

EUROPEAN UNION



Committee of the Regions

CONST-IV-005

Brussels, 9 November 2006

OPINION
of the
Committee of the Regions
of 12 October 2006
on
**The situation of unaccompanied minors in the migration process –
the role and suggestions of regional and local authorities**

THE COMMITTEE OF THE REGIONS,

Having regard to the decision of its Bureau of 25 April 2006, under the fifth paragraph of Article 265 of the Treaty establishing the European Community, to instruct its Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice to draw up an opinion on this subject;

Having regard to its opinion (**CdR 241/2004 fin**) on the *Green Paper - equality and non-discrimination in an enlarged European Union*, COM(2004) 379 final;

Having regard to its opinion (**CdR 337/2004 fin**) on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – *Study on the links between legal and illegal migration*, COM(2004) 412 final;

Having regard to its opinion (**CdR 80/2005 fin**) on the *Communication from the Commission on the Social Agenda*, COM(2005) 33 final;

Having regard to its opinion (**CdR 144/2005 fin**) on the *Communication from the Commission to the Council and to the European Parliament establishing a framework programme on Solidarity and the Management of Migration Flows for the period 2007-2013*, COM(2005) 123 final;

Having regard to its opinion (**CdR 51/2006**) on the Communication on *A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union*, COM(2005) 389 final, on the Communication on *Migration and Development: Some concrete orientations*, COM(2005) 390 final, and on the *Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals*, COM(2005) 391 final;

Having regard to the Communication from the Commission on *The local and regional dimension of the area of freedom, security and justice*, COM(2002) 738 final;

Having regard to the Communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin – *improving access to durable solutions*, COM(2004) 410 final;

Having regard to EC 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*;

Having regard to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

Having regard to the Proposal for a Decision of the European Parliament and the Council establishing the External Borders Fund for the period 2007-2013 as part of the General programme *Solidarity and management of migration flows*, 2005/0047 (COD);

Having regard to the Proposal for a Council Decision establishing the European Fund for the Integration of Third-country Nationals for the period 2007-2013 as part of the General programme *Solidarity and management of migration flows*, 2005/0048 (CNS);

Having regard to the Proposal for a Decision of the European Parliament and Council establishing the European Return Fund for the period 2008-2013 as part of the General programme *Solidarity and management of migration flows*, 2005/0049 (COD);

Having regard to the draft opinion (CdR 136/2006) adopted on 30 June 2006 by the CONST commission (rapporteur: Mr Fontanelli, Mayor of Pisa (IT/PES));

Whereas:

- 1) Unaