interest of the child is being represented throughout the decision-making process.”

Finally, regarding integration the Council calls for strengthening actions related to asylum-seeking children. This concerns mainly establishing and improving reception facilities, but also measures for the development of appropriate integration actions, including the next generation of financial instruments from 2014 onwards in the field of migration management. The Council also requests the European Commission to address “the specific challenges posed by the asylum-seeking minors in the new EU agenda for migrants’ integration”.

## The duty to care for the child

### **United Nations Convention on the Rights of the Child**

#### **Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

The CRC establishes a state obligation to care for separated children calling for both special protection and assistance, as well as for the provision of alternative care. Although the CRC allows states a broad margin of discretion in considering solutions, it requires them to take into account the importance of continuity in a child's upbringing and of the child's ethnic, religious, cultural and linguistic background. Article 39 of the CRC pays

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<sup>30</sup> This position of the Council denotes an important step forward vis-à-vis the previous standing reflected in the Resolution on unaccompanied minors who are nationals of third countries, which had been adopted on 26 June 1997. The 1997 resolution contemplated the possibility that EU Member States refuse admission at the frontier to unaccompanied minors, in particular if they are without the required documentation and authorisation, without requiring the implementation of the fundamental CRC principle of protection of the best interests of the child (97/C 221/03), Official Journal (OJ) C 221, 19 July 1997.

particular attention to children who are victims of any form of neglect, such as separated children; the article establishes that “recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”.

### Charter of Fundamental Rights of the European Union

#### Article 24 - The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

In 2006, the International Committee of the Red Cross (ICRC) together with the International Rescue Committee (IRC), Save the Children (UK), UNICEF, UNHCR and World Vision International (WVI) published a set of ‘guiding principles’ setting out that “action on behalf of unaccompanied and separated children should be guided by principles enshrined in international standards. The validity of these principles has been confirmed by experience and lessons learnt from conflicts and natural disasters in recent years”.<sup>31</sup>

EU law currently does not address specifically the needs of separated, asylum-seeking children. However, the EU Charter of Fundamental Rights and EU legal instruments in the areas of immigration, asylum and family reunification establish a basic set of legal provisions binding on all EU Member States, where aspects relating to the ‘duty to care’ emerge. These standards can serve as a point of departure in developing responses to the issues that separated, asylum-seeking children face.

For instance, Article 18 of the Reception Conditions Directive, which follows closely Article 39 of the CRC, establishes that Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental healthcare is developed and qualified counselling is provided when needed. The Dublin II Commission Regulation recognises that entrusting the care of an unaccompanied minor to a relative other than the mother or father, or legal guardian, may cause particular difficulties and

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<sup>31</sup> International Committee of the Red Cross (2004) *Inter-agency guiding principles on unaccompanied and separated children*, available at: [www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p1101/\\$File/ICRC\\_002\\_1011.PDF](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p1101/$File/ICRC_002_1011.PDF).

therefore requires the cooperation of those authorities, responsible for child protection in the Member States, which are best suited to decide on the ability of an adult to take charge of a child in a way which serves its best interests. It should be noted that the objective of cooperation is to ensure that the authorities decide, with a full knowledge of the facts, on the ability of the adult.

However, a key issue of concern is that the right to remain in a Member State is provided only for children who have applied for asylum (Article 7 of the Asylum Procedures Directive). Although Article 4 of the Return Procedures Directive<sup>32</sup> contains the principle of non-refoulement, EU law does not provide any guidance as to how the 'duty to care' for separated children from third countries who do not request international protection should be applied in practice.

In addition to regulations relevant to 'triggering' the duty of care, EU regulation provides specific provision for the care of children in many other fields of protection covered by the research. These fields are presented under the following two main headings: 'living conditions' and 'legal procedures'. The former concerns the more material, physical, psychological and social aspects of the life of separated children, while the latter mainly focuses on aspects relating to their legal situation, capacity and status. In addition, this report also covers some aspects of maltreatment and abuse, and the situation of children when turning 18. Although the research was not specifically designed to address such issues, they emerged as important aspects of care during the interviews.

As the European Commission noted in its 2006 Communication<sup>33</sup> *Towards an EU strategy on the rights of the child*: "The EU's obligation to respect fundamental rights, including the rights of the child, implies not only a general duty to abstain from acts violating these rights, but also to take them into account wherever relevant in the conduct of its own policies under the various legal bases of the Treaties (mainstreaming)."

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<sup>32</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24 December 2008, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0115:EN:HTML>.

<sup>33</sup> European Commission, *Towards an EU strategy on the rights of the child*, COM(2006)367 final, Brussels, 4 July 2006, p. 3, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0367:FIN:EN:PDF>.

## Key considerations

The research offers a valuable insight into the condition of separated, asylum-seeking children in 12 EU Member States and draws important lessons for policy makers. With this in mind, it is important to note, first, that conditions can change rapidly in response to new policies in place or significant fluctuations in the number of separated, asylum-seeking children; second, that often children's experiences within a given country differ depending on the location of the child's placement, the type of accommodation facility, as well as the ethnic and cultural origin of each child.

Children's responses can also be influenced by a multitude of different factors, for example their personal expectations, frustrations and achievements, personal affiliations to persons, such as teachers, social workers, foster parents or guardians. For instance, a child with a particularly strong bond to a social worker may experience his/her living conditions differently because of this, in contrast to other children. We tried to read children's responses under this light to minimise the element of subjectivity, which is inherent in any interview research.

In addition, the responses of adults also tend to be coloured by their particular function: officials responsible for policy implementation will tend to be less critical of existing provisions, while social workers and representatives from non-governmental organisations (NGOs), as well as others dealing directly with the situation "on the ground", will tend to be more critical. Based on their professional background, the adults interviewed may tend to reflect their own frustration regarding problems they deal with in responding to the specific needs of these children.

# 1. Living conditions

## 1.1. Accommodation

Children who arrive in the EU separated from parents or their primary caregiver often after long and arduous journeys by land or sea need to be accommodated in an environment that will support them in recovering from physical and psychological trauma. The research found that this is often, but not always the case. There is therefore a need to enforce already existing minimum standards more rigorously, and raise them, as necessary, to fulfil the needs of these children according to the criteria set out by the CRC and EU law. This section thus addresses accommodation with respect to where separated, asylum-seeking children live and includes references, for example, to the provision of food and the location of accommodation.

A relevant issue that was raised in FRA's 2009 report on child trafficking<sup>34</sup> concerns the disappearance of children from their shelters and similar institutions, a phenomenon that has reached worrying proportions in some EU Member States. This was not an issue raised in this research; some adult respondents indicated, however, that this constituted an issue of concern to them, because children who disappear from shelters run considerable risks. As a recent report by *Terre des Hommes* pointed out, a decisive factor explaining disappearances is "[...] how most minors (mainly boys between 14 and 17 years of age) perceive their future prospects once it is decided that they be placed in an institution [...]. There is also their certainty, even if they are told otherwise, that this placement is the anteroom of eviction back to their country of origin, despite the fact that their projects are usually very clear and that they want to work in the host country".<sup>35</sup> According to the report, there are numerous reasons why children may leave a care institution, including being disappointed from the protection and support provided or finding that the institution does not correspond to their needs; wanting to continue their journey to their country of final destination; facing a rejection of their asylum application and being afraid to be returned to their home country.<sup>36</sup>

Many of these issues were raised by the children in the interviews and are discussed in different sections of this report. The conclusion is that there is a clear necessity for a careful, individualised needs assessment, as soon as a separated, asylum-seeking child is identified and taken into care, in order

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<sup>34</sup> FRA (2009) *Child trafficking in the European Union: Challenges, perspectives and good practices*, Luxembourg: Publications Office, pp. 114-116, available at: [fra.europa.eu/fraWebsite/attachments/Pub\\_Child\\_Trafficking\\_09\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/Pub_Child_Trafficking_09_en.pdf).

<sup>35</sup> Terre des Hommes (2009) *Disappearing, departing, running away: A surfeit of children in Europe?*, Lausanne: Terre des Hommes, p. 11, available at: [http://terredeshommes.org/pdf/publication/disparitions\\_en.pdf](http://terredeshommes.org/pdf/publication/disparitions_en.pdf).

<sup>36</sup> *Ibid.*, pp. 38-42.



to guide his/her placement into suitable care accommodation and the provision of support.

According to Article 18 of the CRC, Member States have a general obligation to ensure the development of institutions, facilities and services for the care of children. EU law sets some minimum standards regarding accommodation. For instance, Article 30 of the Qualifications Directive<sup>37</sup> and Article 19 of the Reception Conditions Directive,<sup>38</sup> with regard to refugees and asylum seekers respectively, require that unaccompanied minors be placed either with adult relatives, a foster family, in specialised centres for minors or in other accommodation facilities suitable for children. The directives also require that changes of residence shall be limited to a minimum. Furthermore, the Qualifications Directive requires that the views of an unaccompanied child regarding the choice of placement be taken into account (Article 30) and that beneficiaries of refugee or subsidiary protection have access to accommodation under equivalent conditions as other legally resident third-country nationals (Article 31). The relevant EMN reports list a variety of types of accommodation available to unaccompanied minors.<sup>39</sup>

Cleanliness and sanitary conditions emerged in the research as an important aspect of the children's well-being. Under Article 24 of the CRC, States Parties are under a duty to combat disease, taking into consideration the dangers and risks of environmental pollution. As the research highlights, in considering appropriate types of accommodation, undue restrictions on the liberty and the freedom of movement of the child, as well as their placement with non-related adults should be avoided. Article 39 of the CRC requires States Parties to take all appropriate measures to promote physical and psychological recovery, as well as social reintegration of a child victim of any form of neglect, requiring that such recovery and reintegration takes place in an environment which fosters the health, self-respect and dignity of a child.

Many relevant EU legal provisions relating to the health and well-being of separated, asylum-seeking children could be more precise. For instance, under Article 13 of the Reception Conditions Directive, EU Member States have a duty to provide material reception conditions to ensure a standard of living adequate for the health of asylum applicants and capable of ensuring their subsistence. More specific guidance could facilitate the development of a more standardised approach across the EU based on common minimum standards.

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<sup>37</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 30 September 2004, pp. 12-23; available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>.

<sup>38</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6 February 2003, pp. 18-25; available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML>.

<sup>39</sup> More information available at: <http://emn.sarenet.es/Downloads/prepareShowFiles.do?sessionId=713BECE40BFEC89F7D7F984423F1FE49?directoryID=115>.

## Research findings

In the interviews, children were asked to describe the place they lived in and a range of questions regarding their experiences in the different types of accommodation, where they had been placed. This included questions about the rules<sup>40</sup> of the institution or family they were placed in, its location, the size of their room, whether and how many shared it, cleanliness and sanitary conditions, the availability and quality of food, infrastructure and facilities. Adults were asked similar questions.

## Types of accommodation

Children had experienced a variety of accommodation types. Some had lived in open accommodation centres for asylum seekers or in closed centres providing protected care; others had lived in residential care centres for local children, in foster care or, in the case of older children, in semi-independent accommodation. In the Netherlands, they were also placed in detention facilities or 'protected reception',<sup>41</sup> which was considered child-appropriate by some of the adult respondents, although children had mixed feelings.

*"I felt safe in the protected reception, I've grown stronger there."* (Girl, 17, Netherlands)

*"I have been in prison too, but the Protected Reception was even worse. I couldn't call my lawyer and every day I was told that I had to return to my home country. I cried all day. They frighten the girls living here. That is why so many girls ran away, I am sure about that."* (Girl, 18, Netherlands)

In Malta, although according to government policy asylum-seeking children are to be placed in one of the two residential centres catering for these children (Dar is-Sliem<sup>42</sup> or Dar il-Liedna, run by the Organisation for the

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<sup>40</sup> Accommodation centres have different rules regarding children's free movement: some allow children completely free entry and exit and some restrict exit to various degrees.

<sup>41</sup> "Unaccompanied minors between the age of 13 and 18 who are possibly or threaten to become victims of trafficking in human beings or smuggling of migrants, can be placed in a protected reception," according to a report by the EMN Dutch National Contact Point, the Immigration and Naturalisation Service (IND); see IND (2010) *Unaccompanied minors in the Netherlands. Policy on reception, return and integration arrangements for, and numbers of, unaccompanied minors*, The Hague: Ministry of Security and Justice, p.7 available at: <http://emn.sarenet.es/Downloads/download.do;jsessionid=D1F111A59C5DE8E7BFAF62C1F06926D6?fileID=932>.

<sup>42</sup> "Minors living at Dar Is-Sliem claimed, and observers agreed, that there was no separate accommodation for minors and that they were just as often placed with adult men and women." EMN National Contact Point for Malta (2009) *Unaccompanied minors in Malta*, Valetta: Maltese Ministry for Justice and Home Affairs, pp.19-21, available at: <http://emn.sarenet.es/Downloads/download.do;jsessionid=A2AA8045AB9089464DDAE81FA1145DF?fileID=906>.

Integration and Welfare of Asylum Seekers (OIWAS<sup>43</sup>), in practice, when their age is disputed, this may take months. In the meantime, these children remain in adult detention centres, where conditions were found to be overcrowded and unsafe.<sup>44</sup>

In France, adult respondents considered inappropriate that children shared accommodation with adults in hotels and hostels in regions where there are many separated children and local authorities cannot provide suitable accommodation for all. Some children who participated in the research said that they had even ended up living in streets, but were reluctant to go into details. Officials acknowledged the problem, which is particularly acute in Paris and Marseille. NGO respondents said that they sent “prevention teams”, usually by night, to find and offer protection to these children.

In Cyprus, according to the Social Welfare Services<sup>45</sup> unaccompanied children are placed following evaluation either in relevant institutions or in foster care. However, according to NGO respondents, separated asylum-seeking children are accommodated in shelters or youth guesthouses only in exceptional circumstances and are never placed with foster families, as they are considered “too old”. Instead, most live with either relatives or other separated, asylum-seeking children in private, often substandard, accommodation that they find themselves.

*“They live in a very dirty area somewhere down town Nicosia, where the houses are in bad condition and you can smell the sewer, but they still have to pay very high rents. The sanitary conditions are not good. They live with adults, it’s like a hostel. They share a kitchen, one bathroom and toilet for the whole floor. They take turns to clean, that’s why it’s so dirty because no one cares or cleans.”* (Social worker, Cyprus)

In Austria, Belgium, France, Hungary, Italy, Malta, Poland and Spain, children as well as adults complained that reception centres are overcrowded and, in some cases, mentioned problems of violence and vandalism. However, the situation often varied within the same Member State; for instance, in Belgium, according to the children interviewed the rooms in the large accommodation centres in Wallonia and Brussels were overcrowded, while in Flanders most of the children interviewed had a room of their own or shared a room of two people. In some EU Member States, there were also complaints about the cleanliness and sanitary conditions, particularly in reception centres and hotels/hostels.

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<sup>43</sup> Organisation for the Integration and Welfare of Asylum Seekers (OIWAS). For more information, see: [www.msp.gov.mt/ministry/content.asp?id=926](http://www.msp.gov.mt/ministry/content.asp?id=926).

<sup>44</sup> The interviewer in Malta came across a particularly disturbing experience of a 16 year-old boy, highly articulate who had threatened to commit suicide while in detention, and at one point slept outside in the cold for a number of days, in protest.

<sup>45</sup> Ministry of Labour and Social Insurance, *Annual Report 2009*, p.55, available at: [www.mlsi.gov.cy/mlsi/mlsi.nsf/dmlannualrpt\\_gr/0EA21A83D055773DC225770C004C00B2/\\$file/ANNUAL%20REPORT%202009%20low.pdf](http://www.mlsi.gov.cy/mlsi/mlsi.nsf/dmlannualrpt_gr/0EA21A83D055773DC225770C004C00B2/$file/ANNUAL%20REPORT%202009%20low.pdf).

*“Bed and breakfast is certainly not good for children.”* (IGO respondent, Austria)

*“The shelter is not healthy [...]. For example, there is no window in the kitchen and only a very small one in the bathroom. A solution needs to be found for the ventilation of these rooms.”* (Official, Hungary)

Adult respondents attributed problems of overcrowding to lack of resources, the increasing number of asylum seekers or their prolonged stay due to delays in processing asylum applications. For instance, a social worker in France indicated that the duration of the placement is longer than originally foreseen; another adult respondent in Hungary argued that despite the increasing number<sup>46</sup> of children, the available human resources remain the same, noting at the same time, and children confirmed this, that despite the problems there is a generally positive atmosphere. In the Netherlands, a social worker expressed concern about the conditions in AMA-campuses<sup>47</sup> for separated, asylum-seeking children, where arguably there was not enough personal care and support and not all children felt safe. Guardians also confirmed these conditions and argued that there was a serious problem because not enough places exist for separated, asylum-seeking children on these campuses; so reportedly, they even had to use tents.

*“There are only a few social workers and many children and they are getting to be more and more.”* (NGO, Hungary)

*“The federal agency responsible for the reception of refugees is under pressure; there are not enough places [...].”* (Adult, Belgium)

Conversely, children and adults in Belgium, the Netherlands, Poland, Sweden and Spain commented favourably on the small scale accommodation centres, which provide a “family atmosphere”, as well as more privacy, better facilities and care.

*“I like the centre a lot, it’s good. I get up at 7.00 in the morning, I have breakfast, I go to school, I come back for lunch and afterwards there are activities in the afternoon. The food is very good, I like it a lot and in the afternoon sometimes we work in the orchard. There are also different groups: one group works in the garden, another group goes out, another is a computer group, those over 16 go out, they have permission to go out alone.”* (Boy, 15, Spain)

<sup>46</sup> According to the official interviewed, since January 2008 the number of separated, asylum-seeking children had tripled by mid 2009.

<sup>47</sup> This is a residential form with 24-hour supervision at an asylum seekers’ reception centre, for a group consisting of a maximum of 100 unaccompanied minors from 15 to 18 years of age. EMN Dutch National Contact Point (2010) *Unaccompanied minors in the Netherlands. Policy on reception, return and integration arrangements for, and numbers of, unaccompanied minors*, p. 35, available at: <http://emn.sarenet.es/Downloads/download.do?jsessionid=8EC446BD67D75899D77998113CE54DE9?fileID=932>.

Many children, particularly older ones, who emphasised that privacy is important to them, said that it can only be found in small scale facilities.

*“I like my room and the girls (roommates). I shared the room with two small girls. They are like my younger sisters. [...] They make me happy.”* (Girl, 16, Poland)

Placing children in foster families is a common practice in some of the EU Member States examined. In many cases the foster families are either related to the child or originate from the same country. The children’s experiences and views of foster care varied depending on their age, length of stay and host country. As expected, younger children favoured this type of placement more than older ones, as the latter sometimes prefer the privacy and independence afforded by other forms of accommodation. Most children interviewed, however, were happy living in foster families.

In the Netherlands, for example, NIDOS<sup>48</sup> the independent guardianship and family supervision state agency has a large pool of families screened by Nidos, where separated, asylum-seeking children may be placed. An increasing number of these are ‘culture families’, whose cultural background is the same or close to that of the child.

*“Living in a family is nice because there is always someone around who takes care of you.”* (Boy, 17, Netherlands)

*“I like to live in a family because I can empty my head and worry not so much.”* (Boy, 16, Netherlands)

In France, some care workers expressed concern that foster families may not always be an appropriate placement for these children, since they are initially selected to receive national children with very different background.

In Italy, children living in foster families were satisfied, although they complained of a lack of activities, and that they felt lonely. Some adult respondents also expressed concern about the impact of an innovative experimental practice to place separated children in foster families with the same cultural background noting that the preparation and support provided to these foster families should be improved and more effectively monitored by the social services. The practice of fostering by a family of the same nationality and culture as the child started in 2000 in Parma. Following information that most separated, asylum-seeking children already had friends or relatives there, this practice of foster families was later adopted by other cities, such as Venice, Bolzano and Cremona. When foster family members are relatives within the fourth degree, the child becomes eligible for permission to work, which can be renewed beyond the age of 18 years. Educators and cultural-linguistic mediators support the fostering process through the crucial initial phases of identification, evaluation and training,

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<sup>48</sup> More information available at: <http://www.nidos.nl>.

supporting foster families and accompanying the child along the path to autonomy.<sup>49</sup>

In the UK, younger children are usually placed with foster families, either those approved by the local authority or, in England, those providing emergency care under the Foster Placement Regulations 1991. Although local authorities endeavour to place children in culturally appropriate foster settings, a match may not always be initially possible. This, according to adult respondents, is in part because some of the migrant communities in the UK that match the backgrounds of separated children may be small or have recently arrived and hence are still adapting and familiarising themselves with a new and different culture and society. Among children interviewed there were contradicting accounts relating to their experiences: some children had found their foster care placement to be excellent where they felt part of the family and recounted the same treatment as their foster carer's biological children. Others, however, outlined dissatisfaction with their foster carers, citing examples of where they had limited access to a hot bath, or where their carers were always shouting at them.

## Location

Children were concerned about the location of their accommodation, as it influenced their ability to create or maintain social contacts. Adult respondents also saw interaction with the host society as a key aspect of the children's development. However, children and adults held different views whether location in isolated rural areas or big cities provided better opportunities for interaction. While older children clearly preferred to stay in or close to a big city, some adults were concerned about the risks these children could face in large urban centres. Children placed in relatively isolated rural areas said that they would prefer to live in or near a big city, where they would have more opportunities for social interaction and also more chances to find employment.

In Austria, Belgium and Sweden, children complained that the pocket money they received was not enough to allow them to travel to the city to see friends or follow local children in going, for example, to the cinema.

Children in the Netherlands said that living in isolated locations was the main reason why they hardly ever met with local people, or members of their own community. This made them feel insecure. On the other hand, some of the adults interviewed in Sweden and Spain, argued that smaller towns offer better opportunities for social interaction with locals, while in larger urban centres separated children could face more difficulties and risks.

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<sup>49</sup> Fornari, M., Scivoletto, C., *L'affidamento omoculturale: una strategia di accoglienza per i minori stranieri non accompagnati*, available at: <http://www.regione.piemonte.it/polsoc/servizi/dwd/interventi2/fornari.pdf>.

*“It is exhausting because we used to walk a lot when we want to see friends who are living in other places. During the winter it is even harder.”* (Boy, France)

*“There is no chance to get a job, because the camp is far from the city (Budapest). The nearest train station is 45 minutes walk, plus it takes 30 minutes by train to reach Budapest. In big cities, there is a bigger chance to learn, and there you can find every kind of job. Bicske is not a city, it is just a town.”* (Boy, 17, Hungary)

In Spain, accommodation for separated, asylum-seeking children is often in remote locations and adult respondents argued that this is largely because of local resistance to the development of such facilities within cities.

## Food

*“Food is our foremost therapeutic method.”* (Official, Sweden)

Children considered food as a very important issue and made many positive as well as negative comments about its quantity, quality, timing and cultural appropriateness, particularly in Hungary. Adult respondents were also aware of the importance of food for the children and, sometimes, they shared their concerns.

*“Food is a bond to the home country and culture.”* (NGO, Austria)

For instance, references were made in Sweden to accommodation facilities where staff prepares breakfast and the children also have the possibility to cook something themselves. A head of an accommodation unit interviewed said that the kitchen is always open and children can eat, when they are hungry, and also help the cooks.

*“There are different models [...] one in which the children semi-autonomously cook for themselves and they make their own arrangements and take decisions [...] they are older and more autonomous children [...] always under the supervision of an adult [...]. The households where a professional hired by the entity or by the administration [...] does and organises a bit those tasks with the help of the children, but well, on the whole does the cooking there [...] with standardised menus [...] and there are other types of centres in which this activity is subcontracted and is provided by a catering service [...]. The approach is exactly the same as for centres with local minors [...].”* (Official, Spain)

The provision of food varies depending on the accommodation facility. For example, in Poland in two centres children have full access to a kitchen, where they can always find food to prepare an additional meal in case they get hungry. Children interviewed there were completely satisfied with the

quantity and quality of food. However, where access to a kitchen was limited, children complained that they did not have enough food for supper.

*“We receive not enough food for supper [...].”* (Boy, 17, Poland)

*“Most of the children do not like the food cooked for them, or they get too little and are always hungry.”* (Social worker, Austria)

The inflexible timing of lunches and dinners was highlighted by some children, while others complained about not being able to eat as much as they wanted. Many children would prefer to eat food familiar to them, but this is rarely available. In Italy, children and adult respondents appreciated the practice of some accommodation facilities to employ cooks from Morocco, Tunisia or Sub-Saharan Africa.

*“Yes, they bring us meals [...]. I eat that but I still feel hungry. I asked them to give me more food, but they don’t accept that. But afterwards, they throw the extra meals in the garbage. They bring the food two times a day, at 12 noon, and at 5:30 in the evening. It’s good, it’s all with meat, the problem is just that when someone feels hungry they don’t give him another meal.”*  
(Boy, 17, Cyprus)

Many children expressed a wish to have access to kitchen facilities and pocket money to buy food and appreciated any possibilities for learning how to cook. Apparently, however, few accommodation facilities allow children to cook. In accommodation facilities where food was prepared by local staff or catering services most children were not satisfied with the variety, quality, or quantity of the food.

*“We are really worried about the quality of the food [...] it is old. It doesn’t taste good.”* (Boy, Netherlands)

In some, mainly smaller accommodation facilities, older children are allowed to cook their own food. In Sweden, the practice of social workers and children cooking together was highly appreciated by both children and adults. In France, at the *Enfants du Monde – Droits de l’Homme* centres, children choose between two kinds of meals prepared daily and meals are timed according to the children’s cultural habits. On the other hand, children placed in hotels in France complained that they had no breakfast, ate sandwiches or pizzas for lunch and had dinner in snack bars or small restaurants using vouchers. In the Netherlands cooking classes and workshops were particularly well received and appreciated by the children. In the UK, adult respondents argued that allowing children to prepare their own food and providing them with guidance on nutrition and budget planning prepares them for independent life.



### **Boys' and Girls' Towns of Italy**

The Boys' and Girls' Towns of Italy was founded as an American charity working abroad in 1945 to support hungry and homeless children after the war. Today, the centre offers a broad range of educational services, professional courses and other activities for separated, asylum-seeking and other children. The centre is organised as a self-governing community. Its underlying pedagogical principles are children's active participation and self-government aiming to enhance the child's self-reliance and his/her capability to play an active and positive role in society.

For more information, see: [boystownofitaly.org](http://boystownofitaly.org).

## Considerations

Separated, asylum-seeking children should be placed in suitable care according to their best interests based on a thorough assessment of their needs, which must be regularly reviewed. Younger children should preferably be placed in the care of adult relatives or with foster families from their own culture, following a thorough assessment of their suitability. Older, more mature children should be placed in suitable, preferably semi-autonomous small group accommodation, with due regard to their need for privacy, under the supervision of adequately trained social workers. The provision of suitable facilities is particularly important with respect to children requiring special care, protection or treatment for their physical or mental health.

Accommodation in facilities hosting a small number of children is, in principle, preferable to large accommodation facilities. The placement of separated children together with adults not responsible for their care, including in hotels and hostels, or other forms of rented private housing is not suitable.

The placement of separated, asylum-seeking children in closed facilities should only be considered, if deemed essential for child protection in response to the child's best interests requirements, determined and reviewed in the same way as for citizens of the host state.

The location of accommodation facilities for separated, asylum-seeking children should, as far as possible, facilitate social interaction with the local community, as well as friends and peers from their own culture.

Children should be provided with sufficient, good quality food in a culturally sensitive manner, which takes into account religious dietary needs.

## 1.2. Social workers

### United Nations Convention on the Rights of the Child

#### Article 3

[...]

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

In the interviews children were asked to describe their experiences with social workers. The generic term ‘social worker’ is used here to describe persons providing separated, asylum-seeking children with care and protection both when placed in an institutional setting and when placed in foster families. This included questions about how they were generally treated and the level of care and support provided. Adults were asked similar questions.

The role of social workers responsible for the care of separated, asylum-seeking children is crucial for their well-being and development, as well as their physical and psychological recovery. In accordance with Article 19.4 of the Reception Conditions Directive and Article 30 of the Qualifications Directive, those working with unaccompanied minors should have or receive appropriate training concerning their needs.<sup>50</sup> Similarly, according to Article 14 of the Reception Conditions Directive, persons working in accommodation centres shall be adequately trained and bound by the confidentiality principle as defined in the national law in relation to any information they obtain in the course of their work. Article 23.4 of the Reception Conditions Directive recast proposal maintains that those who work with unaccompanied minors should receive continued training concerning their needs.<sup>51</sup>

## Research findings

*“A good care worker listens, helps you when you have problem, laughs, treats you well [...]. He understands your problems, and cares about you.” (Boy, 16, Italy)*

<sup>50</sup> In the proposal for a Directive of the European Parliament and the Council laying down minimum standards for the reception of asylum seekers, COM(2008)815 final, Brussels, 3 December 2008, the Commission suggests to strengthen this provision by stressing the need for continued training (new Article 23.4).

<sup>51</sup> Proposal for a Directive of the European Parliament and the Council laying down minimum standards for the reception of asylum seekers, COM(2008)815 final, Brussels, 3 December 2008.

Respondents recognised the significance of the complex relationship developing between children and social workers. Children living in institutional settings relied on the emotional and practical support provided by social workers in their daily life. Social workers often placed the children in schools, sometimes helped them find a job, supported them in accessing healthcare, and, sometimes, also helped them with the complex administrative and legal procedures, including the asylum application. Most children interviewed were satisfied, and in some cases enthusiastic, with the care and support provided by social workers, expressing sometimes their appreciation for the affection the social workers showed towards them.

*“Aunt [social worker] is the most important person for me. She is like my mum.” (Girl, 16, Poland)*

In France, children who had just arrived spoke of their close link to their social workers and often asked for their being present during the interview. However, other older children who were already living in France for several months or years did not express the same degree of attachment and even alluded to some conflicts with social workers, mainly around discipline issues. Almost all children said they appreciated that their social workers organised leisure activities, such as football, drawing classes and cultural visits in the city.

In Malta, the services of an asylum- seeker having ‘subsidiary protection’ status, who supported the work of regular staff, were considered invaluable by the social workers. He resolved cultural tensions through his knowledge and understanding of the clan-based social structure of the societies the children originated from and was able to understand and interpret the children’s body language.

In Spain, in most of the institutions, each child has a social worker (‘social educator’)<sup>52</sup> to refer to whenever he or she has a need or a problem, which often leads to the development of strong relationships. One of the social workers interviewed said that several of the children have taken to calling him “family” instead of his name. Other social workers said that children who had been in their care and are already living independently in different parts of the country, still call them to tell them how they are doing or to ask for their help or advice when they have a problem.

In the UK, adults as well as children stated that some social workers had a very strong relationship of trust with children in their care, with some children saying that their support had been invaluable, although a small number of children remained suspicious and did not trust them much.

All the adults interviewed, especially the social workers themselves, stressed the need for more staff<sup>53</sup> and more training specifically related to the needs of separated children. In Belgium, for instance, social workers

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<sup>52</sup> Social educators in Spain often originate from the same countries as the children in their care and can be persons who came to the country as separated children themselves.

<sup>53</sup> In many countries adult respondents sharply criticised the lack of staff in youth welfare services in general.

active in reception facilities said they were frustrated because they can hardly offer more than “a bed, a bath and a breakfast” and felt that they needed more training to deal with the different profiles of the children. In the UK, the social workers interviewed shared the view that they needed more guidance and training, particularly on how to assess the age of separated children, as they are “finding it extremely complicated”. Most were also unsure about their ‘guardianship’ role as ‘corporate parent’<sup>54</sup> and how or whether children understood it.

*“We are allowed to sign forms for them, but this can be tricky in that while we have parental responsibility we are not their parents, and this is important to communicate to them because they sometimes look to us for support. We only have a corporate parenting responsibility.”* (Social worker, UK)

In Hungary, social workers complained of work overload and low pay.

*“There are only a few social workers and many children and they are getting to be more and more.”* (Social worker, Hungary)

## Considerations

The care provided to separated, asylum-seeking children should be comparable to that provided to children holding the citizenship of the host state, including the appropriate ratio of qualified social workers to allow for individualised care. Social workers should be provided with special and continuous training to be able to respond to the special needs of separated, asylum-seeking children. The training should allow social workers to understand the children’s cultural, linguistic and religious needs and the issues that may affect them.

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<sup>54</sup> For more information on the concept of „corporate parenting“ see: <http://www.idea.gov.uk/idk/core/page.do?pageId=8330120>.

## 1.3. Healthcare

### **United Nations Convention on the Rights of the Child**

#### **Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such healthcare services.

In the interviews, children were asked to describe their experiences with healthcare, as well as psychological support and counselling. This included questions about the children's access to healthcare services, how they were treated, the level of care and support provided and questions about medical screening and health assessment upon arrival. Adults were asked similar questions.

Access to quality healthcare is of course essential for the wellbeing of every child. Separated, asylum-seeking children have particular physical and psycho-social health needs presenting a particular challenge to healthcare services. Therefore, medical staff needs to be well informed about these needs and how to manage such a child to avoid his/her further traumatisation. The importance of interpretation services were particularly highlighted in this respect.

According to Article 23 of the Convention Relating to the Status of Refugees, lawfully staying refugees are entitled to the same treatment as nationals as regards public relief, which includes healthcare. In addition to the general duties with regard to healthcare established under Article 24 of the CRC, Article 39 requires that all appropriate measures be taken to promote the physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration is to take place in an environment which fosters the health, self-respect and dignity of the child.

In EU law, Article 35 of the Fundamental Rights Charter establishes the right of everyone to benefit from medical treatment under conditions established by national laws and practices. Article 15 of the Reception Conditions Directive requires Member States to ensure that applicants receive the necessary healthcare which shall include, at least, emergency care and essential treatment of illness. Member States are also under a duty to provide necessary medical or other assistance to asylum applicants with special needs. In addition, Article 18 of the Directive requires Member States to ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have been affected by armed conflicts.

Furthermore, Member States are to ensure that appropriate mental healthcare is developed and qualified counselling provided when needed. Article 19 of the Reception Conditions Directive recast proposal<sup>55</sup> maintains that access to healthcare for persons with special needs, such as unaccompanied minors, shall be granted under the same conditions as nationals.

## Research findings

Most children could access healthcare services when needed and many were satisfied both with the treatment, as well as with the behaviour of the medical staff.

*“Here the doctors see the patient as a patient, they do not differentiate, and this is great. It is so much better than in my home country.”* (Boy, 15, Austria)

However, in some countries, for example in Hungary, children complained that medical screening and health assessment upon arrival was not sufficient or was not carried out at all. This is notwithstanding the fact that such assessment is necessary to ensure timely and effective treatment, as well as the prevention of transmittable diseases.

*“There was a seriously ill boy, who came to the shelter, and after several weeks it turned out that he had tuberculosis. Everybody must be checked before.”* (Boy, 17, Hungary)

Children living in large reception centres, for instance in Austria, Belgium and, in particular, in detention facilities in the Netherlands, complained about long waiting times to see a doctor and about the quality of their treatment, arguing that medical staff were often dismissive of their ailments.

*“When you say that you have health problems you have to wait for half a year. My brother went to the doctor in the reception centre for asylum seekers three times.”* (Boy, 17, Poland)

Adult respondents in France, the Netherlands and Spain also mentioned difficulties in obtaining a medical history from children, as well as the absence of medical records that would assist to establish a diagnosis.

*“I almost died; I had an allergic shock and was taken by the ambulance – no help from health personnel, but from social workers. Doctors don’t know English and the nurses maybe 15 words. You are saying true problems, but no understanding, no information. This is not a good behaviour.”* (Girl, 17, Hungary)

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<sup>55</sup> Proposal for a Directive of the European Parliament and the Council laying down minimum standards for the reception of asylum seekers, COM (2008) 815 final, Brussels, 3 December, 2008.

Separated, asylum-seeking children are likely to suffer from post-traumatic stress disorders, depression or other psychological problems due to their experiences in their country of origin or during their journey, as well as to the difficulties they face in adapting to their new situation in the receiving country. Social workers, medical personnel, officials and NGO staff interviewed noted the need for more and better psychological support, even in countries that provide specialist psychological support to separated, asylum-seeking children, for example in Austria and Belgium. Very few children said that they had asked for psychological support or counselling, some claiming that they had not been informed about its availability. Adults, on the other hand, in Austria and Belgium said that a number of children had received psychological support, despite problems of communication due to linguistic barriers. Adults also noted that children tended to avoid psychological counselling to avoid being stigmatised by others and possibly because it is culturally unfamiliar. Research<sup>56</sup> has shown that in general children and young people, in particular boys, are more likely to seek psychological help from informal supports, such as talking to friends or relatives, than from professional services. In the case of separated children in state care, however, there is some concern that a lack of demand for counselling or psychological support may influence the offer of such services.

The research did not specifically ask children about past traumatic experiences nor were they asked about their psychological well-being. Nevertheless, during the interviews, children spoke about their emotions, their feelings of loneliness and their concern about their families back home, and, in particular, about the asylum procedures, which appeared to be a main source of stress and anxiety.

A number of children and adults in Austria, France, Malta, Hungary and the United Kingdom identified the need for more and better interpretation services in medical consultations, and in particular, in counselling and psychological support. Thus, it appears that children often need to go through medical procedures without an interpreter. Frequently friends, social workers or educators needed to assist with interpretation. Many children stressed the importance of the support provided by social workers, foster parents, volunteers, friends and other persons of trust to these children, including in the form of interpretation and intercultural mediation, when they need to access healthcare.

Some girls expressed their preference for women doctors, but this wish could not always be accommodated. Adult respondents in Belgium, Cyprus, Sweden and the UK also underlined the need for education on sexuality, and in Belgium they referred to very informative important initiatives of education on sexuality.

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<sup>56</sup> See for example, World Health Organisation (2007) *Adolescents, social support and help-seeking behaviour*, WHO discussion paper, Geneva: WHO, available at: [http://whqlibdoc.who.int/publications/2007/9789241595711\\_eng.pdf](http://whqlibdoc.who.int/publications/2007/9789241595711_eng.pdf) or Rickwood, D., Deane, F.P., Wilson, C.J. and Ciarochi, J. (2005) „Young people’s help-seeking for mental health problems” in *Australian e-Journal for the Advancement of Mental Health* (AeJAMH), 4(3) Supplement.

In Austria, most children were satisfied with healthcare, but some complained about the absence of interpreters to assist during medical consultations. Two children who had serious health problems were very happy about specialist medical treatment they had received. However, children in the Initial Reception Centre complained that they had to wait for long periods at doctors' offices or claimed that they were not properly examined.

*"The doctor had a short look and said that everything is ok, he gave me the same drops and tablets as always. It does not matter which problem you have, the tablets are always the same."* (Boy, Austria)

Similarly, in Belgium, some children in the reception centres complained that their complaints were "not taken seriously". One boy had to complain several times about severe stomach aches before he was taken to hospital, where he was diagnosed an ulcer.

In France, adult respondents expressed concern about the long waiting periods for registering with the universal medical coverage (*Couverture maladie universelle*, CMU), which gives children free access to healthcare, including psychological care. They were also concerned that children not entitled to CMU could only have access to free emergency healthcare.

In Hungary, many of the children complained about superficial examinations, while three pointed out that they did not receive dental treatment other than tooth extractions, and others mentioned that prescribed medicines were not given to them. Adult respondents, however, claimed that the available healthcare services are on the whole adequate and satisfactory.

In Italy, adult respondents were very critical regarding the healthcare system, as a whole, but social workers in Southern Italy claimed that they had created an efficient network of local specialised doctors and hospitals to guarantee immediate and good quality healthcare services to the children accommodated in their centres. However, some isolated incidents of refusal of treatment<sup>57</sup> were mentioned, which, however rare, merit special attention, as they are in violation of the law and children's fundamental right to health.

*"I went to the doctor because I broke my finger [...]. He said he could not help me because I was irregular, even though my finger was swollen. Now, if I'm sick, I don't say anything to anybody [...]. I'd rather keep my mouth shut and my problems to myself."* (Boy, 17, Italy)

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<sup>57</sup> The Italian Ministry of Health circular letter No. 5 dated 24 March 2000 widens the unaccompanied minors' right to access the National Health System by providing healthcare both to unaccompanied minors entitled to a permit of stay as well as to those without a permit of stay, including preventive medicine services.



#### **An ethno-psychiatric approach (Italy)**

The Centro Frantz Fanon in Turin provides migrants, refugees, victims of torture and asylum seekers with psychological assistance, counselling or psychotherapy if they need it. The centre has a special focus on the care of victims of trafficking, particularly women and separated children.

Most of the staff members in the Frantz Fanon Centre are trained in psychotherapy as well as anthropology. The clinic works with an ethno-psychiatric approach which is based on taking into account the cultural background of patients in therapy.

For more information (in Italian), see at: [associazionefanon.org](http://associazionefanon.org).

## Considerations

A thorough health assessment of separated, asylum-seeking children to attend to their health needs should be conducted as soon as possible upon their entering into contact with authorities, while ensuring their informed consent. The results of this assessment should in no way influence or affect negatively the outcome of the asylum claim.

Access to adequate healthcare must be guaranteed to all children without discrimination and irrespective of their legal or other status, and incorporate mandatory professional interpretation and intercultural mediation support. Especially girls, and also boys, should, as far as possible, be provided with doctors of the same sex when this is their preferred option. Specific attention should be devoted to the emotional problems and the mental health situation of separated, asylum-seeking children.

## 1.4. Education and training

### United Nations Convention on the Rights of the Child

#### Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

[....]

In the interviews children were asked to describe their experiences with education, in schools, language courses and vocational training. This included questions about what type of educational facility or school they had been enrolled in, whether they attended regularly, what language support or any other form of assistance was provided, how they were treated by teachers and other students, the challenges they faced and their expectations. Children were also asked about any work experiences they had and how they were treated in that context. Adults were asked similar questions regarding the children's experiences.

In addition to the provisions of the CRC, the right to education is also enshrined in Article 22 of the Convention relating to the Status of Refugees. According to Article 14 of the Charter of Fundamental Rights everyone has the right to education and to have access to vocational and continuing training. In the field of asylum, the relevant EU standards address such aspects as the application of the principle of non-discrimination in accessing education.

Specifically with regard to 'minor children of asylum seekers and asylum-seekers who are minors' the Reception Conditions Directive enshrines under Article 10 that access to education should be provided to them "under similar conditions as nationals" and "for so long as an expulsion measure against them is not actually enforced". The directive introduces a protection measure by stipulating that such children may not be removed from secondary education only because they reached the age of 18 years.

The directive also requires that access to education should be provided within three months after their asylum application, either within or outside accommodation centres. This period may be extended to one year, where educational support, such as language courses, is provided to facilitate access to the host country's education system. The Reception Conditions Directive Recast, however, proposes to exclude this one year extension. It should also be noted that, currently, Member States are granted a high level of discretion in providing access to education through the following caveat: where "due to the specific situation of the minor" access to the education system is not possible, a Member State "may offer other education arrangements", but without specifying what these may be. In this regard the recast introduces a more explicit duty by replacing 'may' with 'shall'.

The recast proposal also requires that Member States ensure that minors are provided with preparatory classes and/or specific education designed, respectively, to facilitate their access and integration in the national schooling system.

According to Article 12 of the Reception Conditions Directive, Member States may allow asylum seekers access to vocational training irrespective of whether they have access to the labour market. Nevertheless, access to vocational training relating to an employment contract is made dependent on the extent to which the applicant has access to the labour market

### Research findings

Education was a very important issue for all children and adults interviewed. Many children appeared to appreciate the value and importance of a good education and were prepared to work hard to gain academic qualifications.

*"I have to make it! I learnt nothing at home, I must understand the world, I must understand everything!"* (Boy, 15, Austria)

*"Learning is important! My father was teacher in Afghanistan and was killed by Taliban because he did not stop teaching [...]."* (Boy, 14, Austria)

However, most children complained that they received limited information about educational possibilities and many did not know at what stage in their asylum application procedure they could actually start attending school.

*"The first time I went to the welfare they said that I can go to school, but when I asked how and what I should do? They told me that I should wait until they will come and visit me to explain that, but they never did."* (Boy, 17, Cyprus)

Adults stressed the importance of education for the well being and future chances of these children, whether they are allowed to remain in the country or not.

*"School means everything. It is incredibly important [...]."*  
(Official, Sweden)

As adult respondents noted, a busy school schedule can allow the children to recover from traumatic experiences and think less of the asylum procedure, which is often their main worry and concern. Furthermore, doing well at school boosts their self-esteem and confidence. Some children for example in Belgium and France thought that success at school might influence the outcome of their asylum claim positively. However, a number of children said that their fear and anxiety about the outcome of their asylum application affected their ability to concentrate on schooling and homework.

*“The school is fun if I am fine, sometimes when I think about the asylum procedure I cannot think and concentrate anymore and I feel bad.”* (Boy, 16, Austria)

A number of important needs were highlighted in the interviews: First, the need to develop the necessary language skills as quickly as possible to enable integration into mainstream school; this is important both in terms of educational achievement and for developing relations with other children. Secondly, the need to place children in schools as soon as possible, on the basis of an individual assessment of their educational needs: children’s ability to follow the courses needs to be carefully assessed, to avoid placing them at a level that is either too low or too high for them; this needs to be reassessed periodically, as children may be making fast progress, which needs to be reflected in their placement. Thirdly, some of these children may be illiterate and require special tuition to address this. Fourthly, there is a need for educational and psycho-social counselling and support: many of these children may be traumatised as a result of their journey or exploitation from adults, they come from countries with a very different educational system, different teaching cultures and different relations between teachers and students and thus find it difficult to adjust; in addition they need help with homework that for other children is provided by parents or siblings.

*“I attend school; I’m in the third year of obligatory secondary education. I feel fine at school, we study a lot, the teachers treat us very well[...] the centre’s educators help me to study.”*  
(Boy, 14, Spain)

All children had attended language courses of varying quality and intensity, and sometimes, in addition to the national language, also courses in English. In some cases, for example in Hungary and Sweden, some children said that they were more interested in learning or improving their English than the language of the country, as they did not intend to stay in the country.

Reception centres usually offer language courses, but there were conflicting views regarding their quality and adequacy. In Austria, for example, children claimed that the German classes at the initial reception centre in Traiskirchen were not sufficient both in terms of time or quality. They were more satisfied with the additional language support they received in school. Cyprus piloted an intensive language course programme for non-native speakers. In Hungary, both children and adult respondents noted problems

in the infrastructure, such as a lack of books, due to the rising number of asylum seekers.

In the Netherlands, children learn Dutch as ‘second language’ in special classes and are then enrolled in a regular Dutch school, except those in detention or ‘protected reception’.<sup>58</sup> In Spain, after language tuition in Spanish and, as appropriate, in Catalan, children were enrolled in normal schools or, for those older than 16 years, in vocational training courses. In Sweden, adult respondents suggested that more intensive language tuition would help these children attend normal school sooner and facilitate their integration with both Swedish and foreign children.

In Sweden, the youngest child interviewed followed preparatory language classes, while attending an ordinary class in the upper level of compulsory school. The other children attended upper secondary school, where language tuition was provided through either the ‘Swedish for Immigrants’<sup>59</sup> or the ‘Individual Introductory Courses for Immigrants’<sup>60</sup> schemes.

In the UK, adult respondents found the scheme “English for speakers of other languages” (ESOL)<sup>61</sup> very useful, as they equip children with the necessary basic knowledge of the English language. However, they stressed that waiting lists for ESOL class enrolment could take months, which can be very distressing for children who cannot pursue further education or take up vocational training without a minimum knowledge of English.

Many of the children interviewed asked for more intensive language tuition. Adult respondents stressed the importance of providing intensive language courses as soon as possible, so that children can reach a satisfactory level of language competence that will allow them to attend normal school. Furthermore, extensive language support, while at school, is essential for adequate school performance.

*“I went to school three to four weeks after my arrival to Poland. The beginning was very difficult. I did not understand anything. I could not understand my classmates. It was the worst possible thing. In that time, I liked being back in the children home most, because everybody could understand me.” (Boy, 17, Poland)*

Adult respondents pointed out that access to education was to a great extent dependent on the time of the year children arrived, as some have to

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<sup>58</sup> In January 2008 the pilot project “Protected Reception” was initiated in five locations aiming to reduce the number of children disappearing from care and combating more effectively child trafficking. See also EMN Dutch National Contact Point (2010) *Unaccompanied minors in the Netherlands. Policy on reception, return and integration arrangements for, and numbers of, unaccompanied minors*, p. 37, available at: <http://emn.sarenet.es/Downloads/download.do?jsessionid=8EC446BD67D75899D77998113CE54DE9?fileID=932>.

<sup>59</sup> See: <http://www.sweden.gov.se/sb/d/6997/a/67940>.

<sup>60</sup> See: <http://www.umea.se/ostra/startsidan/aboutostra/programmesatostra/individualprogramme/introductioncourseivik.4.13c1b69101a982ca2a8000122102.html>.

<sup>61</sup> See: [http://www.direct.gov.uk/en/EducationAndLearning/AdultLearning/ImprovingYourSkills/DG\\_10037499](http://www.direct.gov.uk/en/EducationAndLearning/AdultLearning/ImprovingYourSkills/DG_10037499).

wait for several months before they are found school places while others can be placed in school relatively quickly.

Adult respondents in several countries noted difficulties in the enrolment of separated, asylum-seeking children for a variety of reasons, for instance, schools may only enrol new students at the beginning of a school year, or schools are generally reluctant to take foreign children, or they lack the space or the resources to provide the special support that the separated children require. Furthermore, some adult respondents were sceptical if the children actually attended school and suggested that their attendance, and performance, should be more systematically monitored.

In Malta, none of the children interviewed attended school, although all children in care are eligible or, if below 16 years of age, obliged to attend school. According to the adult respondents the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS) provided some English language tuition, but Maltese was not taught systematically. Some children had mixed feelings about the choice between working and going to school and adult respondents argued that children mostly did not want to attend school preferring to work and send money to their families or save it for an eventual journey towards mainland Europe. At the time of the research OIWAS and the Ministry of Education were exploring ways of improving the situation, for example, by recruiting 'liaison teachers' to facilitate the entry of these children into mainstream schools based on an individual assessment of their individual linguistic, curricular, cultural, and psycho-social needs.

*"The question is how many of them actually want to go to school. These children want to work and send money back home. So, on top of integration difficulties, we must consider resistance by the students themselves."* (Official, Malta)

In most EU Member States covered in this research, efforts are made to place separated, asylum-seeking children in mainstream schools, where their ability to follow courses depended on their linguistic capacity and their level of education.

In Italy, Spain and Cyprus, adults noted that schools in general will only enrol children at the start of the school year, but even then schools are not always prepared to enrol these children who may require special support.

*"Sometimes there are difficulties, sometimes we have our frictions and there have been many meetings with the educational authorities so that they provide immediately places in the school for these children, so that they can start a normal life as soon as possible."* (Official, Spain)

Adult respondents stressed the difficulties in assessing the educational level and specific educational needs of separated, asylum-seeking children. In France, some children referred critically to the evaluation test

administered by CASENAV<sup>62</sup> before enrolment, claiming in one case that they were wrongly assigned to a low educational level. In Marseille, most children said that within a few weeks after their arrival they were enrolled to the *École d'Application*, which offers language training, educational support, as well as cultural and sport activities, to facilitate later entry into mainstream schools. Children said that they enjoyed their classes and activities, but stressed that they would prefer to go to school with French children.

*"In Chechnya I finished the 9<sup>th</sup> grade, but in Poland I attend the 7<sup>th</sup> grade again. If we had an opportunity to learn Polish in a year or so then we could have been in a higher class."* (Boy, 17, Poland)

Adult respondents also highlighted the difficulties in placing the children in classes together with much younger children, when this level is too low in relation to their age.

*"They told me I would have to learn with small kids, because I don't know. We don't have people your age, she said. But this is ok because I will be learning."* (Girl, 17, Cyprus)

In some cases, for example in Cyprus, children are enrolled as 'observers'. Although the children liked the school, adults commented negatively on this practice, as children are not challenged and may become easily bored or distracted. Adults also noted some efforts to pilot additional language tuition and stressed the importance of intensifying them.

*"The school is important to my future [...]. I'm there as a listener now, as still I don't know the language [...] everybody is nice with me there, I like it a lot."* (Boy, 14, Cyprus)

In other cases, as one child said the children may be placed in adult education.

*"The bad thing is that it's evening school, so there are no activities like dancing or music classes[...] we have people 17, 20, 30 and even 40 years old, most of the students have white hair[...]. The good thing is that I'm learning the language there, it's very important to communicate with the people here."* (Boy, 16, Cyprus)

In the Netherlands, all children were very eager to learn Dutch and those going to mainstream schools said they enjoyed it. However, boys living in detention said that their school there was not a 'real school', although they also made some positive comments.

*"That is because we are illegal [...]. You don't learn Dutch at school and there are no computer lessons."* (Boy, 16, Netherlands)

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<sup>62</sup> Centre Académique pour la Scolarisation des Nouveaux Arrivants et des enfants du Voyage (CASNAV).

*“I learn English and French and I get drawing lessons which I like.” (Boy, 17, Netherlands)*

In Poland, according to officials interviewed, practically all children attend school on the same basis as Polish children. However, an NGO worker argued that although enrolled, not all children attend school regularly.

*“Most children have been enrolled in schools... I have meetings at schools and it turns out that 50% do not attend classes [...].” (NGO, Poland)*

Adults also argued that the educational system is not prepared to deal with the increased demands that the education of these children requires. In Poland, for example, adults suggested that teachers in public schools are not trained to deal with these children.

*“Work with foreign children requires more effort, much more work. There should be extra funds made available to compensate those teachers who are willing to undertake such efforts.” (Social worker, Poland)*

In Hungary, only two schools, in Bicske (Kossuth Zsuzsa Primary School) and in Budapest (Than Károly Academic and Vocational School), provide education for separated, asylum-seeking and refugee children.

*“We are far too many in the group. We do not have notebooks, pens or dictionaries.” (Boy, 16, Hungary)*

Separated, asylum-seeking children attending school with local children clearly appreciated the opportunities for social interaction. However, a number of children had problems with schoolmates, either of immigrants or local origin.

*“A Romanian girl said ‘You smell badly. You are black’ [...]. Maybe these immigrants do not have experiences with Africans. But I do not want them to be racists. If I was the director of the school [...], I would teach antiracism once a week.” (Boy, Austria)*

*“And it was also very, very difficult to understand the teacher and cope with the class. They always laugh at me, and they don’t correct me. I asked them, please correct me, when I am wrong, but they didn’t correct me, they just laughed. And it kills your spirit.” (Girl, 17, Hungary)*

Many children expressed their appreciation for their teachers, particularly when they took a personal interest in their life.

*“The teacher is very correct and she does everything. She helps a lot, she is like my mother. She even helps with out of school things.” (Girl, 16, Hungary)*

School is important also for the opportunities it provides for finding friends and developing social relations with others. Children often said that they



were placed in classes with other foreign students and most did not like this and would prefer to attend 'normal' classes, despite the language barriers, mainly because this would allow them to be in contact with local children and escape the "asylum seeker environment".

*"I can't improve my Dutch there because everyone is talking their own language. I would prefer going to a normal school with other Belgians."* (Boy, 16, Belgium)

### Vocational training

Vocational training and work possibilities were also very important issues for the children. In fact, some adult respondents claimed that older children who had arrived to the Member States mainly to work and support their families in their country of origin, can be frustrated attending school, as they would rather work, as soon as possible even in low-paid, unskilled jobs. This was reflected in the responses of some children, who were anxious to earn and send money home, even though they seemed aware of the benefits of education for improving their life chances. Many of these children often expressed their wish to "learn a trade" so that they could make some money and be more independent.

*"I would like to be a baker in a confectionary [...]. In Warsaw I was working hard in a confectionary. It was not hard for me because I liked this job."* (Girl, 16, Poland)

Adult respondents in some countries, for example in Austria, pointed out that access to vocational training courses can be limited to those courses which do not require a work permit. In Spain, adults referred to problems in securing a place in vocational training courses due to their being highly demanded. In France, older children in long term placement centres attended vocational school or training, but without a work permit not all courses were available to them.

According to many adults access to vocational training is important, as it facilitates later employment, a key element in administrative procedures for regularisation.

*"I chose a school where I could learn to become a professional builder. But they told me that it was not possible because of the papers."* (Boy, 17, France)

In Poland, any vocational training is organised with the assistance of educators, but children need a work permit, which is not normally granted. Adult respondents were in favour of providing access to vocational training, although they also argued that children should also be oriented, according to their best interests, to follow courses leading to further and higher education.

*“I was moved to a school, where vocational training was a part of curriculum. But I didn’t receive my work permit and so I had to change schools again.” (Boy, 17, Poland)*

Some children considered vocational training would be a good option, if their asylum application was rejected and they had to return to their home country. This was also reflected in some comments made by adults. For example, in Sweden, the head of a ‘group housing’ facility said that children whose asylum application is rejected and will eventually be returned would benefit more from vocational training and learning English, rather than Swedish.

A number of the children interviewed said that they would like to work, some as soon as possible, but most only after finishing school or some training. Children in some countries, for example in Austria and Belgium, appreciated the occasional opportunity to work in their accommodation facility for pocket money. However, in Nicosia, Cyprus, some of the children alleged that the Welfare Office encouraged those over 16 to find work or register as unemployed to collect benefits. An official interviewed on the other hand said that children aged 15-18 can only work under very strict conditions.

In Sweden, children had work placements (*praktik*) arranged through their school or housing facility and all appreciated having a summer job to earn some money. In other countries, few children said that they were working or had worked in the past, and of those, most were happy with their work.

*“I love working as a cake-baker and I am lucky that they gave me a contract immediately. The owner is very happy with me and I am too. I also get on well with other colleagues.” (Boy, 17, Spain)*

A small number of children said that they were or had been working irregularly because they needed the money to cover their own needs, to support their families (that could include in paying debts to smugglers) or simply because it helped them take their mind off their problems.

*“Some Spaniards do not wish to work at 18 but immigrants do because they know what they have left behind. Their family, people they have to help, and they have to help themselves to live here, buy their things, food, monthly transport, etc. If the centre or the community does not help you, how are you going to live? For this reason I would give work to young people who wish to work and immigrants always wish to work. It doesn’t matter if you are a minor; you want to work to help your family because they need you.” (Boy, 15, Spain)*

When asked where they worked or had worked, the children’s answers varied: cleaning, kitchen work, cutting grass, assisting in shops, waiters in restaurants, and construction work.

Adult respondents, for example in Cyprus, France, Sweden and the UK expressed concerns about separated, asylum-seeking children working

irregularly given the high risk of exploitation or trafficking. However, adult respondents in Austria, the UK, the Netherlands and Spain considered that properly regulated and supervised work could help older children interact more with the community, improve their self-esteem and gain work experience that could improve their future life chances.

*“Work is important for one’s identity and self-confidence.”*  
(Official, Austria)

### **SMILE – Supporting and Mentoring in Learning and Education**

SMILE is a project run by the Children’s Section of the Refugee Council. It aims to reduce the isolation and absence of education and activities experienced by refugee children and young people. The project promotes inclusive education by challenging prejudices related to asylum and raise awareness of the needs of refugee children. Based in London, the West Midlands, Yorkshire and Humberside, the project supports separated, asylum-seeking and refugee children, as well as children in families to improve their life chances by helping them to enjoy and achieve in education, and by raising awareness of their specific needs.

For more information, see: [smileproject.org.uk](http://smileproject.org.uk).

### **The Kirikou**

In March 2008, the Federal Agency for the reception of asylum seekers (Fedasil) in Belgium opened the “Kirikou” day care centre/day nursery in the Rixensart federal centre for asylum seekers. The centre helps school-aged, young mothers under the age of 18 and living in the reception centre to attend school entrusting the care of their children up to three years old to the Kirikou centre from early in the morning until late in the afternoon. Care workers also provide counselling and assistance to the mothers.

For more information, see: [www.fedasil.be/Rixensart/nieuws\\_detail/i/14620](http://www.fedasil.be/Rixensart/nieuws_detail/i/14620).

## Considerations

In compliance with the relevant EU legislation, access to education must be guaranteed to separated, asylum-seeking children under similar conditions as for country nationals. In order to be able to make adequate choices, child-friendly information on educational possibilities should be provided as soon as possible to these children in a language that they understand. It is equally important to discuss educational possibilities with the children.

Educational authorities and schools should be adequately resourced to provide special educational and psychosocial support to these children, particularly in relation to language training. In order to ensure that they

regularly attend and participate in school, educational authorities should systematically monitor school attendance and performance.

Separated, asylum-seeking children could clearly benefit from better access to vocational education and training; in this context, a more flexible approach to work permit requirements could facilitate this, in so far as they can meet educational and language requirements.

Those children, who wish to work and fulfil the necessary age requirements, should be assisted in finding work, if this does not interfere with their education, for instance, by providing opportunities for appropriate work experience, such as summer jobs or paid internships. However, it is important to strictly monitor the application of the relevant regulations regarding hours and conditions of work to ensure that children are not exploited.

## 1.5. Religion, cultural norms and values

### **United Nations Convention on the Rights of the Child**

#### **Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

[...]

Separated, asylum-seeking children not only lack their parents to care for them, but are also separated from their familiar cultural setting. This can make them feel alienated in a foreign environment, increasing the risk of their dependence on adults they should not associate with, such as smugglers and traffickers.

Religion can be a very important source of emotional support as some children specifically mentioned. Some references made by the children in this domain were positive, acknowledging the freedom to practice their religion in their host country, but there were also sometimes complaints that their religious needs were not always accommodated, such as the provision of halal food.

The CRC, in addition to Article 14, requires in Article 30 that a child belonging to a religious minority shall not be denied the right to profess and practise his/her own religion. EU asylum and immigration legislation addresses this aspect through reference to the EU Charter of Fundamental Rights, which in Article 10 reaffirms the principles of freedom of thought, conscience and religion.

## Research findings

In the interviews children were asked whether and how their cultural values and norms were accommodated, and about the importance of religion in

their life, as well as whether they had any problems practicing it in public. Adults were also asked to identify any issues related to religious or cultural practices.

Many children spoke in the interviews about cultural differences they have experienced, for example, in relation to food, health, their interaction with local children, the discipline required of them, and the asylum interviews. These issues are highlighted in the respective sections of this report. Adults, as well as children, also highlighted the tensions and sometimes conflicts between children with a different ethnic or cultural background. All these elements are often, but not always, taken into consideration by those responsible for the children's care and there is evidently a need for a more culturally sensitive approach.

*"There is conflict between people from Africa and Chechens. I am a Christian. My roommate is a Muslim. He does not like when I am praying. I do not understand what he says."* (Boy, 16, Poland)

*"I share room with my sister and one Polish girl [...] she speaks badly about me and makes fun of my God, Allah [...]."* (Girl, 16, Poland)

A number of children, for example in Austria, Hungary, Italy, the Netherlands, Poland and the UK, mentioned religion in various respects, for example food, social interaction with peers and adults, and also as a way of coping with their problems. For these children religion and belief was an important source of motivation and support.

*"I'm scared for my life. I only know God."* (Girl, 17, Cyprus)

Some children, for example in Austria, said that they were actually pleasantly surprised that they were free to practice their religion.

*"Practising my religion is free here. Religion is very important for me. I fled from Afghanistan because of my religion."* (Boy, 16, Austria)

In Poland, children from Chechnya and Dagestan were particularly religious. According to adult respondents their ethnic and cultural identity is strongly centred upon religion, providing them with system of fundamental values and a sense of community affiliation.

*"I have sister in the reception centre. She is not my real sister. She is my sister because she is also a Muslim."* (Girl, 16, Poland)

Participating in religious practices is especially important for these children. Those who live in Warsaw attend Friday's pray in a mosque, but those who live in small cities with no mosque do not have that opportunity.

*"There is no mosque here. There was one in Warsaw. It is hard to be a Muslim living here. We cannot look at people wearing*

*shorts, naked, when people touch each other and kiss.” (Girl, 16, Poland)*

Other children complained that their religious needs were not always taken seriously. Some Muslim children, in countries, such as Austria, Belgium, France, Italy, the Netherlands, Poland and Spain had doubts as to whether their food conformed to religious requirements (halal). In addition, children in Hungary, the Netherlands, Poland and Spain said that pork was being served in meals.

*“It is very difficult to be a Muslim in Poland. During the month of Ramadan we have to cook in the evening. We do not have a clean place to pray. I am afraid that they would give me pork.” (Boy, 17, Poland)*

*“They say it is halal, but we cannot control that.” (Boy, 16, Netherlands)*

## Considerations

The right to freedom of thought, conscience, religion or belief of separated, asylum-seeking children as well as their right to manifest and practice their religion should be adequately respected, protected and fulfilled. Accordingly, in the provision of care and services to these children, particularly with regard to food, due consideration should be given to meeting their religious requirements, especially as they relate to practice and observance.

## 1.6. Recreation and leisure

### United Nations Convention on the Rights of the Child

#### Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

In the interviews children and adults were asked about the different leisure and recreational activities available, such as sports and cultural activities, excursions, and access to television and the internet.

Leisure activities, an essential element in the life of every child, have particular relevance in the case of separated, asylum-seeking children. As the research showed, they emerge as key to the protection and promotion of their social, spiritual and moral well-being, as well as their physical and mental health.

In modern societies, the use of the media, especially electronic media, constitute an important component of the leisure activities in which children like to engage. Under Article 17 of the CRC, States Parties recognise the important function performed by the mass media and undertake to ensure that the child has access to information and material from a diversity of national and international sources. Article 11 of the Charter of Fundamental Rights makes specific reference to the right to receive and impart information and ideas regardless of frontiers. The Reception Conditions Directive Commission recast proposal<sup>63</sup> introduces an obligation to Member States to ensure that when minors are provided with specific housing, access to leisure activities, including play and recreational activities appropriate to their age be ensured.<sup>64</sup>

### Research findings

Recreation and leisure activities were vital for all children involved in the research; they considered them as a source of strength and a way of keeping their mind off negative thoughts. However, some children complained that such activities were not always available to them.

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<sup>63</sup> European Commission, *Proposal for a Directive of the European Parliament and the Council laying down minimum standards for the reception of asylum seekers*, COM(2008)815 final, Brussels, 3 December 2008.

<sup>64</sup> See Article 22(3) of the proposal.

Adult respondents also stressed the importance of sports and leisure activities for the children and commented on the positive impact of cultural activities, such as visiting museums, going on excursions, attending or participating in cultural festivities and going to the cinema. Participating regularly in such activities helps children take their mind off the asylum procedure, which is a source of considerable stress and anxiety, and at the same time allows them to learn, as well as interact with the local community.

Watching television and accessing the internet were frequently mentioned by children as favourite pastime activities, not only for entertainment, but also as a source of news and contact with their home country, particularly the internet. Media access was considered as a source of remaining in contact with and news about their country of origin. Some children, however, either did not have access to the media or could not access them frequently.

Similarly, lack of sufficient pocket money reduced the opportunities for social interaction. Going out with friends or to the cinema was a problem for many children, because the pocket money they received was not sufficient. The actual amount children received as pocket money varies, but, as an illustration, children said they were given a weekly pocket money allowance of around €7 in Belgium and Malta, €12 in Poland and €5 to €12 in Spain.

Children's experiences of the availability and quality of recreational and leisure activities depended on where they lived. They usually complained of limited opportunities in the larger centres. Adults, however, and particularly officials, often had a different view, arguing that they were sufficient.

In Austria, for instance, although officials maintained that the standard of care and living conditions in the Initial Reception Centre is very high, children complained that few leisure activities were offered. Conversely, children placed in boarding homes were very satisfied with the leisure activities offered there, although some complained of limited access to TV and the Internet

Similarly, in Belgium, children living in reception centres complained that the 18.00 curfew prevented them from participating in extracurricular school activities outside the centres. The Observation and Orientation Centres (OOC)<sup>65</sup>, which provide secure but open reception facilities where children spend two to four weeks do offer, the children said, a variety of activities. Also in the Netherlands, the responses were mixed. Children at Children Living Groups and AMA-Campus complained of a lack of activities, in contrast with children in foster care and Small Living Units, who were happy with the activities offered.

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<sup>65</sup> There are two OOC, managed by the Belgian federal government through FEDASIL, Steenokkerzeel (Dutch speaking) and Neder-over-Heembeek (French speaking) capable of hosting a total of around 100 children.



*“If I had the power, I would see to even more sports activities and I would open a house like this for all the asylum-seeking children.”* (Boy, 15, Netherlands)

In Cyprus children, as well as many adults, claimed that practically no activities were provided for the children.

*“It will be very helpful, if there are some activities for youth here, like in sport, arts to make us use our time in positive way, that’s all.”* (Boy, 16, Cyprus)

In France, children spoke positively about the cultural and sport activities offered by the *École d’Application* of the Judiciary Juvenile Protection (*Protection Judiciaire de la Jeunesse*, PJJ) in Marseille, which they attend during the early months of their arrival.

Children across all countries said that they really liked engaging in sports and cultural activities. For many this was a way of socialising and meeting other children from the local community. Many boys mentioned sports, especially football, as a favourite pastime, although sometimes they complained that the cost involved was too high for them.

*“I play volleyball with Polish children. We go for walks together.”*  
(Boy, 17, Poland)

*“I would like to practice sports more often, but there is no money.”* (Boy, Netherlands)

## Considerations

Separated, asylum-seeking children should be provided with possibilities to engage in leisure activities, such as sports, as well as to participate in cultural life, including of the society where they live. The competent authorities should consider appropriate opportunities, facilities and means available, or those that could be made available in this respect, and ensure that these be accessible to or provided for separated, asylum-seeking children. The children should be provided with opportunities to use media (especially electronic and broadcast media such as radio, television, internet) to adequately satisfy their communication needs.

## 1.7. Social interaction and experiences of racism

### United Nations Convention on the Rights of the Child

#### Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

#### Article 29

1. States Parties agree that the education of the child shall be directed to:

[...]

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

[...]

Social interaction is crucial role for children's development and socialisation, and, as it emerged in the research, it is a very important issue for the children. The adults interviewed stressed the importance of developing relationships with others for social integration and also that particularly those children who are more vulnerable need to be protected against discrimination and racism.

Article 29 of the CRC addresses basic aspects of how social interaction between separated, asylum-seeking children and their host society should be articulated, ensuring respect for the child's cultural identity, language and values, as well as for the national values of the country in which the child is living.

Often, integration programmes for separated, asylum-seeking children in EU Member States start once a person has been granted status and the right to stay. However, barriers to social interaction while awaiting a decision negatively affect the integration process once protection is granted,<sup>66</sup> and can also be detrimental to their reintegration in case of return to their country of origin. It should be highlighted that the European Refugee Fund can co-finance Member State actions aimed at facilitating the integration of asylum applicants and beneficiaries of international protection. Community

<sup>66</sup> UNHCR, *Note on the Integration of Refugees in the European Union*, May 2007, paragraphs 8ff, available at: <http://www.unhcr.org/refworld/docid/463b24d52.html>.

co-financing may be increased to 75% for projects addressing actions aiming to take into account the special needs of vulnerable people, such as unaccompanied minors.

The European Commission Action Plan on Unaccompanied Minors (2010-2014) specifically notes that measures to support the integration of unaccompanied minors granted refugee or subsidiary protection status are essential. In addition, the Action Plan requires that in “[...] cases where return is not possible or integration in the country of residence is considered in the best interests of the child, a legal status should be granted to unaccompanied minors entitling them to at least the same rights and protection as beforehand and suitable accommodation should be found. The minors should be supported in their path toward successful integration in the host society.” According to the Action Plan, the Commission will “address the specific challenges posed by unaccompanied minors in the new EU agenda for migrants' integration”.

Furthermore, the June 2010 Council of the European Union in its Conclusions on unaccompanied minors agreed to call on the European Commission and the Member States, “[...] to strengthen unaccompanied minors related actions, mainly in order to establish and improve reception facilities responding to the specific needs of minors, as well as measures for the development of appropriate integration actions. Likewise, to ask the Commission to reflect on how best to include the UAM [unaccompanied minor] dimension in the next generation of financial instruments, as of 2014, in the field of migration management.”<sup>67</sup>

### Research findings

In the interviews, children were asked to describe how they felt living in their host country and any problems they encountered when interacting with peers or others. This included questions relating to their overall integration in society, their interaction with peers and others, as well as questions relating to issues of discrimination and racism. Often children spoke about these issues when discussing their living conditions, education or work experiences. Adults were asked similar questions.

All children expressed a strong desire to interact more with peers, both from the host country – noting that this improved their sense of ‘belonging’ - as well as from their own or other countries, particularly asylum-seekers experiencing similar problems.

*“I play volleyball with Polish children. We go for walks together. Polish people have positive attitude towards Chechens and answer any questions one might have.” (Boy, 17, Poland)*

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<sup>67</sup> Council of the European Union, Council conclusions on unaccompanied minors, 3018th Justice and Home affairs Council meeting, Luxembourg, 3 June 2010, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/114887.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114887.pdf).

Adult respondents emphasised that this interaction was an important element in the socialisation of the children as well as an excellent motivation for language learning. However, both children and adults rarely referred to any particular integration programme that they could access, unless they were victims of trafficking. In addition, some adults, for example in the Netherlands and Sweden, were sceptical about the idea of integrating older children who may soon be returned to their home country.

*“There is a fine balance between return work and integration work... And this is something that one can handle more or less successfully. The worst is if one chooses ‘either or’. It is highly dangerous to solely work with an integration perspective because it may be so that this kid gets a rejection and suddenly needs to go back. And it is highly dangerous to lock them up until they have received a residence permit and then we start to work with them. One needs to work with both perspectives, as possibilities for the child.”* (Head of housing unit, Sweden)

Some of the children, however, indicated that they felt more comfortable with people from their home country or from the same ethnic group, often because of language difficulties, cultural values, and sometimes simply because they felt ‘not accepted’.

*“I go to the gym and I have some friends of my age [...]. Half are Italians and the other half foreigners, Afghans, Cubans, Brazilians. I met them at school.”* (Boy, 16, Italy)

*“Polish people are my friends but not my close friends. My close friends are only Chechens. A close friend is one you could die for [...].”* (Boy, 16, Poland)

Other children, for example in Belgium, said that they were too embarrassed about their status as separated asylum seekers to contact Belgian peers. In most countries there was a noticeable difference between boys and girls, particularly those with a Muslim background, as boys were more outgoing and this created more opportunities for social interaction.

In some countries, for example in Cyprus, some of the officials interviewed argued that most children did not want to interact with Cypriots, while NGO workers had different experiences. In France, recently arrived children were frustrated by the different cultural norms of social interaction.

*“When I arrived I used to say hello to everybody in the street and I thought people were nasty because they did not answer me.”* (Boy, 14, France)

Most of the children who lived in accommodation centres usually did not have friends from the local community, while the few who did said that they felt more accepted and integrated, despite occasional problems.

*“I have Spanish friends, I go out with them, after football or class and I get on well with them. There is no racism, but sometimes people get angry, in a football match they said to*

*me 'shitty North African' [...] because I play so well!" (Boy, 17, Spain)*

Children living with foster families or independently seemed to find it easier to become friends with local children. Those children who had developed friendships with local children said that they enjoyed going out with them; they complained, however, of practical barriers, such as lack of adequate pocket money or an early evening curfew in their accommodation. In Belgium, for example, children living in reception centres were obliged to be back at 6pm, which didn't give them time for participating in extra-curricular activities, which is a way of making friends. In Spain, continuous references were made to limited opportunities for meeting Spanish children by those children living in accommodation centres, although to counter this special activities are organised.

*"I believe that a very good practice is going out with groups from here. What is that called? Exchange [...]. We have done this several times and it felt very good because you meet new people. Tonight they are coming to see our play. There should be more opportunities to be together." (Boy, 14, Spain)*

In general, the ability to speak the national language and overcome, or at least understand, cultural differences largely determines the children's ability to interact with local people. In Cyprus, for example, children who could speak better Greek felt much more integrated and had found local friends.

*"I don't have problem to integrate here [...]. They are nice people, my friends are asking about me all the time [telephone rings] [...]. You see this is one of them, it's good that they are checking on me all the time." (Boy, 16, Cyprus)*

Practically all children and many adults recounted stories about incidents of discrimination and racist behaviour concerning the children, usually in public places, for example their being openly ignored, not served or being stared at. Such incidents did not only occur at privately owned service delivery premises, but also in schools and healthcare centres, although in most instances such incidents did not seem to affect children's overall positive assessment of their host country.

*"If someone says 'You are a foreigner', I reply, 'If you are going on holidays you are also a foreigner', and if someone says, 'You Nigger', I reply, 'That's my last name.'" (Boy, 16, Austria)*

*"There is too much discrimination here, every time I talk to someone here, they ask me from where you are, and when they know that I'm from Syria, they don't want to talk to me. This is something very bad, and should change." (Boy, 17, Cyprus)*

One psychologist interviewed in Italy stated that parents sometimes did not want their children to be friends with separated, asylum-seeking children. Adults, particularly in Spain and the UK, also spoke of the prevailing

prejudice against migrants and asylum-seekers, often portrayed by some media as 'criminal delinquents' or as 'scroungers with bogus claims of being minors'. Children also mentioned some examples of racial discrimination.

*"There are people who treat you well, others who treat you poorly. Sometimes, there are racist people. For example, if you travel in the 'metro' they look at you contemptuously, they clutch their bag because they think you are going to rob them. But they are right because there are many children who steal but this is not right because I don't know what they think, that everyone is the same. We are not all the same, not all people steal. There are good people and bad people everywhere. It is not difficult to think this [...]." (Boy, 17, Spain)*

*"Three times I went to the disco because I wanted to forget everything, just hear music and dance. They did not let me in, but everybody else went in. At this time I thought I am not human." (Boy, 17, Austria)*

In turn, this negative image impacts on the lives of the children, affecting people's attitudes and behaviour towards them. For example, in Spain, efforts to establish new accommodation centres for separated children were resisted by residents leading authorities to relocate them in more remote areas.

Adult respondents in most countries referred to the emotional problems, the loneliness and isolation these children feel that may even lead to depression and other mental health problems. In this context, adult respondents underlined the need for awareness raising both among the general public and professionals, such as teachers, police and medical staff, about the existence, lives and needs of refugees and asylum seekers and in particular the separated children among them.

*"All the Austrians I met wanted to help me and were nice when they understood that I am not bad!" (Boy, 17, Austria)*

*"Programmes need to be developed; children should be moved out of the shelters more often [...]. Society knows very little about refugees. This should be taught in schools." (NGO, Hungary)*

### **Supporting young and unaccompanied minors**

A British Red Cross London-based initiative offers practical and emotional support to children aged 15 to 18 years who have arrived in the UK alone through 'peer befriending', whereby children are given an opportunity to meet other young people and build a supportive network to reduce the risk of isolation. Through 'peer education', children are given invaluable life skills to help them integrate into their communities, such as improving English, job skills, information technology (IT) skills and health awareness. The children are involved in the organisation of the project by designing materials and requesting specific areas of training.

For more information, see: [www.redcross.org.uk/Donate-Now/Make-a-major-donation/Projects-in-need-of-your-support/Young-and-unaccompanied-minors](http://www.redcross.org.uk/Donate-Now/Make-a-major-donation/Projects-in-need-of-your-support/Young-and-unaccompanied-minors).

### **Connecting people**

This project began with the financial support of UNICEF Austria in 2001; the Austrian NGO *Asylkoordination Österreich* is responsible for its implementation. The project is run in Vienna and Graz (through Verein Zebra). It was specifically developed for separated, asylum-seeking children to provide them with a long-term and stable relationship with a "godfather/mother" (Pate/Patin).

Volunteer godfathers/mothers are trained and then matched with a separated child. Asylkoordination offers additional support and monitoring through regular exchange and information meetings, as well as further training and events. The aim is to offer these children emotional and practical support in managing their daily lives. Godfathers/mothers support children in practicing German, spending leisure time together, accompanying them to authorities, providing them with relevant information regarding education and/or employment in Austria and assisting them with any kind of problems they may face, such as with regard to school

Caritas Germany runs the project in Munich.

For more information, see: [www.asvl.at/connectingpeople/htms/kap\\_2.htm](http://www.asvl.at/connectingpeople/htms/kap_2.htm).

## **Considerations**

The interaction of separated, asylum-seeking children with their peers, as well as with children and adults from the host society, including with those belonging to the same ethnic or cultural group, should be encouraged and facilitated as this is an important aspect of their development. In this context, the competent authorities should consider the beneficial effects

that participation in integration programmes could have for these children and for society.

Administrative and disciplinary rules applicable to separated, asylum-seeking children should be aimed at the children's protection and establish no undue, detrimental or discriminatory restrictions affecting the children's ability to interact with others. Financial or other forms of material support should be adequate, in order to ensure the children's ability to participate in social life, interacting with their peers from the host society.

Initiatives combating discrimination and mistreatment should be supported at national level, as well as in the local communities where the children live and within their particular placements. Appropriate training and oversight should be provided to social workers, officials and other persons responsible to care for the children, so that they do not engage in conscious or involuntary practices of discrimination or other inappropriate conduct vis-à-vis the children.



## 2. Legal issues and procedures

Legal procedures that affect the legal status of separated, asylum-seeking children emerged in the research as being of primary importance to them. Issues that were raised relate to the role of guardians, access to and quality of legal representation, age assessment, family tracing and reunification, issues related to the asylum procedure and detention.

A key aspect of the protection of separated, asylum-seeking children in the context of legal issues and procedures concerns age determination, guardianship and legal protection, including access to justice. The CRC refers to legal guardianship and legal representation, but without explicitly defining them – leaving this crucial aspect of child protection to rest within the scope of state discretion. Given the limited legal capacity of a child, the importance of appropriate legal protection, representation and aid is crucial, especially when establishing a child’s status as “a child” and as “separated” or “unaccompanied”. In this respect, it is worth noting that Article 47 of the EU Charter of Fundamental Rights guarantees that legal aid shall be made available to those who lack sufficient resources in so far as this is necessary to ensure effective access to justice. The EU asylum *acquis* also refers to the duty to ensure the necessary representation of unaccompanied minors who apply for asylum.

### 2.1. Legal guardianship and legal representation

#### United Nations Convention on the Rights of the Child

##### Article 3

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

[...]

In Article 3 and other articles, the CRC refers to the role of the legal guardian, in conjunction with the role of the parents of the child, without, however, regulating the actual content of the legal guardianship function. This is addressed, with regard to unaccompanied and separated children outside their country or origin, by General Comment 6 of the UN Committee on the Rights of the Child.

Every child should have an adult to turn to for guidance and advice and a possibility to have his/her limited legal capacity complemented and his/her best interests cared for. Given the specific vulnerability of separated,

asylum-seeking children, the provision of the most comprehensive forms of support is crucial for their protection. Legal guardianship complements the incomplete legal capacity of a child and gives the responsibility for a child's well-being to a natural or legal person. Child guardianship regimes, as well as the type and scope of guardianship for separated asylum-seeking children, vary among EU Member States, as outlined in the study of the European Migration Network.

Legal guardianship can range from the granting of responsibility for child well-being and support in all spheres of life (including both the conclusion of legal acts and child well-being in areas such as healthcare and education) to responsibility for legal support in some spheres of life only and with regard to specific acts (such as in connection with the conduct of legal proceedings or economic transactions). Some EU Member States do not assign a legal guardian to separated, asylum-seeking children, but a guardian who provides general social support, without being able to complement a child's legal capacity. Other Member States just provide legal representation, advice or counselling to the child.

The basis for granting legal protection to children also varies greatly among EU Member States. While in some Member States guardianship for separated, asylum-seeking children is not explicitly envisaged under national law, in others separated children are assigned a legal guardian or legal representative on the basis of legislation relating to child care, while in others this is done on the basis of legislation relating to asylum and immigration.

Similarly, the guardianship functions, their organisation and implementation vary between EU Member States, while the effectiveness of the protection provided to separated, asylum-seeking, largely depends on the nature of these functions and on how these functions are carried out. For instance, in some countries persons act as guardians on a pro-bono basis, in others they are remunerated and in some both possibilities exist. This, in turn, influences how the children perceive the role and usefulness of a guardian, according to the research findings.

EU law recognises the importance of legal guardianship, but does not define legal guardianship functions. EU law in the field of asylum refers to various forms of representation in addition to legal guardianship. For instance, Article 19 of the Reception Conditions Directive requires that unaccompanied children must be provided as soon as possible with either legal guardianship or, where necessary, representation by an organisation that is responsible for the care and well-being of minors, or by 'any other appropriate representation'. Although the directive seems to give precedence to legal guardianship, it also allows other options. The Temporary Protection<sup>68</sup> and the Qualification Directives contain similar provisions in Articles 16 and 30, respectively.

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<sup>68</sup> Council Directive 2001/55/EC of 22 July 2001 on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the

Both the Reception Conditions and the Qualification Directives require that authorities regularly assess representation. The latter also places an obligation on Member States to ensure that the minor's needs in the implementation of the directive are duly met by the appointed guardian or representative.

In particular, with respect to the examination of the asylum application, Article 17 of the Asylum Procedures Directive establishes a duty of ensuring promptly the provision of representation of a minor. However, Member States are exempted from the duty of appointing a legal representative in this respect where the unaccompanied minor: a) will in all likelihood reach the age of maturity before a decision at first instance is taken; or b) can avail himself or herself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative; or c) is married or has been married. It is worth noting in this respect that there is currently no consideration regarding cases of forced or underage marriage. It should also be noted that the directive states that Member States may, if this is in accordance with their legislation in force on 1 December 2005, refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her asylum application without representation.

It is important to note that the European Commission in its recast of the Asylum Procedures Directive places emphasis on improving the representation of a child by strongly supporting the concept of 'legal guardianship' vis-à-vis other forms of representation.<sup>69</sup> The recast of the directive establishes an additional requirement that the representative be impartial and has the necessary expertise in the field of child care.

Moreover, the recast draws a distinction between the representative "and/or a legal adviser or other counsellor admitted or permitted as such under national law", requiring that the latter are present at the interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview. The recast reduces the scope for exclusions of the duty to appoint a representative to situations when a child will in all likelihood reach the age of maturity before a decision at first instance is taken, is married or has been married. It also establishes the provision of free legal assistance to unaccompanied minors as the underlying principle, to which a limited number of exceptions are allowed. Further, and also with regard to adults, the recast foresees the possibility that EU Member States allow the engagement of non-governmental organisations in the provision of free legal assistance and/or representation to applicants for international protection.

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consequences thereof, OJ L 212, 07 August 2001, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0055:EN:HTML>.

<sup>69</sup> Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast), COM(2009)554 final, proposal on Article 1(n) of the directive.

## Research findings

In the interviews children were asked to identify their legal guardian and/or their legal representative and to describe their experiences with them. This included questions relating to how guardians are assigned and how long it takes, the information the children received from their guardians, how the children were treated and the type of support provided. Adults were also asked questions regarding their perception of how effective the guardianship and legal representation system functions in their country.

The research found that most children, but also many of the adult respondents are unclear about the role and responsibilities of a guardian. The interviews also confirm the findings of the European Migration Network study in that the situation differs widely both between and within countries. In some countries persons act as guardians on a voluntary basis, for example in Poland, while in others, such as in the Netherlands, they are remunerated, and in other Member States, as in Belgium, there is a combination of both.

EU Member States apply a variety of different models for guardianship and legal representation with the exception of the United Kingdom, where according to the EMN report, “The view of the Government [...] is that the care and support unaccompanied children receive from local authorities, under the same statutory arrangements as other children in need, fully meets EU and international obligations.”<sup>70</sup> However, as the EMN reports also points out, some stakeholders, including the Refugee Consortium and the Children’s Commissioner for England, believe that guardianship and legal representation arrangements should be introduced.<sup>71</sup> Adult respondents to this research in the UK highlighted that separated children are allocated a social worker by local authorities and able to receive support from the Refugee Council’s Panel of Advisers. They are also entitled to free legal advice and support.

In most of the countries respondents identified a number of problems with the guardianship and legal representation systems. They also highlighted good practice examples, particularly in Sweden and the Netherlands.

*“It is nice having someone on your side.”* (Boy, 16, Sweden)

In some countries the adults interviewed were somewhat confused regarding how the guardianship and legal representation regime is applied. For example, in Austria, all adult respondents agreed that the legal adviser

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<sup>70</sup> European Migration Network (2010) *Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU Comparative Study*, pp. 53-58.

<sup>71</sup> The Committee on the Rights of the Child in its Concluding Observations on the report submitted by the United Kingdom (CRC/C/GBR/CO/4, 20 October 2008) notes: “70. [...] the Committee is concerned that: [...] (c) There is no independent oversight mechanism, such a guardianship system, for an assessment of reception conditions for unaccompanied children who have to be returned; 71. The Committee recommends that the State party: (c) Consider the appointment of guardians for unaccompanied asylum seekers and migrant children.” available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/445/74/PDF/G0844574.pdf?OpenElement>.

in the admission to the asylum procedure and the Youth Welfare Authority are responsible for guardianship/legal representation of separated children once they have arrived. However, they were unsure about other issues, such as how long the process of assigning a guardian takes. One suggested that this largely depends on the courts, another pointed out that it can take about four weeks if a relative claims guardianship. Two others indicated a period of about two months because, “officials prefer to wait and see if the children will be staying in Austria.” A legal adviser said it takes six months quoting a specific court decision that a child living in Austria for less than six months cannot be assigned to a guardian, but only a legal representative.<sup>72</sup> Others said Austrian federal provinces (Länder) do not deal with guardianship in a uniform way.

For most adult respondents the role of a guardian related to assisting the child in accessing and completing the asylum procedures. The perception of other guardianship functions varied between and within countries. Some adults had doubts whether the guardianship entailed only legal support duties or whether it was also related to supporting the child with education and healthcare, for example. Some adult respondents commented on the delays in assigning a guardian: while guardians were allegedly appointed immediately upon arrival in some countries, in others appointment was invariably delayed, sometimes for more than six months following the arrival of a child.

Adult respondents also often complained about the delays in the assignment of a legal guardian. While guardians in Italy and “ad-hoc administrators” in France were said to be immediately appointed upon arrival, in other countries children, as well as adult respondents complained that appointments were often delayed, for instance in Belgium and Hungary.

*“They told me the guardian will come, but she did not come [...].  
I don’t have her number [...].”* (Boy, 17, Hungary)

One of the striking findings was that with the exception of children in Sweden and the Netherlands, most children interviewed did not know whether they actually had a guardian, or who it was, or what the responsibilities of a guardian are. It should be noted however, that although researchers made efforts to explain what a guardian is, it is possible that not all children understood the concept.

*“I do not know what is a legal guardian. Do I have one?”* (Girl, 17, Austria)

*“No, I don’t have as I far as I know any one like that.”* (Boy, 16, Cyprus)

This was also reflected in the different perceptions of guardianship of the children. In Cyprus, for example, children sometimes named roommates as their guardians; in France, they referred to their social workers; in Poland and the UK they identified teachers or solicitors. In Italy children had a

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<sup>72</sup> Germany, Regional Court Wiener Neustadt, Case No. 16 R96/09w, 30 March 2009.

fragmented and confused perception of the roles and duties of a guardian. In some countries, even adult respondents thought they were guardians, although this was not the case.

According to both children and adults, the frequency and quality of contact between guardians and children varied. There were some complaints about the frequency of contacts which were generally considered as insufficient and often limited in their content to procedural asylum issues. However, in some countries, for example in Sweden and in the Netherlands, most children were very satisfied with their guardians, the legal support they provided and the frequency of contact with them. Some children said that they spoke with their guardians about anything and contacted them almost every day. In Sweden, a boy said that he visits his guardian almost daily, she cooks him dinner and advises him to “stay strong and not give up”. One boy said that his guardian calls and says good night to him every evening; another appreciated that she helps him with bus money and buys him clothes; and another mentioned how he developed a very close relationship with his guardian and was invited to live together with his family.

In Belgium, some children liked very much when they had a more personal relation with their guardian (such as going to her/his house, having dinner together and going to the cinema), but this was not the case with all guardians.

In Austria, Belgium, France, Hungary, Italy and the Netherlands children said that they would like to meet more regularly with their guardians and to be able to establish a more personal relationship with them – an issue that adult respondents also thought was very important for a child’s well-being. In Cyprus adults recommended a complete review of the guardianship system.

Regarding legal representation, both children and adult respondents were often critical: they complained, for example, about the legal experience of those representing them, about their limited knowledge of the different countries of origin and about their limited understanding of the problems and needs of separated, asylum-seeking children.

*“I had a guardian, but he did not come for the interview. Everybody came: the interpreter and others but not him. I saw him only once [...]. He was a young student. I did not know him. I even did not know why I needed a guardian. Now I have a new guardian, whom I have not seen yet.” (Boy, 17, Poland)*

Many adults, for example in Austria, Belgium, France, Italy, Poland and Sweden suggested that guardians and legal representatives should be much better trained and qualified, stressing, in addition, that adequate, professional interpretation is very important, but often lacking. In Austria, Belgium, France and Italy, adults said that more staff and resources are needed to support these children adequately in legal proceedings.

*“Students are doing pretty well, when it comes to the asylum procedure. Nevertheless, having read the laws is not enough,*

*they lack knowledge on detailed issues, trafficking or documents.” (Official, Poland)*

Separated children need not only that their interest be represented in connection with the asylum and other legal procedures, but also the type of emotional support and guidance normally provided by parents. The presence of an adult that the children can rely on to mentor and support them is therefore very important for their well-being. Many children referred in the interviews to various adults, such as social workers, teachers and guardians, who provide them with such guidance and support; however, it is necessary to provide such support in a more structured and systematic way. Most examples of this type of mentoring support were mentioned by children in Sweden.

### **Belgium sponsorship programme**

The programme was created in 1995 with the aim to facilitate young asylum seekers in realising their life project. The objective is to give the children non-financial moral support through an individual or a family. The ‘godmothers’ and ‘godfathers’ of this project who are selected and trained on the legal and social aspects of the asylum procedure help these children by sharing their life experiences, providing emotional support, or simply listening to them.

For more information, see: [www.exil.be/index.php?fr\\_support](http://www.exil.be/index.php?fr_support).

## Considerations

It is essential to provide adequate, easy to understand, child-friendly information to separated, asylum-seeking children and their carers about the various forms of representation and the possibilities to complement the limited legal capacity of a child available under the legal system.

A legal guardian should be provided to every separated, asylum-seeking child as soon as possible. Legal guardians and other representatives should be encouraged to maintain a close relationship with the children for whom they are responsible. Where necessary, the support of professional interpreters should be provided in order to facilitate communication between the child and their legal guardian or other representative.

Furthermore, those assigned legal guardianship duties, as well as any other person/s in charge of safeguarding the child’s best interests, should be provided with the appropriate training and support to carry out their functions effectively.

The exercise of legal guardianship and other representation functions should be regularly and independently monitored through the conduct of regular and independent assessment by judicial authorities, for instance.

Finally, appropriate legal representation, advice and counselling, as well as free legal aid, as appropriate, should be provided to separated, asylum-seeking children and their legal guardians or other representatives, in the context of legal procedures, as soon as possible, to ensure fair access to justice.

## 2.2. Age assessment

### United Nations Convention on the Rights of the Child

#### Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
  2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.
- [...]

Age assessment procedures are used when the age of a person claiming to be a child is disputed by authorities. These procedures often consist of the cross-checking of documentary evidence, interviews, or medical examinations, or a combination of the above. Medical examinations may include magnetic resonance tomography, bone and dental assessment and radiology tests. The EMN reports provide detailed information<sup>73</sup> as to the application of age assessment methods in EU Member States, an issue which is also touched upon by the FRA report on child trafficking.<sup>74</sup>

Age assessment may have serious consequences for separated, asylum-seeking children, since if the assessment concludes that they are 18 years or over, they will no longer be regarded as a child and will not benefit from the extended protection afforded to child asylum seekers. Scientific research has shown that age assessment through medical examination is not always exact, for example in cases of children who have had malnutrition and experienced severe trauma, who “tend to have a growth spurt with accelerated skeletal and sexual maturation.”<sup>75</sup> In the UK, the Royal College of Paediatrics and Child Health acknowledged already in 1999 that “age determination is an inexact science and the margin of error can

<sup>73</sup> European Migration Network (2010) *Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU Comparative Study*, pp. 75-83.

<sup>74</sup> FRA (2009) *Child Trafficking in the European Union: Challenges, Perspectives and Good Practices*, pp. 54-55.

<sup>75</sup> Benon, J., Williams, J. (2008) „Age determination in refugee children” in: *Australian Family Physician*, Vol. 37, No. 10, 821, available at: [http://digital.library.adelaide.edu.au/dspace/bitstream/2440/48032/1/hdl\\_48032.pdf](http://digital.library.adelaide.edu.au/dspace/bitstream/2440/48032/1/hdl_48032.pdf).



sometimes be as much as 5 years either side.”<sup>76</sup> There have been several publicised cases of children suffering from wrong age assessment; for example, in April 2010 in the UK the Local Government Ombudsman found that an unaccompanied 15-year-old asylum-seeking girl was denied care after being age-assessed by untrained social workers in Liverpool.<sup>77</sup>

Age is an essential element of a child’s identity, as the CRC defines childhood by reference to age. The UN Committee on the Rights of the Child notes in its General Comment No. 6 that the identification of a child as separated or unaccompanied includes age assessment, which should take into account physical appearance, but also psychological maturity. Moreover, according to the Committee the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child, giving due respect to human dignity. In the event of remaining uncertainty, the individual should be given the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.

EU law regulates some aspects of age assessment. The Asylum Procedures Directive (Article 17.5), for example, envisages the possibility of using medical examinations to determine the age of unaccompanied minors within the framework of the examination of the asylum application. However, it does not deal with the controversial issue of which type of medical examinations are adequate and/or appropriate. The directive requires that if medical examinations are used, the unaccompanied minor be adequately informed of the method of examination to be used and the possible consequences of its results - and of his/her possible refusal to undergo that examination - on the asylum application. The directive does not require that the child be informed about the health consequences of the examination, although it does require the consent of the unaccompanied minor and/or his/her representative that the examination be carried out. According to the Directive, the rejection of an asylum application cannot be solely based on a refusal of medical examinations for age assessment.

The recast proposal amending the Asylum Procedures Directive<sup>78</sup> envisages the use of medical examinations to determine the age of unaccompanied minors where following the general statements of the minor concerned, or other relevant evidence, Member States still have doubts concerning his/her age. The proposal requires that any medical examination be performed in full respect of the individual’s dignity, selecting the less invasive exams. It also requires that the relevant information on the medical examination be provided in a language that the unaccompanied minor

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<sup>76</sup> Royal College of Paediatrics and Child Health (1999) *The Health of Refugee Children - Guidelines for Paediatricians*, available at: [www.rcpch.ac.uk/doc.aspx?id\\_Resource=1758](http://www.rcpch.ac.uk/doc.aspx?id_Resource=1758).

<sup>77</sup> Available at: <http://www.cypnow.co.uk/news/ByDiscipline/Social-Care/994198/Ombudsman-finds-failed-age-assessment-denied-15-year-old-asylum-seeker-appropriate-care/>.

<sup>78</sup> Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast), COM (2009) 554 final, proposal on Article 1(n) of the directive.

understands, as opposed to "may reasonably be supposed to understand" as the Directive states.

## Research findings

In the interviews children were asked whether they had been subjected to age assessment and to describe their experience. Adults were also asked about age assessment, and especially to provide their views on the effectiveness and impact of age assessment on the children.

*"[...] everyone thinks we lie about our age." (Boy, 17, Spain)*

*"Age assessments are always tricky. It can be a very intimidating experience for the young people. The entire age assessment process is very lengthy and the young person is viewed with suspicion through the whole process." (Social worker, UK)*

Most adult respondents were not comfortable with age assessment procedures, particularly social workers in the UK. Assessing the age of young asylum seekers, who have made a perilous and difficult journey to escape from persecution or war can be emotionally challenging and social workers, as well as immigration officials, saw age assessment as a source of problems, but, sometimes, also as a "necessary evil". Respondents mentioned a range of procedures used, which includes checking documentary evidence, interviews and medical examinations, such as magnetic resonance tomography, bone and dental assessment and radiological testing, often applied in combination. However, many questioned both the reliability of the methodologies used, as well as the way they are applied claiming that the resources available for this purpose are limited.

*"Ideally age assessments should be carried out by an independent body and not by local authorities. The quality of first assessments should be improved and this is a job that requires expertise and should be carried out by trained staff." (Social worker, UK)*

*"The current system may be efficient, but doctors are not able to tell the exact age they can only estimate." (Official, Hungary)*

*"It is not fair that the age assessment is down to the social worker, it is a difficult job and despite adopting a multi-disciplinary approach we find it incredibly complicated to do." (Social worker, UK)*

*"We clearly feel we cannot assess the age of the child and how do we know anyway? We are not trained to do age assessment. We are trained in social work and we can't make decisions on their asylum claim, on whether they should be returned etc. We had a young man who came in with shrapnel wounds, young*

*people with female genital mutilation, others suffering from HIV. The toughest of social workers would never want to be in a position to challenge such a young person. I know there are those that abuse the system but that is not everybody who comes through the door. We can't exclude everybody on the basis of some bogus claims. It is a very emotive subject [...]."*  
(Social worker, UK)

In Malta, adults pointed to the problems created by a large number of asylum-seekers changing their initial age declaration after they have realised that children are released from detention. However, age assessment, especially if it involves medical verification in the form of a bone age test, takes time leading to bottlenecks with asylum seekers waiting several weeks in detention for age assessment.

Age assessment was a very sensitive issue for children in every country engaged in the research, with the exception of Sweden, where those few children whose age had been assessed had no problem with the procedure. Other children, particularly in Austria, France, Hungary and the UK, expressed fear and were critical of age assessment procedures, and had little information about them. Many said that officials should simply believe them.

Some of those that had been age assessed seemed perplexed that their age was challenged, and were distressed about the possibility of being perceived as "liars". In Hungary, only some of those children who had been age assessed were willing to discuss the issue.

*"Age assessment was a disappointment for me [...]. The medical check-up wasn't too serious, I had to show my chest, they looked into my mouth and it was less than three minutes [...] I do not have any proof, because there is no government in my country. How could I have any evidence? The worst thing is that they think I am a liar."* (Boy, 17, Hungary)

*"I had a dental age assessment, which determined that I was 16. I told them I was 15[...]. I don't believe the dental assessment is correct – it kept changing between 16 and 17 [...], but they treated me well. I am actually 15, because that is how old my mother told me I was. Who knows me better – my mother or the doctor?"* (Boy, 15, UK)

On the other hand, a small number of children, for example in Spain, said that they would prefer to be older, having more rights and being more independent.

*"I don't want to be 17! Being 17 means being in [...] prison, they tell you when to get up, when to go to sleep. I don't want to be under age, I want to work. I can't work if I am 17."* (Boy, 16, Spain)

In France two children, who had been assessed and found to be below 18, refused to even discuss it, as evidently they were more interested in having the rights of an adult rather than the protection and care provided to children. In Malta, adults were concerned that some children claim to be adults so as not to be separated from friends or relatives that they travelled with.

## Considerations

Age assessment should only be used where there are grounds for serious doubt of an individual's age. If medical examinations are considered essential, the child must give his/her informed consent to the procedure after any possible health and legal consequences have been explained in a simple, child-friendly way and in a language that the child understands. Age assessment should be undertaken in a gender appropriate manner by independent experts familiar with the child's cultural background and fully respecting the child's dignity. Recognising that age assessment cannot be precise, in cases of doubt, authorities should treat the person as a child and grant the right to appeal age assessment decisions.

## 2.3. Family tracing and reunification

### United Nations Convention on the Rights of the Child

#### Article 10

1. [...] applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents [...]

#### Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

The vulnerability of separated children lies precisely in their separation from their family environment. The CRC provisions underline the importance attached to facilitating personal relations and contacts between the child and parents when they are separated. Therefore, tracing the child's family, facilitating regular contact and reuniting them are often crucial for the well-being of a child. However, care needs to be taken that family tracing is only undertaken when it is in the child's best interests, namely when it will not endanger the child<sup>79</sup> or his/her family. Furthermore, if it is in the child's best

<sup>79</sup> According to the UNHCR Guidelines on International Protection: Child Asylum Claims, paragraph 28: "In asylum cases involving child victims of trafficking, decision makers will

interests to remain in the host country, for example in the case of refugee status having been granted, the state should facilitate family reunification.

EU law contains detailed provisions regarding family tracing and reunification. Article 19 of the Reception Conditions Directive requires Member States to make efforts to trace a separated child's family members as soon as possible in order to protect the child's best interests. The directive, however, also stipulates that "in cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety."

The European Commission recast proposal amending the Reception Conditions Directive strengthens the obligation of Member States to trace family members by maintaining that relevant procedures must be established in national legislation. It introduces a duty for Member States to start to trace the members of the unaccompanied minor's family as soon as possible after an application for international protection is lodged whilst protecting the child's best interests. Although it does not address the key issue of how and by whom the best interests of the child ought to be determined, it provides some guidance by requesting that in assessing the best interests of the child, Member States take due account of the following factors in particular: (a) family reunification possibilities; (b) the minor's well-being and social development, taking into particular consideration the minor's ethnic, religious, cultural and linguistic background; (c) safety and security considerations, in particular where there is a risk of the child being a victim of trafficking; (d) the views of the minor in accordance with his/her age and maturity.<sup>80</sup>

The Dublin II Council Regulation also establishes in its Article 15 that any Member State, even where it is not responsible under the criteria it sets out, "may bring together family members, as well as other dependent relatives, on humanitarian grounds based on family or cultural considerations". The regulation further sets out that, at the request of another Member State, the

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need to pay particular attention to indications of possible complicity of the child's parents, other family members or caregivers in arranging the trafficking of consenting to it. In such cases, the State's ability and willingness to protect the child must be assessed carefully. Children at risk of being (re-)trafficked or of serious reprisals should be considered as having a well-founded fear of prosecution within in the meaning of the refugee definition", available at : <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.

<sup>80</sup> The UNHCR Guidelines on Determining the Best Interests of the Child, also devote specific headings to among others „safety as a priority“ and „the importance of the family and of close relationships“. Regarding the latter in particular, the guidelines note: "Though normally regarded as being in the best interests of the child, family reunification could, in certain circumstances, not be in his or her best interests. This would be the case when it exposes or is likely to expose the child to severe harm, or when it is opposed by the child or the parents, and efforts to address the problem through social work, family mediation and counselling remain unsuccessful". See further, p. 72 of the Guidelines, published by UNHCR in May 2008, available at: <http://www.unhcr.org/4566b16b2.html>.

Member State bringing together family members will have to assume responsibility for examining the asylum application of the persons concerned. This proceeding requires the consent of those persons.

If the asylum seeker is an unaccompanied minor having a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the child's best interests. The European Commission recast proposal amending the Dublin Regulation deletes the reference to "if possible" and therefore sets a clear obligation towards EU Member States in this regard. Moreover, the proposal introduces an obligation for Member States to trace the family members of unaccompanied minors, in the same lines as in the recast proposal amending the Reception Conditions Directive.

According to Article 12 of the Commission Regulation from 2003<sup>81</sup> complementing the Dublin II Council Regulation, the decision to entrust the care of an unaccompanied minor to a relative other than the mother or father, or legal guardian may cause particular difficulties, especially where the adult concerned resides outside the jurisdiction of the Member State in which the minor has applied for asylum. The Commission Regulation also requires that the Member State's competent authorities responsible for the protection of minors cooperate when they need to decide on the ability of adults to take charge of a minor in a way that serves his or her best interests.

Moreover, the Family Reunification Directive<sup>82</sup> establishes some common criteria to determine the material conditions for exercising the right to family reunification. When examining an application for family reunification regarding children, Member States must have due regard to children's best interests, according to Article 5 of the directive. The only unaccompanied minors covered by the Directive are those with refugee status, although the Directive does not affect the possibility for the Member States to adopt or maintain more favourable provisions.

Finally, Article 15 of the Temporary Protection Directive provides a definition of the family for the purposes of family reunification, in cases where families already existed in the country of origin and were separated due to circumstances surrounding a mass influx. The directive establishes that where a third-country national enjoys temporary protection in one Member State and one or some family members are not yet in a Member State, the Member State where the third-country national enjoys temporary protection has a duty to reunite them taking into account, on a case by case basis, the extreme hardship which they would face if reunification did not take place. Whether this is a duty or an option for the Member State depends on the

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<sup>81</sup> Commission Regulation (EC) No. 1560/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

<sup>82</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3 October 2003, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML>.

closeness of the family link. The directive explicitly requires that, in applying Article 15, Member States take the best interests of the child into consideration.

## Research findings

In the interviews children were asked whether they were in contact with their families, if yes, how often and, if not, if they had used any services to locate their family and what were their experiences of using them. In case children were in contact with their parents, they were also asked if and how they were supported in maintaining contact, if they wanted to be reunited with them, under what conditions, and whether there was any pressure to do so. Adults were asked questions relating to the same issues, focusing on the effectiveness of family tracing services and procedures.

As regards relations with the family, this is a very sensitive and emotionally charged issue and was treated accordingly by the interviewers. Many children said that they were not in contact with their family and/or that they did not know their family's whereabouts. However, this finding should be treated with caution, as social workers suggested that children often do not say that they are in contact with their family fearing that this may lead to their return.

*“Whether or not one has a family should not be allowed to influence one's right to apply for asylum.” (Official, Sweden)*

Children who were in touch with family members, mostly in France, Italy and Spain, maintained a fairly regular contact, calling them every few weeks, but many complained that telephone charges were too expensive. In some cases they also used Internet facilities. In France, for example, most of the children interviewed were in regular contact with their families, and some of them said that they wanted more frequent contact. In Italy and Spain, almost all children had contact with their families and would call them regularly. However, some children, for instance in Austria, Poland and the Netherlands, said that they did not want to re-establish contact with family members, because they had been mistreated or neglected by them in the past, and others because they feared receiving 'bad news' about them.

*“I have contact with my sister, grandmother, grandfather. No longer with my mother she obeys my father and he doesn't like me. He is an alcoholic and burned me with oil (shows his right leg that is horribly scarred), so I had to run away [...].” (Boy, 15, Austria)*

Many children did not know or were unsure about opportunities and resources for family tracing and reunification. In the UK, for example, about half of the children knew about the British Red Cross services. Other children, for example in Sweden or in Cyprus, who knew about family tracing, did not know how or where to request it.



Reactions from children who had requested family tracing were mixed: some children expressed their satisfaction with the results and the assistance they received, but others were disappointed. The few that had used such services, for example, in Austria, Belgium, the Netherlands, Sweden and the United Kingdom seemed to be quite satisfied with the assistance they got in their family tracing efforts. In Hungary, officials claimed that family tracing efforts are an element of the asylum procedure, often without much success, while children said that they were not informed.

*“Somalis are generally tracing their families, but they do not have exact data, do not know dates of birth, names [...] and there are no real results. Afghans are not looking for their families; they have contact with them as quite often they are sent by their families.”* (Official, Hungary)

*“I want my family. They are refugees in the forest. There are serious fights in Somalia. I need my family first. Some of them died. The last remaining ones I must find. I need some help how I can search [...]. Other countries bring families, and search them.”* (Girl, 16, Hungary)

Children with experiences of family tracing appreciated the assistance of the national red cross societies or the ICRC, but also complained of long waiting periods, for example in Belgium, while some, for example in Austria, said that they did not trust it. In some cases, in Austria, Belgium and Sweden, children also highlighted the support they received in family tracing from friends and distant relatives, as well as other persons of trust.

*“I have recently found my mum. After 8 years. We write and call to each other, when I get a pocket money.”* (Girl, 15, Poland)

*“I have not seen my family since I was 7 years old. My brother found me through the Red Cross, but he couldn't find the rest of my family.”* (Boy, 17, UK)

Adults were generally aware of family tracing possibilities, although in some cases, for example in Italy, not all were familiar with the relevant procedures. A number of adults acknowledged the support provided in family tracing by the national Red Cross societies, the ICRC and other organisations, such as Refugee Work, ISS and IOM. In Sweden, adult respondents praised the support provided by children's guardians assisted by the Red Cross, although one official complained that not enough effort was made by the relevant services to trace family members.

*“We actually have phone numbers that just lie in dossiers with us, at the Social Welfare Service and similar places [...]. I believe it is more of an attitude question, than a technical question [...]. [People say] ‘why should we call?’ instead of ‘why shouldn't I call?’”* (Official, Sweden)

Social workers in France considered family tracing important, because it allows children to plan their future better, while other adults, for example in

Belgium, Sweden and the United Kingdom, were more sceptical considering the possible negative effects of family tracing on children's asylum claims and also the risks family members could face in their home countries. They argued that tracing and finding family members of someone who seeks asylum because they are persecuted could alert authorities in the home country with possibly serious consequences to those family members traced, who might be persecuted. They stressed the crucial importance that any family tracing activity fully respects confidentiality and data protection regulations.

Children also expressed concerns about family tracing. Some were worried that locating family members might result in the rejection of their asylum claim and subsequently in the return to their country of origin. Other children feared negative consequences for their family in the country of origin; they were anxious that the family tracing procedures may alert the authorities to their asylum claim, thus exposing their family to harm.

*"I would like to [find my family], but I am scared of the Syrian government because if they find out my family will be in trouble [...]. You wouldn't believe how the government treat the Kurdish in Syria they treat them very badly."* (Boy, 15, UK)

*"I have never been in contact with family [...] those people who are looking for me may kill me, put me in prison."* (Boy, 17, UK)

Adults stressed that particular care needs to be taken to ensure that tracing family members is indeed in the best interests of the child and is carried out only after the children involved have agreed having fully understood what the process entails. In addition, some adults highlighted that family tracing may not necessarily bring good news to children and may result in seriously traumatising them, if they learn, for instance, that a family member is dead. Therefore, they stressed, family tracing should always be carried out with appropriate counselling.

*"I don't know where they are, my parents were sleeping, we just scattered, there is problem in my country. I don't know even about my brothers. I don't know if they are alive, or [...]."* (Girl, 16, Cyprus)

*"I know about tracing in Eritrea with Red Cross, but I rather like to think that they are safe, somewhere, instead of finding out that they are already dead."* (Girl, 17, Austria)

Family reunification was a particularly sensitive issue for many children, as it often meant return to their home country, and many did not want to discuss it. Those that did discuss it want to be reunited with their family in the host country.

*"Reunification with my family here would be the most beautiful thing in the whole world."* (Boy, 17, Austria)

Some also said that they would only try to find and bring family members to their host country, when conditions allowed them.

*“I would like to find my sister, but I cannot help her now, I do not have money, it is better to get established first, then I will bring her when I am ready.” (Child, Austria)*

However, family reunification rarely occurs, because, as most children and adult respondents said, family reunification is a very lengthy and bureaucratic procedure. In fact of all children interviewed only two, one in Italy and one in Austria, said that family members had been traced and that they expected to be reunified with them in the EU.

*“I found my family after two years and we have regular telephone contact. We will be reunited, but the DNA test costs €1,000 [...] the Austrian family that supports me (Patenfamilie – ‘connecting people’ project) will pay it and Red Cross will pay half the travel costs” (Boy, 16, Austria)*

Furthermore, some children did not want their families to join them because they were not satisfied with living conditions in the host country and in a few cases, for example in Poland, children said that they had applied for voluntary return assistance to go back home.

*“If life in Austria is like it is here in the Initial Reception Centre, it is better if they do not come.” (Boy, Austria)*

Most adults interviewed said that reunification with other family members was very rare, either because family members cannot be traced or because the process is too lengthy and bureaucratic or because of practical difficulties.

*“The conditions for family reunification are unrealistic. It does not work at all for anybody.” (NGO staff, Hungary)*

Several adult respondents underlined the importance of adequate preparation for family reunification, highlighting that it can cause serious stress to the child, especially if family members coming to the host country expect to be supported by the child. The child may find it very difficult to cope with this responsibility.

*“When I get my papers, then I’ll be able to invite them [...] I’m here safe, I can go wherever I want without fear. I just need my family with me [...]. I look at people who live here and I see how my family lives in fear and displacement. My young brothers, they cannot go to school, that makes me feel frustrated. I want to take them away from all that.” (Boy, 17, Cyprus)*

An important issue was raised by some adult respondents regarding child trafficking: they suggested that it is very important to verify carefully whether anyone claiming to be a parent might not be a trafficker.

*“A man travelling with two little children was arrested through a European Arrest Warrant for trafficking. The children were neglected, the psychologist suggested observation. Then women came up having the children declared in their passports*

*- were they really their children? - and the court gave the children to these 'mothers'.*" (NGO, Poland)

### **Refugees United**

Refugees United is an innovative tool to assist refugees in finding lost family members by providing a global, anonymous and dedicated refugee network using pioneering technology to alleviate the pain of separation from and uncertainty about family members.

Refugees United provides free of charge a unique search engine that allows refugees direct access to each other through a powerful and simple system. There are no difficult forms to fill in, no language barriers and no need to contact authorities.

Its most important feature is the possibility to register under pseudonyms, scars, birthmarks or other personal markers only identifiable to close family or friends. It is thus possible to remain anonymous in registering and searching. Every user decides on the level of information he or she wishes to disclose, taking into account his/her particular political, social and mental situation and thus offering security and invisibility.

For more information, see: [www.refunite.org](http://www.refunite.org).

## **Considerations**

Separated, asylum-seeking children who wish to maintain personal relations and direct contact with their families should be supported, unless this is contrary to the child's best interests. Effective mechanisms of family tracing and reunification need to be in place. Children should be well informed about the possibilities available to them and assisted in accessing such specialised services. Sufficient guarantees should also be established so that the submission of a family tracing or reunification request does not entail any adverse consequences for those concerned. The initiation of family tracing by a child should always be supported with appropriate counselling. When family reunification is to be effected, the child should receive support (including psychological) so that he or she does not suffer any negative consequences.

Any unnecessary bureaucratic and financial obstacles to a swift family reunification should be removed. Furthermore, it is important to strengthen cooperation among competent authorities in the EU Member States. Such cooperation should ensure that authorities or courts responsible for the protection of children can decide, with full knowledge of the facts, on the willingness and the ability of the adult/s concerned to take charge of a child in a way that serves his or her best interests. A primary consideration in

## 2. Legal issues and procedures

deciding in which Member State family reunification should take place should be the best interests of the child – to be assessed in each individual case following a thorough and swift procedure.

## 2.4. The asylum procedure

### United Nations Convention on the Rights of the Child

#### Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

In 2009 the UNHCR issued specific guidelines for child asylum claims<sup>83</sup> which provide substantive and procedural guidance on carrying out refugee status determination in a child-sensitive manner highlighting the specific rights and protection needs of children in asylum procedures. They stress, inter alia, that claims made by child applicants, whether accompanied or not, should normally be processed on a priority basis, as they will often have special protection and assistance needs. The guidelines also underline the need to appoint a guardian and a legal representative to assist the child in the asylum procedure as soon as possible. They further suggest that if the facts of the case cannot be ascertained and/or the child is incapable of fully articulating his/her claim or if there is some concern regarding its credibility decisions should be based on a liberal application of the benefit of the doubt.<sup>84</sup>

Two issues emerged in the research as being of particular importance for the children. First, that the relevant information on asylum law and procedures for separated, asylum-seeking children is not always drafted and communicated in a child-friendly way. Second, that the asylum determination procedures are often perceived as taking a very long time, and this has a negative impact on the children, who by their very nature particularly suffer the effects of the lack of certainty as to their life prospects for an extended period. Responses by both children and adults also indicate that Member States may lack adequately trained human resources to examine applications by separated children in a child-sensitive manner.

<sup>83</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.

<sup>84</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>. On the question of asylum and the ECHR, see Mole, N. and Meredith, C., Council of Europe (2010) *Asylum and the European Convention on Human Rights*, Human Rights Files No. 9, Strasbourg: Council of Europe.

The protection afforded by Article 22 of the CRC is enriched in the EU context: the Qualifications Directive requires in Article 9.2(f) that Member States have regard to child-specific forms of persecution, when assessing applications for international protection from minors. The Asylum Procedures Directive established some safeguards for separated children seeking asylum. As already discussed, Article 17 of the Asylum Procedures Directive stipulates that Member States should, as soon as possible, take measures to ensure that a representative represents and/or assists the child with respect to the examination of the application. Member States should further ensure that the representative is given the opportunity to inform the child about the meaning and possible consequences of the personal interview, and, where appropriate, about how to prepare himself/herself for it. The representative should be allowed to be present at that interview and to ask questions or make comments. Finally, interviews should be conducted by persons – and decisions on applications prepared by officials – who have the necessary knowledge of the special needs of children (Article 17.4).

A key issue for the protection of separated children is the possibility provided by Article 23.3 of the Asylum Procedures Directive for the prioritisation or acceleration of the application, where the application is likely to be well-founded or where the applicant has special needs. Another key issue for the protection of separated children is the provision of information on the asylum procedure. Article 10 of the Asylum Procedures Directive establishes that applicants for asylum shall be informed accordingly in a language they may reasonably be supposed to understand about the procedure and about their rights and obligations and the possible consequences of not co-operating with the authorities.

The Commission recast proposal of the Asylum Procedures Directive additionally requires Member States to ensure that the personal interview is conducted in a child-friendly manner.

In line with Article 6 (read in conjunction with Article 2(i)) of the Dublin II Council Regulation), Member States have to consider asylum applications lodged by unaccompanied minors, where one of the parents or the guardian is legally present in the state, under the condition that “this is in the best interest of the minor”. The article does not establish a duty of family tracing. It does establish, however, that in the absence of a family member the Member State responsible for examining the asylum application shall be that where the minor has lodged his or her application for asylum.

Some of the rules for the application of the Dublin II Council Regulation set in the 2003 Commission Regulation are particularly relevant for separated, asylum-seeking children. Reference has already been made when dealing with family tracing and reunification to the ‘humanitarian clause’ of Article 15 of the Dublin II Council Regulation, which allows for the transfer of cases between Member States based on family unity, situations of dependency (including on account of pregnancy, serious illness, severe disability or newborn nature) or cultural considerations, as well as the reuniting of

unaccompanied minors with relatives (other than parents) found in another Member State that can take care of them. Furthermore, as already highlighted, Article 12 of the Commission Regulation notes that the decision to entrust the care of an unaccompanied minor to a relative other than the mother or father, or legal guardian may cause particular difficulties, especially where the adult concerned resides outside the jurisdiction of the Member State in which the minor has applied for asylum. Accordingly, the regulation requires the facilitation of cooperation between Member States to allow their competent authorities to decide on the ability of the adult/s concerned to take charge of the child in a way that serves his/her best interests. For this purpose, the regulation encourages the use of available options in the field of cooperation on judicial and civil matters.

The Commission Regulation also references in its Article 11 certain situations of dependency which are established in the 'humanitarian clause' of the Dublin II Council Regulation. Article 11 sets out the following criteria for assessing the necessity and appropriateness of bringing together the persons concerned: (a) the family situation which existed in the country of origin; (b) the circumstances in which the persons concerned were separated; (c) the status of the various asylum procedures or procedures under the legislation on aliens in the Member States. In situations of dependency, another requirement of the directive relates to the assurance that an asylum-seeker or the relative concerned will actually provide the assistance needed.

Furthermore, the Commission Regulation establishes the criteria for determining in which Member State the relatives shall be reunited and when a transfer could take place; the criteria are based on the ability of the dependent person to travel, as well as on the situation of the persons concerned as regards residence. The regulation gives preference to bringing the asylum seeker together with his or her relative to the Member State where the latter is legally present.

## Research findings

In the interviews, the children were asked to describe their experiences with the asylum procedure and any problems they encountered. This included questions relating to the information they were provided with, the length of the procedure, the behaviour of officials towards them, in particular during interviews, the translation and interpretation provided and any other issues that concerned them. Adults were asked similar questions and in addition they were asked for their views regarding the asylum procedure and ways to improve it.

The asylum procedure is, according to both children and adult respondents informed of and engaged on it, the most important concern for the children, as its outcome strongly determines their future life. They were all eager to talk about their experiences.



*“The positive decision was like a second chance to live [...].”*  
(Girl, 17, Austria)

A problem of particular importance highlighted by both children and adults concerns the frequently long delays in the asylum determination procedure, which may result in applicants losing their right to have their asylum application treated as a child’s or the right to claim family reunification as a result of their reaching majority age.

### The provision of information

According to many adult respondents, when children arrive they have limited, possibly conflicting and often incorrect information about asylum procedures. This information may have been provided by other adults, relatives, other asylum-seeking children they met during their journey, or even smugglers, as children indicated in Austria, Malta, the Netherlands, and Spain. Therefore, a key issue for many adult respondents was not only the provision of correct information to the children, but also the building of a relationship of trust, as early as possible upon the children’s arrival so that the children actually start relying on official information. In this regard there was criticism by a number of adults and children of police practices of interviewing children immediately after arrival, in order to collect information on smugglers and smuggling routes.

In the interviews children said little about their informal information sources, but very often said, for example, in Austria, Belgium, Cyprus, France, Hungary, Malta, the Netherlands, Spain and the UK, that they could not understand the information provided. Children also complained that even their own legal representatives did not always explain the procedures to them adequately. Children in Italy and Sweden, however, considered themselves well informed.

*“A social worker explained to me the procedures when I arrived, but I did not understand.”* (Boy, 16, France)

*“No, it wasn’t clear for me, I thought when I applied that they will give me a place to live and money and work, but they didn’t give anything, I got assistance from Welfare after five to six months.”* (Boy, 16, Cyprus)

*“They gave me and my sister subsidiary protection, I don’t know what that means and if it is good or bad. Can we ask to bring our family or not? No one explain anything to us.”* (Boy, 17, Cyprus)

Children were also confused as to the implications of the different statuses and permits they received. For example, children in Spain referred to ‘papers’ as the single most important thing to them, but they could not explain what entitlements and duties such ‘papers’ (for example, residence and work permit) would give them.

*“I don't have papers, two years here and I still don't have papers, I don't think this is normal. I dream at night of having papers [...]”* (Boy, 17, Spain)

Adult respondents, mostly officials, for example in Austria, Sweden, Spain and the UK stressed that it is very difficult for children to fully understand the legal procedures and their respective implications, despite the fact that in some countries, such as in the UK, child-friendly information was available in several languages. Others, particularly NGOs and social workers in Austria, Belgium and the Netherlands, were critical of the type of information provided and the way it was communicated arguing that neither is particularly child friendly. In Austria, for example, they criticised the overly “bureaucratic” language used in leaflets.

*“Inadequate communication is producing frustration at both ends - the police and the children themselves.”* (NGO, Malta)

In Italy the children, as well as the social workers interviewed considered the information provided on the children’s rights and the asylum procedure as sufficient. This may be related to actions of the ‘Praesidium’ project, an initiative of the Italian Interior Ministry, which engages humanitarian and other organisations<sup>85</sup> to enhance Italy’s capacity in managing arrivals of mixed flows by sea to Italy. The project started in March 2006 providing assistance and information services, and since March 2009 is entirely funded by the Italian Ministry. Initially focused on the island of Lampedusa, the project was later extended to cover Sicily and other locations.<sup>86</sup> However, UNHCR points out that its future is uncertain, due to a substantial change in Italy’s policy vis-à-vis sea arrivals, introduced in early 2009, which contains a number of restrictive measures, such as the creation of a detention centre for those expelled from Lampedusa and the interdiction of migrants’ boats at the high seas and their return to Libya.<sup>87</sup>

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<sup>85</sup> The Italian Red Cross, UNHCR, Médecins Sans Frontières, IOM, Save the Children (since March 2008), and others. See UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, January 2007, Rev.1, pp. 75-76, available at: [www.unhcr.org/refworld/docid/45b0c09b2.html](http://www.unhcr.org/refworld/docid/45b0c09b2.html).

<sup>86</sup> See: [http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/notizie/immigrazione/00911\\_2010\\_04\\_01\\_Praesidium\\_V.html?back=%2Ftools%2Fsearch%2Findex.html%3Faction%3Dsearch%26matchesPerPage%3D10%26displayPages%3D10%26index%3DProgetto+Online%26sort%3D%26category%3D%26searchRoots%3D%252Fit%252F%26text%3Dpraesidium%26start%3D%26end%3D%26type%3Dgeneric](http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/00911_2010_04_01_Praesidium_V.html?back=%2Ftools%2Fsearch%2Findex.html%3Faction%3Dsearch%26matchesPerPage%3D10%26displayPages%3D10%26index%3DProgetto+Online%26sort%3D%26category%3D%26searchRoots%3D%252Fit%252F%26text%3Dpraesidium%26start%3D%26end%3D%26type%3Dgeneric).

<sup>87</sup> UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev.1, p. 76, available at: <http://www.unhcr.org/refworld/docid/45b0c09b2.htm>.

### **Kizito Comic**

The *Kizito comic* is a comic book developed to help children understand the asylum procedure. It was first published in February 2008 with the support of the Belgium Office of the Commissioner-General for Refugees and Stateless Persons (*Commissariat Général aux Réfugiés et aux Apatrides*).

Kizito represents a separated child arriving in Belgium and seeking asylum. The story looks at the different steps of the asylum procedure and life in Belgium and uses images more than words so that children who do not speak the language can understand it.

The European Refugee Fund has subsidised the production of Kizito and 5,000 copies were printed in French, Dutch and English and distributed to separated children seeking asylum and social workers.

For more information, see: [www.presscenter.org/archive/other/17fd46b36c35f0d3d8585131cb9ddcaf/?lang=fr](http://www.presscenter.org/archive/other/17fd46b36c35f0d3d8585131cb9ddcaf/?lang=fr).

### **The Praesidium project**

The Italian Ministry of Interior initiated this project with co-funding of the European Commission Action Programme for administrative cooperation in the fields of asylum, visas, immigration and external borders (ARGO). The Praesidium project was jointly implemented by the UNHCR, IOM, the Italian Red Cross and Save the Children (Italy).

It began in March 2006 to contribute to the development of a protection-sensitive reception system for asylum seekers and others arriving by sea in southern Italy. The project allowed the provision of information to those who arrived, and the identification of channels for their reception and access to appropriate legal and administrative procedures.

For more information, see: [www.unhcr.org/4ac35c600.pdf](http://www.unhcr.org/4ac35c600.pdf).

## **Asylum determination interviews**

Most children consistently complained about response time in decision making saying that it took too long for a 'final' decision<sup>88</sup>. Only a very small number of children said that decisions had been made within a satisfactory

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<sup>88</sup> The asylum process is a complex procedure involving several stages. In most cases a decision to remain in the country under care as a minor is taken relatively quickly, but the decision to grant refugee or subsidiary protection status, which provides a person with important rights, such as family reunification may last much longer, in some cases even after the child reaches majority and thus loses a number of these rights.

time period. In some cases they even indicated that they would prefer the process to end quicker no matter the outcome.

Delays in the asylum determination procedure may have serious consequences for asylum applicants reaching majority age, who may lose their right to have their application treated as a child's or the right to claim family reunification.

Similarly, adults agreed on the fact that the process can take weeks, months or, in some cases, even years. For example in Austria, some NGOs sharply criticised the lengthy process, although officials claimed that the large number of applications combined with limited human resources created serious backlogs.

In addition, in many countries officials interviewed were critical of the time it takes to share information within the EU under the Dublin II Regulation.

Children and adults also pointed out that long waiting periods, especially if children are not engaged in other activities, such as education, and/or work, can be harmful for their development. In many cases children complained that stress and frustration caused by the asylum process affected their state of mind and impacted on their ability to concentrate on their education.

There was no consistency in the views regarding the asylum interview setting. While in the UK, Netherlands, Poland and Sweden most children and adults were generally satisfied, in other countries they criticised both the interview settings and its content.

*"I received very good treatment from the Home Office. I've seen my solicitor about 4 or 5 times and am happy with my solicitor and understand that they are there to help me. I felt very well informed. They always gave me a face-to-face interpreter but if not available (and when I just turned up without appointment) they used Language Line."* (Boy, 15, UK)

*"I had two interviews so far. During my last interview, I had a male interpreter and asked for a female one, so interview cancelled and another interview after a week."* (Girl, 17, Austria)

*"They do not care about our problems they just wait until we make a mistake in the interview."* (Boy, 17, Austria)

However, many children complained of the limited time they had to discuss their case with their lawyers, guardians or legal representatives and few seemed to understand the role of the different persons at the interview.

The interview process itself was invariably an unpleasant experience for children, who often complained, especially in Austria and Belgium, that it was a long and detailed "interrogation" with the same questions asked repeatedly.

*"I was very nervous, the night before the interview. I couldn't sleep. I didn't know anyone there. They asked hundreds of*

*questions. In my whole life, no one ever asked me so many questions.” (Girl, 16, Netherlands)*

*“The procedure is very bureaucratic; it is like being on trial.” (Social worker, Austria)*

Children in the Netherlands and Austria expressed the wish to have a person they trust attend their interviews, which they said is not always the case.

*“The interview was very bad. My sister was with us, and the officer in immigration at the interview called her ‘stupid’.” (Boy, 17, Cyprus)*

The suitability and training of officials carrying out interviews was questioned, for example in Austria, Belgium, Italy and the UK, by adult respondents who suggested that interviews should only be carried out after special training in interviewing children.

*“The policeman said: my child is 15 and understands everything. Then he said: you are 15 and do not understand anything at all. How is that possible?” (Girl, 15, Austria)*

*“My first interview was horrible [...] the judge woman shouted at me, I was 13 then, it was so scary [...] the other interviews were ok.” (Boy, 16, Austria)*

In Poland adults praised the past practice of psychologists conducting asylum interviews in an environment familiar to the child, while officials observed through one-way mirrors, and a child in Poland confirmed that having his interview in his accommodation centre made him feel safe and more comfortable. In Poland adults also proposed that interviews should be carried out by child psychologists and observed by officials.

Practically all children said that an interpreter was present at their interviews, when necessary, but about half the children interviewed in all countries claimed that interpretation was inadequate. Both children and adult respondents mentioned instances when the quality of the interpretation was not good, particularly when the interpreter spoke a different dialect. However, in some cases, children also expressed doubts about the impartiality of the interpreters, especially when these were asylum-seekers themselves.

*“In our first interview in Thalheim, we wanted a Kurdish interpreter and they brought an Iraqi, but we could not understand him, so we spoke in Arabic, but my brother does not understand Arabic, so we felt very insecure, but otherwise it was ok.” (Boy, 16, Austria)*

In Malta, Spain, Cyprus and Belgium adults said that the cultural background of children was not always taken into consideration either in selecting questions or in assessing responses. Furthermore, both children and adults, in Hungary, Sweden, the Netherlands and Spain complained

that they were asked questions designed to “catch them out”, for example about street names, which do not exist in Afghan villages, or details about the history of a country that uneducated children may not be aware of. In addition, some questions were very detailed, for example “what was the colour of the border guard’s shirt” and children who knew that the same question may be repeated in a follow-up interview to check the consistency of their replies feared that they may not be able to remember the exact answer they had given.

*“The immigration procedure is not bad. But they asked silly questions. The lady asked the same questions twice [...]. She behaved like military. She was unkind. I was asked to remember name of places and streets in my hometown. I felt if they wouldn’t believe me. She said: tell me this and this. What is the name of this street? It was horrible.”* (Boy, 17, Hungary)

In some cases, adults were very critical of questions that they considered as entirely inappropriate for these children’s emotional state; for example, when children were asked to describe mistreatment or their parents’ death.

*“The police shouted at me ‘why don’t you speak to us’ [...] to tell them how my father was murdered [she cries] [...].”* (Girl, 15, Austria)

*“I’d like to forget some things from the past but officials from the asylum agency asked me a thousand times [...].”* (Boy, 16, France)

The “final decision” is a very emotional issue for the children and according to several adult respondents a negative response is experienced as a real trauma. Many children said that they do not understand why asylum was granted to one applicant and not to another, and many believed that the decisions are subjective and arbitrary.

*“What did the others do that I didn’t?”* (Boy, 17, Sweden)

*“Even if you don’t do anything wrong, you are not sure to get resident permit.”* (Boy, 17, France)

Also, as both children and adults indicated, a negative decision is often interpreted as a “personal failure”, and this may have a very negative emotional effect on a child, especially if his/her family expects the child’s financial support, and/or has become heavily indebted to pay for the child’s journey.

*“Imagine if I return to Morocco with my friends, they have papers and I am the only one who does not. What a disgrace!”*  
(Boy, 17, Spain)

### **Panel of Advisers to Unaccompanied Children**

The Panel of Advisers to Unaccompanied Children of the UK NGO Refugee Council is supporting unaccompanied minors and young adults through the asylum process. The Panel was established in 1994 and is funded by the UK Home Office. It consists of 25 fully supported advisers, many of whom speak the languages of the children they are working with.

The Home Office refers children to the Panel within 24 hours after filing the asylum application. The advisers facilitate separated children's access to legal representation, accompany them to asylum interviews and hearings in the asylum and court procedures and assist children when going to the doctor, to social services or other services.

The Panel also cares for young adults under the age of 21, who are caring for their younger brothers or sisters in the absence of a parent. In order to promote friendship among the children and meetings with peers and supervisors, the Panel organises a social evening every week in London.

For more information, see: [www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk).

## Considerations

Any legal procedures, including interviews, concerning separated, asylum-seeking children should be conducted by officials with the necessary expertise in dealing with children's specific needs. Legal representatives and officials should have expertise in migration, asylum and anti-trafficking law and have a good understanding of child-specific forms of persecution and exploitation. They should be well informed of instruments for victim protection and support, and specially trained in dealing with separated children in a gender and culture sensitive manner.

The children should be adequately informed in a language they understand and in a child-friendly way about legal procedures and their possible consequences. They should be granted free legal aid, as expeditiously as possible.

Asylum interviews should be conducted giving primary consideration to the best interests of the child, in a child-friendly manner and in a non-intimidating environment. Children should be allowed to be accompanied by persons they trust. Particular care should be taken in questioning, making all efforts to avoid the risk of re-traumatising the child, and ensuring that the questions are suitable for the child's circumstances and respectful of his/her culture and religion.

Every effort should be made to ensure that asylum applications by separated children or other legal procedures, especially those determining their legal status, are given the highest priority and speedily processed. The children should receive adequate and clear explanation of any decisions affecting them, including an explanation of the underlying reasons.

## 2.5. Detention

### United Nations Convention on the Rights of the Child

#### Article 37

States Parties shall ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Concerning the detention of children, Article 37 of the CRC sets very strict requirements. These have further been clarified by the UN Committee on the Rights of the Child which in its General Comment No. 6 has stated that: "Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof".<sup>89</sup> The Committee also requires that all efforts, including acceleration of relevant processes, be made to allow for the immediate release of separated children from detention, and their placement in other forms of appropriate accommodation.<sup>90</sup> UNHCR has also taken a clear position against the detention of unaccompanied children seeking asylum.<sup>91</sup>

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<sup>89</sup> UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6 at 61. The UN Working Group on Arbitrary Detention has taken a similar approach, when indicating that "[...] given the availability of alternatives to detention, it is difficult to conceive of a situation in which the detention of an unaccompanied minor would comply with the requirements stipulated in article 37 (b), clause 2, of the Convention on the Rights of the Child." See A/HRC/13/30 at paragraph 60.

<sup>90</sup> General Comment No. 6.

<sup>91</sup> UNHCR, *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, available at: <http://www.unhcr.org/refworld/docid/3c2b3f844.html>.



Similarly, the Council of Europe Commissioner for Human Rights in his recent 'positions on the rights of minor migrants in an irregular situation' has stated that "as a principle, migrant children should not be subjected to detention. Any detention of children must be closely monitored and authorities need to ensure the utmost transparency with respect to such detention, keeping statistics that provide a detailed picture of the extent of their detention".<sup>92</sup>

In its judgement on the Case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, the European Court of Human Rights (ECtHR) found the detention in a closed centre for adults of a Congolese 5 year old separated, asylum-seeking girl to be unlawful.<sup>93</sup> The ECtHR ruled that in the absence of any risk of the child "seeking to evade the supervision of the Belgian authorities, her detention in a closed centre for adults was unnecessary". The Court also noted that "other measures could have been taken that would have been more conducive to the higher interest of the child guaranteed by Article 3 of the Convention on the Rights of the Child. These included her placement in a specialised centre or with foster parents. Indeed, these alternatives had in fact been proposed by the second applicant's counsel".<sup>94</sup> Hence, the ECtHR attached importance to the type of facility in which the child was placed and whether it could cater for her specific needs.

Having observed the impact that deprivation of liberty can have on a child's development, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment took a stricter approach in its 19th General Report issued in 2009. The Committee considers that deprivation of liberty of an irregular migrant who is a minor is "rarely justified and, in the Committee's view, can certainly not be motivated solely by the absence of residence status."<sup>95</sup> The Committee recommends that when a child is exceptionally detained, all efforts should be made to allow immediate release, and additional safeguards should be put in place to cater for the specific needs of children. The UN Working Group on Arbitrary Detention has also stressed that additional justification beyond the mere status as irregular migrant is required when resorting to the detention of minors.<sup>96</sup>

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<sup>92</sup> Position adopted on 25 June 2010. See further on: <https://wcd.coe.int/ViewDoc.jsp?id=1654377>. Following the Commissioner's visit to the Netherlands in 2008 visit to the Netherlands, the Commissioner welcomed "the measures taken to reduce the number of children in administrative detention, but regrets that there are still many detained unaccompanied minors and urges the authorities to find alternative solutions". More information available at: [www.schipholwakes.nl/REPORT%20BY%20THE%20COMMISSIONER%20FOR%20HUMAN%20RIGHTS%20MR%20THOMAS%20HAMMARBERG.%20ON%20HIS%20VISIT%20TO%20THE%20NETHERLANDS.pdf](http://www.schipholwakes.nl/REPORT%20BY%20THE%20COMMISSIONER%20FOR%20HUMAN%20RIGHTS%20MR%20THOMAS%20HAMMARBERG.%20ON%20HIS%20VISIT%20TO%20THE%20NETHERLANDS.pdf).

<sup>93</sup> Judgement of 12 October 2006, Application No. 13178/03.

<sup>94</sup> See paragraph 83 of the judgement.

<sup>95</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2009) *20 years of combating torture*, 19th general report of 1 August 2008, paragraph 97.

<sup>96</sup> See A/HRC/13/30 at paragraph 60.

The deprivation of liberty is being used as a measure to protect children from harm in accordance with the principle of the child's best interests. However, the Council of Europe Commissioner for Human Rights, in the aforementioned positions, has noted that a number of measures could be taken to strengthen the protection of separated and unaccompanied minors "without resorting to the deprivation of liberty, simply by ensuring a sufficiently strict control by custodial institutions of the movement of the minors in their care. According to the Council of Europe Commissioner for Human Rights, children living in these institutions should be adequately informed about the serious risks of being lured into prostitution or other abuse by trafficking networks. Where there are instances of disappearances of separated children, these should be immediately reported to the police so that they may take appropriate action".<sup>97</sup>

In light of the provision on non-penalisation for irregular entry enshrined in Article 31 of the 1951 Geneva Convention relating to the Status of Refugees,<sup>98</sup> asylum seekers should normally not be detained. European Union law contains a duty not to detain a person for the sole reason that he/she is an applicant for asylum.<sup>99</sup>

The Reception Conditions Directive (Article 7) does not explicitly prohibit the deprivation of liberty of separated, asylum-seeking children. Although the directive does not establish specific procedural guarantees to protect children, it requires that where an applicant for asylum is held in detention, Member States ensure the possibility of a speedy judicial review. Article 17 of the Return Directive requires in regard to the detention of minors and families that children are detained only used as a measure of last resort and "for the shortest appropriate period of time". It also requires that children in detention have the possibility to engage in leisure activities appropriate to their age and, depending on length of stay, access to education. In addition, the directive stipulates that unaccompanied minors under a return procedure should, as far as possible, be provided with accommodation in institutions with personnel who can take their needs into account and accordingly equipped facilities. Although the Directive requires that the best interests of the child be a primary consideration in the detention of minors pending removal, it does not regulate how the child's best interests will be assessed. The detention of separated children pending their return has been addressed in detail in the FRA 2010 report on detention of third-country nationals in return proceedings, as well as in the Agency's 2009 report on child trafficking.<sup>100</sup>

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<sup>97</sup> See „positions on the rights of minor migrants in an irregular situation“ adopted on 25 June 2010, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1654377>.

<sup>98</sup> UN Treaty Series, No. 2545, Vol. 189, p. 137. The Convention has been ratified by all European Union Member States.

<sup>99</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards of procedures in Member States for granting and withdrawing refugee status.

<sup>100</sup> FRA (2009) *Child Trafficking in the European Union: Challenges, perspectives and good practices*, Luxembourg: Publications Office, pp. 92-95.

It should also be noted that the prohibition of the detention of unaccompanied minors is envisaged in both the Reception Conditions Directive Recast (proposing a specific provision according to which “unaccompanied minors shall never be detained”)<sup>101</sup> and the Dublin II Council Regulation Recast.<sup>102</sup>

The recent European Commission Action Plan on Unaccompanied Minors (2010-2014)<sup>103</sup> envisages that where detention is exceptionally justified, it is to be used as a measure of last resort only for the shortest appropriate period of time. The best interests of the child are to be taken into account as a primary consideration.

In 2007, a study on the conditions in centres for third-country nationals, conducted by the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs found that “[...] some countries detain unaccompanied minors. This takes place either when the legislation of these States authorises the detention of unaccompanied minors aged over 15 or 16 years, or in violation of the legal measures in place. In some countries, the detention of unaccompanied minors was found to be a particular cause for concern (e.g. Greece, Cyprus).”<sup>104</sup>

In 2010, the Jesuit Refugee Service-Europe published a report based on almost 700 interviews with persons in immigration detention, including 28 children.<sup>105</sup> The report notes that “[...] among the children interviewed some were detained with the general population, while others were kept in specialised facilities”. The study found that these children are physically vulnerable to injury from abusive staff and psychologically vulnerable “[...] to mental injury not only from staff, but also to the conditions and environment of detention and all of the negative factors that are entailed.” Many of these children reported that they could not communicate with staff, because they did not speak their language. Most of these children reported to be uninformed about the asylum procedure and only a quarter of them had met a lawyer.

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<sup>101</sup> European Commission, *Proposal for a Directive of the European Parliament and the Council laying down minimum standards for the reception of asylum seekers* (Recast), COM(2008)815 final - COD 2008/0244, Brussels, 3 December 2008. See proposed new Article 11, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0815:FIN:EN:PDF>.

<sup>102</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person* (Recast), COM/2008/820 final/2 - COD 2008/0243, Brussels, 19 January 2008, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0820:FIN:EN:HTML>.

<sup>103</sup> European Commission, *Communication by the Commission to the European Council and the Parliament, Action Plan on Unaccompanied Minors (2010 – 2014)*, COM(2010)213 final, Brussels, 6 May 2010, p.9, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>.

<sup>104</sup> Available at: [www.libertysecurity.org/IMG/pdf\\_eu-ep-detention-centres-report.pdf](http://www.libertysecurity.org/IMG/pdf_eu-ep-detention-centres-report.pdf).

<sup>105</sup> Jesuit Refugee Service Europe (2010) *Becoming Vulnerable in Detention: Analyzing the Impact of Detention on the Individual*, available at: [www.policyinnovations.org/ideas/policy\\_library/data/01584/res/id=sa\\_File1/JRS-Europe\\_BecomingVulnerableInDetention.pdf](http://www.policyinnovations.org/ideas/policy_library/data/01584/res/id=sa_File1/JRS-Europe_BecomingVulnerableInDetention.pdf).

In December 2009, the Royal Colleges of Paediatrics and Child Health, General Practitioners and Psychiatrists and the UK Faculty of Public Health published an intercollegiate briefing paper<sup>106</sup> on the effects of administrative detention on the health of children, young people and their families. The paper considers that the administrative immigration detention of children, young people and their families is harmful and unacceptable, and calls on government to address this issue as a matter of priority and stop detaining children without delay.

## Research findings

In the interviews children were asked whether they had been detained in their host country or in another EU Member State and why. If they had been detained they were asked to describe their experiences and conditions of detention. Adults were asked if, to their knowledge, separated, asylum-seeking children were detained in the country, for what reason, under what safeguards and specifically in what conditions.

Five children were interviewed during their time of detention, in the Netherlands.<sup>107</sup> Children interviewed in Malta said that they had been detained prior to their age assessment, while children in other countries spoke of their experiences of detention in other EU Member States such as Greece, and in third countries.

Although the interviewers explained ‘detention’<sup>108</sup> to children in simple terms, often the children considered situations where their movement was restricted to protect them from harm as ‘being in detention’;<sup>109</sup> for example, when they were placed in closed accommodation centres where they had to abide by a curfew or particular rules regarding visitors. Children under ‘protected reception’ in the Netherlands also considered themselves ‘in

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<sup>106</sup> Royal College of General Practitioners, Royal College of Paediatrics and Child Health, Royal College of Psychiatrists and the UK Faculty of Public Health (2009), Intercollegiate Briefing Paper, p. 4, available at: [http://www.rcpch.ac.uk/doc.aspx?id\\_Resource=5829](http://www.rcpch.ac.uk/doc.aspx?id_Resource=5829).

<sup>107</sup> The Committee on the Rights of the Child in its Concluding Observations on the report submitted by the Netherlands (CRC/C/NLD/CO/3, 27 March 2009) notes: “67. While noting with appreciation the high number of asylum-seekers accepted in the Netherlands, 27 March 2009) is concerned about the practice of detention of unaccompanied children [...].68. The Committee recommends that the State party further reduce the use of aliens’ detention for unaccompanied children [...]”. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/413/14/PDF/G0941314.pdf?OpenElement>.

<sup>108</sup> Detention is the condition of “any person deprived of personal liberty except as a result of conviction for an offence”, UN GA Resolution A/RES/43/173 at the 76th plenary meeting, 9 December 1988, 43/173 on „Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment”, available at: [www.un.org/documents/ga/res/43/a43r173.htm](http://www.un.org/documents/ga/res/43/a43r173.htm).

<sup>109</sup> Detention needs to be distinguished from restriction on the right to freedom of movement, although the difference is essentially one of degree or intensity and not one of nature or substance, as the ECtHR has clarified. See ECtHR, *Guzzardi v. Italy*, No. 7367/76, 6 November 1980, paragraph 93. See also FRA (2010) *Detention of third-country nationals in return procedures*.

detention', even though this may not constitute 'detention' under the domestic law.

The children often said that they could not understand why they were subject to various restrictions or detained, since they had not committed any crime. Some children were also confused when asked if they had ever been detained, immediately denying it and explaining that they are honest and law-abiding.

*"No, never, why should I, I'm not a criminal!"* (Boy, Austria)

In the Netherlands, according to the EMN report,<sup>110</sup> "The placement of an unaccompanied minor in detention is only used as a measure of last resort and for the shortest appropriate period of time. [...] Unaccompanied minors who are placed in detention are, in principle, placed in a correctional institution for young offenders". The report points out that following criticism, the measure of detention for separated children and possible alternatives are being assessed.

The responses of the five boys who were interviewed while in detention in the Netherlands, as well as the responses of other children who had been previously detained in other countries, provide a snapshot of their experiences and feelings.

*"It was even worse than living under Saddam. I was there for two months and they kept talking about my return. I didn't get any other kind of attention. They shouted at me when they didn't understand me."* (Boy, 16, Netherlands)

None of the children felt well about being or having been in detention and their responses on practically all aspects of their life were negative, although some appreciated the support provided by many teachers and 'mentors' (*begeleiders* in the Netherlands), as well as other detained youngsters.

*"That is because we are illegal. You don't learn Dutch at school and there are no computer lessons."* (Boy, 17, Netherlands)

*'Dutch detained children helped me. School during detention was nice and good.'* (Boy, 16, Netherlands)

Four boys were very critical about the support provided by their guardian and two complained that when they need a doctor it takes several days before they see him, while another three said that the doctor "only prescribes aspirin".

A 16 year old boy, when he learned that he would be interviewed, prepared a list of complaints that he handed out to the interviewer:

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<sup>110</sup> Immigration and Naturalisation Service (IND), EMN Dutch National Contact Point (2010) *Unaccompanied minors in the Netherlands*, available at: <http://emn.sarenet.es/Downloads/download.do?jsessionid=BBDDDC934916CA7335A931F5E44D983C?fileID=932>.

*“Bad things in the detention facility: The rules are not clear. What our duties are and what we are allowed to do, is not written down so we never know when we will be punished or not; Our letters are opened before we get them. Is this allowed? My ‘mentor’ locked me in once and laughed at me. There is no respect for us. There should be an Imam on Fridays, but he only comes once every three weeks. We don’t get enough money. Some ‘mentors’ take away your mattress and when their boss comes, they quickly give it back. There are not enough activities to do so we can forget our problems. The showers are too hot and we can’t take long showers. Sometimes you have a lot of problems so you can’t sleep. In the morning, you are not allowed to stay in bed a little longer. No programme for going outside.” (Boy, 16, Netherlands)*

Most adults interviewed in the Netherlands were also critical of the policy of detaining asylum-seeking children, some questioning the quality of care that can be provided for them in such institutions.

In the UK, most children had no experience of detention, but one adult recounted his experience with other children who had been detained.

*“[...] Children were incredibly traumatised after 2 days in detention, they were banging their heads off the wall in our office – one was given ILR [indefinite leave to remain].” (Legal advisor, UK)*

In Malta, all children interviewed had spent a period in detention ranging from one to six months and described their experience in very negative terms. They highlighted such issues as the lack of freedom, the overcrowded conditions, the boredom and idle time that made them just “eat and sleep like an animal”. Some had serious difficulties coping with the physical and verbal aggression they witnessed and experienced: “too many fights, shouting, bad talk, TV on all day on maximum volume [...]”. In a closed and overcrowded environment the mixture of adult and young asylum seekers from different cultural backgrounds and speaking different languages made for an explosive mix. Children also complained of being bullied by adults describing their situation as a case of “survival of the fittest”. A child, for example, described to the interviewer how phone cards he was given to contact his family were snatched away by adult detainees. All children were greatly relieved when they were removed to the open accommodation centres.

Adult respondents in Malta were concerned with the detention of children waiting for age assessment. They highlighted the bottleneck created by, on the one hand, the large number of asylum-seekers claiming to be minors to get more favourable treatment, and on the other hand, those children, who were initially claiming to be adults in order to avoid being separated from friends or relatives, and who were subsequently declaring their childhood.

*“We oppose detention in principle, and we are especially concerned that all asylum seekers, regardless of individual circumstances, are taken in detention; irrespective of processing times, vulnerable people should not be in detention.” (Official, Malta)*

In other countries, children said that they had been detained for different reasons in the past. For example, in Cyprus, Hungary and Poland, this had been due to irregular entry and/or false documents. In Italy and the UK, detention had occurred after arrival, mainly due to shoplifting offences. Children who had committed a minor crime in Spain were placed under the responsibility of special centres. In France, police detained children for identity checks, when they looked over 18 years of age and carried no identification.

### Considerations

Separated, asylum-seeking children should never be detained for reasons relating to their residence status, or their lack of it, or the conditions of their entry into an EU Member State. Detention should be applied only where this is in the child’s best interests, and with similar conditions and safeguards as for children having the citizenship of the state.

In Member States where detention is used for the purpose of removal, there is a need to respect scrupulously all safeguards provided for in Article 17 of the Return Directive, that is, to: apply detention only as a measure of last resort and for the shortest appropriate period of time; provide accommodation in institutions provided with personnel and facilities that take into account the needs of children; offer the children the possibility to engage in leisure activities, including play and recreational activities; and provide the children with access to education.

### 3. Maltreatment and abuse

#### **United Nations Convention on the Rights of the Child**

##### **Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

##### **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

##### **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

Discrimination, maltreatment and abuse are treated in detail under the CRC. EU asylum legislation only contains general references to respect for fundamental rights and observance of the EU Charter of Fundamental Rights, as well as to Member States' obligations under instruments of international law. The analysis of instances of maltreatment and abuse, and their legal treatment under international instruments is a complex issue, for which the present research was not specifically designed. Hence, this section only contains limited references to these issues as they emerged in the course of the research.

The EU Charter of Fundamental Rights provides general protection against various forms of maltreatment through different articles. For example, Article 3 calls for respect for a person's physical and mental integrity; Article 4 prohibits torture and inhuman or degrading treatment or punishment; and, Article 21 prohibits any discrimination on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

More specific regulation in this area can be found in a variety of international legal instruments, for example, the European Convention on



Human Rights,<sup>111</sup> the International Covenant on Civil and Political Rights;<sup>112</sup> the ILO Worst Forms of Child Labour Convention,<sup>113</sup> the United Nations Convention against Transnational Organised Crime,<sup>114</sup> the Council of Europe Convention on Action against Trafficking in Human Beings,<sup>115</sup> the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse,<sup>116</sup> the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,<sup>117</sup> and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>118</sup> An analysis of relevant legal provisions, as well as of judicial or quasi-judicial decisions emerging from their supervisory or monitoring bodies, is beyond the scope of this report. Nonetheless, it is important to note that interesting developments at EU level are likely to result from the European Council's call, under the Stockholm Programme, to the Council and the European Parliament for new legislation combating sexual abuse, sexual exploitation of children and child pornography.<sup>119</sup> The European Council has also requested that the Commission explores the creation of an

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- <sup>111</sup> Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005), as amended by Protocols No. 11 and No. 14 (Rome, 4.XI.1950). Also of relevance are Protocol No. 6 concerning the Restriction of the Death Penalty (CETS No. 114), Protocol No. 7 concerning crime and family (CETS No. 117), Protocol No. 12 concerning discrimination (CETS No. 177), Protocol No. 13 concerning the abolition of the death penalty in all circumstances (CETS No. 187). All available at: <http://conventions.coe.int/Treaty/Commun/ListeTraités.asp?MA=999&TI=human+rights&LO=999&AO=&AV=&CM=2&CL=ENG>.
- <sup>112</sup> International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI) of 16 December 1966. Optional Protocols: the First Optional Protocol concerning individual complaints, General Assembly resolution 2200A (XXI) of 16 December 1966; and the Second Optional Protocol concerning the abolition of the death penalty, General Assembly resolution 44/128 of 15 December 1989. All available at: [www2.ohchr.org/english/bodies/hrc/index.htm](http://www2.ohchr.org/english/bodies/hrc/index.htm).
- <sup>113</sup> Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour. Adopted by the conference at its eighty-seventh session, Geneva, 17 June 1999. Available at: [www.ilo.org/public/english/standards/reim/ilc/ilc87/com-chic.htm](http://www.ilo.org/public/english/standards/reim/ilc/ilc87/com-chic.htm). Also of relevance is the Worst Forms of Child Labour Recommendation No. 190, available at: [www.ilo.org/ilolex/cgi-lex/convde.pl?R190](http://www.ilo.org/ilolex/cgi-lex/convde.pl?R190).
- <sup>114</sup> UN Convention against Transnational Organized Crime and the so-called Palermo Protocols (A/RES/55/25) of 15 November 2000, available at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.
- <sup>115</sup> Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), Warsaw, 16 May 2005, available at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>.
- <sup>116</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), Lanzarote, 25 October 2007, available at: <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm>.
- <sup>117</sup> European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, (ETS No: 126), Strasbourg, 26.XI.1987, as amended according to the provisions of Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) which entered into force on 1 March 2002, CPT/Inf/C (2002)1. Available at: <http://www.cpt.coe.int/en/documents/ecpt.htm>.
- <sup>118</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (A/RES/39/46), which entered into force on 26 June 1987. Available at: [www2.ohchr.org/english/law/cat.htm](http://www2.ohchr.org/english/law/cat.htm). Optional Protocol (A/RES/57/199), which entered into force on 22 June 2006. Available at: [www2.ohchr.org/english/law/cat-one.htm](http://www2.ohchr.org/english/law/cat-one.htm).
- <sup>119</sup> See the Commission's Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, Brussels, 29.3.2010, COM(2010)94 final, 2010/0064 (COD).

EU-wide child abduction network in order to promote cooperation between Member States, with a view to ensuring interoperability.<sup>120</sup>

In addressing the question of trafficking in human beings, the European Council has requested the European Commission to propose measures to make border checks more efficient in order to prevent, in particular, the trafficking of children.<sup>121</sup> In the Action Plan on Unaccompanied Minors, the European Commission has also requested that wherever unaccompanied minors are detected, they be separated from adults, to protect them and sever relations with traffickers or smugglers and prevent (re)victimisation.<sup>122</sup>

## Research findings

The research was not designed to examine particularly sensitive issues, such as maltreatment and abuse. Children were therefore only asked in general terms if they had ever been treated badly in their host country and, if so, how they were supported. Adults were asked if they knew of incidents of mistreatment or abuse of separated, asylum-seeking children.

Few children, or adults, spoke about this issue. Those children who did often spoke about maltreatment in a broad sense, and referred to ‘not being taken seriously’ or being considered ‘liars’ for example in this context. Others children referred to undue pressure during interviews (see previous section on asylum procedures), with officials sometimes shouting as a form of verbal abuse. Although instances of physical maltreatment or abuse were rarely mentioned, some children, mainly in Austria, referred to maltreatment and abuse in third countries, as well as in one Member State, Greece, in line with findings of several recent reports on this issue<sup>123</sup>.

*“I was in detention in Greece and only got bread and water after they told me to leave.” (Boy, 15, Austria)*

*“In Greece the police arrested me, handcuffs, then detention in Samos 11 days, not enough food, no hygiene. Next they gave us papers: ‘go wherever you want’, we asked: ‘where? We want asylum’ and they said ‘get out of the country’. Greece is the worst place in Europe, I shiver when I think about it.” (Girl, 17, Austria)*

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<sup>120</sup> Page 22 of the Programme.

<sup>121</sup> See also the European Commission Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA, Brussels, 29.3.2010, COM(2010)95 final, 2010/0065.

<sup>122</sup> See p. 9 of the Action Plan.

<sup>123</sup> For example, UNHCR (2009) *Observations on Greece as a country of asylum*, available at: <http://www.unhcr.org/refworld/pdfid/4b4b3fc82.pdf>, and Human Rights Watch Report, *Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, available at: <http://www.amnesty.org/en/library/asset/EUR25/002/2010/en/07291fb2-dcb8-4393-9f13-2d2487368310/eur250022010en.pdf>.

*“Before coming to Austria, I spent 10 or 11 months in Greece, slept in parks and was sometimes beaten by the police.” (Boy, 16, Austria)*

*“In Greece I was in prison for 10 days. No sun, no information, no lawyer, no telephone, food ok, big cell, but 70 people in it.” (Boy, 15, Austria)*

Some adults, for example in Belgium, Hungary and the Netherlands, and some children spoke of violent incidents among children in accommodation centres and stressed that persons responsible for the children care must always be vigilant.

*“The Turkish guy came with a knife and was drunk, and it happened that I was near there, the Turkish guy injured me in my hands.” (Boy, 17, Cyprus)*

In France, some children mentioned insults from social workers, the police or other people when they were living on the streets. Adults were also concerned about children living without protection on the streets and some expressed concern over the treatment of children in the ‘waiting zone’ before their placement. In the Netherlands, four boys who had been detained complained that the guards would sometimes shout at them.

In Cyprus, children expressly complained of actual maltreatment by the police. Concerns were also raised by some adults.

*“They were very cruel with me, the last time in the detention the policeman told me ‘if you won’t give me your papers, I will put you in a room where there are no cameras, and I will beat you till you talk’, he said that I’m liar and slapped me, I told him why you are slapping me I didn’t do anything wrong, he slapped me again and said ‘don’t ask me why I slap you’[...]. I don’t know how I went out from there alive, it was horrible, they told me that I have the right for a lawyer, I told them why, I didn’t kill anyone why I will need a lawyer [...] I’m afraid now from the police, afraid that they might stop me and ask me for papers, I still don’t have any [...]. I don’t go out from the house now [...].” (Boy, 17, Cyprus)*

*“The police, they assault. You are just Somali, they say. They took my things, I never see them. They make fun of headscarf, saying why you wear, why not take it off and be free. I was not safe, they were shouting at us [...]. Now, if we walk, I am afraid of the police [...].” (Girl, Cyprus)*

When asked about help and support in case of maltreatment or abuse, most children said that they would turn to a social worker. However, they could not say how they are encouraged or empowered to report incidents of mistreatment or what they would do, if a social worker would mistreat them. In Austria one boy said that after he complained about a social worker who hit him, the social worker was investigated and subsequently dismissed.

Most adults were satisfied that the existing complaint and support structures for abused children would protect these children adequately. However, some were more sceptical: for instance, one adult respondent in the UK said that children might refrain from reporting abuse fearing a negative impact on their asylum procedure. Legal advisers interviewed in Austria argued that, although under the Austrian Code of Criminal Procedure officials are obliged to report any incident of abuse, it would be practically impossible to initiate a criminal procedure. They cited one case of alleged abuse where the child reporting abuse was consequently accused of defamation.

Notwithstanding the fact that most separated children felt 'accepted' in the receiving country, some children in Austria, Belgium, Cyprus, Hungary, Italy, the Netherlands, Spain and Sweden reported experiences of discrimination and racism in their daily life. According to adult respondents, the separated children were frequently fined in public transportation or stopped by the police, as a result of ethnic profiling, similarly to other migrants, for example in Cyprus, France and Spain.

## Considerations

Effective mechanisms should be in place for the prevention, identification, reporting, referral, investigation, treatment and follow-up, and, as appropriate, for judicial review of instances of discrimination and mistreatment of separated, asylum-seeking children. This should apply to any form of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

Authorities should ensure that separated, asylum-seeking children are well informed about the existence of these mechanisms and possibilities for legal action and legal aid. They should be actively encouraged to and supported in reporting situations of discrimination and mistreatment to the authorities, in particular to child ombudsmen institutions, where they exist. Adequate guarantees should be provided to ensure that the children do not derive negative consequences from the reporting of discriminatory or abusive practices, including in the context of the conduct of legal procedures that concern them.

## 4. Turning 18

The transition from childhood to adulthood is a difficult process for any child, even more so for separated, asylum-seeking children who have to struggle with many additional problems. For them, reaching the age of majority constitutes a crucial turning point in life. Provision of care, living conditions, legal options and perspectives change significantly from the moment they legally become adults.

The legal position of separated children asylum seekers who become adults is complex. As the EMN study shows, the legal framework and administrative practices relevant to this transition differ considerably between Member States affecting children in many ways. Young people whose legal status in the host country was not decided by the time they turned 18 and those whose application for asylum was rejected face a great risk of drifting into an irregular status and of disappearing. It is therefore essential to find durable and sustainable solutions in a timely manner in order to safeguard the children's best interests and to allow them to fulfil their right to development.

The Council of Europe *Recommendation of the Committee of Ministers on life projects for unaccompanied migrant minors*<sup>124</sup> provides useful guidance. The Recommendation does not distinguish between regular or irregular migrants, asylum seekers or others in need of protection. The concept of 'life projects' promoted in the Recommendation aims to develop children's capacities to allow them to acquire and strengthen skills necessary to become independent, responsible and active in society: "In order to achieve this, life projects, fully in accord with the best interests of the child, as defined in the Convention on the Rights of the Child, pursue objectives relating to the social integration of minors, personal development, cultural development, housing, health, education and vocational training, and employment."<sup>125</sup>

Life projects can be implemented in the host country, the country of origin or in both through a comprehensive, integrated and multidisciplinary approach taking into account the children's specific situation. In this respect, the Recommendation asks states to take action, for example by establishing and/or supporting national bodies for coordinating relevant agencies, allocating the necessary resources for creating such bodies and setting up information networks.

<sup>124</sup> The expression „unaccompanied migrant minors“ includes separated children and minors who have been left to their own devices after entering the territory of the member state.

<sup>125</sup> Recommendation CM/Rec(2007)9 of the Committee of Ministers to Member States on life projects for unaccompanied migrant minors, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1164769&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

Regarding transition to adulthood, the Recommendation specifically notes that “[...] Where a minor involved in the implementation of his or her life project attains the age of majority and where he or she shows a serious commitment to their educational or vocational career and a determination to integrate in the host country, he or she should be issued with a temporary residence permit in order to complete the life project and for the time necessary to do so.”

As life projects may be implemented either in the host country or the country of origin or both, the Recommendation draws attention to the particular issues separated, asylum-seeking children may face by highlighting that “[...] special attention should be given to the case of unaccompanied minors seeking asylum. Asylum procedures should not affect the effective preparation and implementation of life projects for these minors, for whom enhanced protection is necessary, in particular with regard to the principle of non-refoulement.”

Children and adult respondents referred in the interviews to examples of ‘life projects’ implemented in Member States. In Belgium, for example, a separated child develops a ‘life project’ preparing for adulthood by developing his/her social network, teaching him/her to prepare meals and how to deal with a budget. In this context, an interesting initiative is the Belgian *Mentor-Escale*<sup>126</sup> helping separated children to develop their capacity for independent living by attending school or training, and learning how to manage their budget. The initiative also supports them in accessing healthcare, strengthening their social networks, and also in protecting themselves against injustice, violence and dangers they may face, as well as in becoming aware of their rights and duties.

The EU has funded a number of such projects, for example under the Equal Initiative<sup>127</sup>, such as the ‘Transition Support Project’<sup>128</sup> aiming to develop a model for effective multi-agency working to coordinate, integrate, activate and deliver services to support separated 17-21 year olds seeking asylum to enable them to participate in education with a view to preparing them for adult life.

## Research findings

In the interviews children were asked about their thoughts and plans about the future. Adults were also asked if and how children are supported in dealing with their transition to adulthood.

*“I am becoming 18 tomorrow so I will have to leave the children home soon [...] I will have to work illegally but who is going to employ me without work permit [...] I don’t have a clue what kind of job I could possibly find. I am tough. I did everything on*

<sup>126</sup> See: <http://www.mentorescale.be>.

<sup>127</sup> See: [http://ec.europa.eu/employment\\_social/equal/activities/etg5\\_en.cfm](http://ec.europa.eu/employment_social/equal/activities/etg5_en.cfm).

<sup>128</sup> See: <http://www.equal-ci.ie/projects/ecahb.html>.

*my own when I was at home. I like to do things on my own. I decided to become an interpreter. I speak Chechen, Russian, and Polish. I study English. I don't have anyone who could help me.” (Boy, 17, Poland)*

Children who had received a positive decision on their asylum application were on the whole optimistic about their future options, eager, for example, to have the opportunity to work or study further. The others were more apprehensive and some feared removal, particularly in the Netherlands, where in practice a separated, asylum-seeking child that was 15 years of age or older at the time of his asylum application will have to leave the Netherlands after having reached the age of 18 years, if his/her asylum application is refused.

*“I feel uncertain about my future. I am born in the Netherlands. I might be sent away when I am eighteen.” (Boy, 17, Netherlands)*

Similarly in Italy the introduction of stricter regulation through the so-called “Security Package”<sup>129</sup> means that most separated, asylum-seeking children cannot in practice qualify for regularisation and after the age of 18 either return, which is highly unlikely, or drift into an irregular status.

*“Until they turn 18, separated children are over-protected, after that, no one knows what will happen to them.” (Official, Italy)*

In Belgium, a separated, asylum-seeking child upon turning 18 normally loses the support of the guardian and other protective measures and could be subject to removal, if he/she has no residence document. In practice though, adults said that they are informed about different procedures that can extend their residence permit for another 6 to 12 months, under certain conditions.

In Malta, children after the age of 18 have to leave their residential centres and move into private housing, if they can afford it, or be placed in the ‘Marsa’ or ‘Ħal Far’ open centres for asylum-seeking adults. Formally there is no provision for any ‘after care’ support from the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS), but adults at the residential centres for children said that they operate an “open door policy” and many young people who need support or advice, visit them.

A significant number of children were unaware of the legal consequences that turning 18 may have on their status and how this would affect their housing, support, living conditions, education and work opportunities. Most seemed unprepared for the challenges ahead. Other children expressed concern and anxiety about where they would stay after turning 18 and whether they would be able to continue their education or find work.

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<sup>129</sup> Law No. 94 of 15 July 2009 established that in order to get a residence permit when they turn 18, applicants have to satisfy jointly the following criteria: that they were under guardianship or foster care, that they have entered Italy since at least three years and participated in projects of integration for at least two years.

*“I would like to stay in this house a little longer but when I turn eighteen, I have to move.” (Boy, 17, Netherlands)*

*“I have heard that when I turn 18, they will send me to Caritas like a dog.” (Boy, 17, Austria)*

Many adults were also particularly concerned about this; some, for example in Austria, Italy and Poland, pointed out the need for a transition period particularly for these children.

*“After a peaceful period in the children home they enter society in which it is difficult for them to manage their lives, especially as they are often still in the procedure. They receive about PLN 800. It is not enough for a person who wants to continue studying [...]. The assistance should be adapted to the individual needs of each child leaving the children home. Polish children in such situation receive special aid from the state to start independent life.” (Official, Poland)*

A key concern was housing, as in many cases children are compelled to relocate, as soon as they become 18, although they may not have an income sufficient for adequate accommodation. In some countries concerns were also expressed that they would be unable to complete their education.

In countries with an effective guardianship regime, for example Netherlands or Sweden, some adults were also concerned that after turning 18 children would no longer benefit from a guardian’s advice, care and protection. Adults also expressed their concerns about children disappearing from their housing units, becoming homeless or drifting into an irregular status and merging with irregular adult migrants as they reach 18.

*“Their life changes completely: they are pushed into low and medium support flats, their needs are not any more taken into consideration.” (Legal adviser, UK)*

In some countries, for example Hungary, Spain and France, adults mentioned different types of care provisions for a period of transition, adding that these could benefit from better funding. In France, for example, care provisions may be extended, while allowing some more autonomy, beyond the age of 18 until 21 on the basis of a ‘contract for young adults’ (*Contrat Jeune Majeur*) granted by local authorities to children who have developed a “project for integration”. In Hungary, those children who were granted refugee or subsidiary protection status before turning 18 are entitled up to the age of 24 to ‘after care support’ that includes free accommodation and contribution to the cost of living. Children who receive a positive decision after they reach majority age are not eligible, but they can benefit, since January 2009 from the support provided by the Home for Young Adults funded by the European Refugee Fund.



## 5. The Council of Europe 'life projects'

On 12 July 2007, the Committee of Ministers of the Council of Europe<sup>130</sup> adopted the 'Recommendation on life projects for unaccompanied migrant minors'.<sup>131</sup> This recommendation offers a new management policy on the migration of minors, such as separated, asylum-seeking children. It advises governments on how they could improve their policy and practice in relation to the migration management of the children, particularly by strengthening their international co-operation. It also provides guidance as to how relevant authorities can, through the development of 'life projects', contribute to improving the welfare of the children. This encompasses a comprehensive and co-operative approach to the needs of the children and the persons responsible for dealing with them: the term 'relevant authorities' refers to all governmental institutions dealing with the children, which includes ministries, police services, border protection services, judges, legal guardians, social services, and diplomatic representations.

The 'life projects', which have already been described in the previous section, are considered as individual tools, implying a personalised treatment of each unaccompanied migrant minor. They are aimed to help the children overcome the difficulties they face, so they can become independent, responsible and active in society. The life projects are developed with the active involvement of the children themselves and are conceived as a way of coordinating and orientating government action in respect of the rights of the children. Pursuant to the Explanatory Memorandum to the Recommendation 'The child's life project will cover different aspects of his or her life from housing, health, education to personal development, cultural development, social integration and future employment. The social worker or other professional responsible for drawing up the life project for a particular child will look at his or her personal capacity and faculties and reflect these in a life project that is tailored to the child's situation and defines his or her future prospects [...]. Finally, life projects are conceived as a mutual commitment by the unaccompanied migrant minor and the authorities. Its implementation must be monitored and a regular evaluation process foreseen.'<sup>132</sup>

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<sup>130</sup> The Council of Europe is an international organisation, which in addition to the EU Member States, includes in its membership: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, Norway, The Russian Federation, San Marino, Serbia, Switzerland, The Former Yugoslav Republic of Macedonia, Turkey and Ukraine.

<sup>131</sup> Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on Life Projects for unaccompanied migrant minors, adopted on 12 July 2007.

<sup>132</sup> Explanatory Memorandum to The Recommendation CM/Rec(2007)9 of The Committee of Ministers to Member States on Life Projects for unaccompanied migrant minors. European Committee on Migration (CDMG).

## Concluding remarks

The experiences, views and perceptions of the separated, asylum-seeking children who were interviewed in 12 EU Member States vary between and within the countries in many respects. The divergent findings correspond to the different settings and environments in which these children live, but also to their own interpretation of the situation which is influenced by previous experience.

Notwithstanding this, the interviews provide a valuable insight into the situation on the ground and some important evidence about how the needs of these children can be met.

With regard to the situation on the ground, the report shows that although under the care of the state, these children may live in accommodation that is not suitable for them – sometimes in detention or in detention-like conditions, such as under strict curfew rules, even if they have not committed a crime; they are not always provided with quality medical care and do not always enjoy equal access to appropriate education and training; their religious needs are not always respected or fulfilled; they can be victims of discrimination with little opportunity for redress or even mistreated, most worryingly, by persons responsible for law enforcement. These children are often insufficiently informed about legal procedures and opportunities available to them, which are crucial for their future. Their views and ‘truths’ are frequently not taken into consideration, and their life depends on decisions for which the authorities can take a very long time. These decisions are based on processes that make the children feel insecure and often unprotected or ill-advised. Finally, not enough attention is paid to them after they turn 18, which may have serious negative effects on their situation.

In a nutshell, the findings show that many of the rights of these children, often not clearly reflected in EU legal provisions, are not always fulfilled.

In order to facilitate this fulfilment, and in view of the specific considerations outlined in each of the sections of this report, the following distils some aspects identified as crucial in relation to the living conditions of separated, asylum-seeking children:

- adequate, child-friendly information on all aspects of the children’s protection should be provided as soon as possible to the children in a language that they understand. The children should be provided with the support of sufficient social workers, appropriately trained to respond to their needs;
- they should be placed in suitable accommodation – in principle, in a family type of environment or allowing for semi-autonomous living hosting a small number of children - based on a thorough assessment of their needs, which must be regularly reviewed;

- they should be provided with adequate access to leisure activities, and their communication needs – including access to TV and internet – should be adequately met;
- the children’s practicing of their religion should be facilitated. In the provision of food, for instance, due consideration should be given to meeting religious requirements, as they relate to practice and observance;
- a thorough health assessment of the children should be conducted, as soon as possible, while ensuring informed consent. The results of this should in no way influence negatively their legal status or the outcome of their asylum claim. Mandatory professional interpretation and intercultural mediation support should be provided to the children in accessing healthcare, and due account should be taken of the children gender and cultural concerns in the provision of treatment;
- educational authorities and schools should be adequately resourced to provide special educational and psycho-social support to these children, including in relation to language training, and their school attendance and performance should be monitored. Consideration should be given to removing barriers to vocational education and training, ensuring that lack of a work permit does not impede such access, in so far as educational requirements are met.

With regard to procedures relevant to the legal status of separated, asylum-seeking children, aspects of the considerations outlined in the report to be highlighted include the following:

- a suitable legal guardian should be assigned to every separated, asylum-seeking child, as soon as possible, and guardians should be encouraged to maintain regular contact with children in their care. The scope of guardianship duties should be clearly conveyed to children and adults responsible for their care, and the exercise of guardianship function should be independently monitored;
- appropriate legal representation, advice and counselling, as well as free legal aid, as appropriate, should be provided to separated, asylum-seeking children and their legal guardians or other representatives, in the context of legal procedures, as soon as possible. The scope of legal representation duties should be clearly conveyed to children and adults responsible for their care, and the provision of legal representation should be independently monitored;
- age assessment should only be used where there are grounds for serious doubt of an individual’s age. Medical examinations relating to age assessment should be conducted only with the child’s informed consent after any possible health and legal consequences have been explained in a simple, child-friendly way and in a language that the child understands;
- recognising that age assessment cannot be precise, in cases of doubt a person should be treated as a child, with the right to appeal age assessment decisions;

- all persons in charge of processing child applications should receive special training in dealing with separated children and be aware of mechanisms for child victim protection and support. Asylum interviews should always be conducted in a child-friendly manner, in a non-intimidating environment with a primary consideration being the best interests of the child;
- interviewers and decision makers should have appropriate expertise in migration, asylum, anti-trafficking law and be familiar with child-specific forms of persecution and exploitation;
- separated, asylum-seeking children should never be detained for reasons relating to their residence status, or their lack of it, or the conditions of their entry into the Member State;
- effective mechanisms should be put in place for the prevention, identification, reporting, referral, investigation, treatment and follow-up, and, as appropriate, for judicial review of instances of discrimination and maltreatment of separated, asylum-seeking children.

At present, no comprehensive or articulate system exists for the protection of separated, asylum-seeking children in the EU. The relevant CRC provisions, which are essential for the protection of these children, are often not effectively implemented, although, as noted in the Stockholm Programme adopted by the European Council, “the rights of the child [...] must be systematically and strategically taken into account with a view to ensuring an integrated approach”.

The Justice and Home Affairs Council Conclusions on Unaccompanied Minors adopted on 3 June 2010 point at the increasing awareness of the specific problems that separated, asylum-seeking children face in the EU at high level governmental decision-making. They also point at the wish to identify practical and durable solutions which facilitate human rights protection by undertaking common and co-ordinated approaches at that level. Aspects such as the Council’s attention to the need for a ‘personalised’ treatment of each child rather than the adoption of ‘collective’ solutions, is illustrated by the Council’s encouragement of Member States to adopt ‘individual decisions based on an individual assessment of the best interests of the child’. The Council’s call on the Commission and the Member States to promote the development and exchange of best practice guidelines on age assessment, which combine scientific and legal criteria, reflects the search for approaches which allow balancing the child’s dignity and integrity and the protection of legality

The acknowledgement of the particular vulnerability of these children could be accompanied with less emphasis on the link between their protection and their co-operation with authorities in the prosecution or prevention of crime. The Council’s call for a better understanding of the phenomenon of children disappearing from care is an important first step in starting to tackle its root causes effectively. Policy guidelines regarding the improvement of reception facilities and measures for the development of appropriate integration actions are also steps in the right direction.

A leading concern in the adoption of the 3 June 2010 Council Conclusions on Unaccompanied Minors has been the return and reintegration of children in their country of origin. This is an issue that requires further study and consideration in order to find durable and sustainable solutions in the best interests of the child, taking into account the compelling reasons which led or forced these children to leave their home country and undertake an arduous journey to the EU.

The number of separated children arriving to the EU from third countries and wishing to stay in Member States will most likely continue to rise given the continuing conflicts in different areas of the world and economic disparities. The challenge for the EU and its Member States will be how to deal with this issue effectively, while fully respecting fundamental rights and acting in the best interests of each child.

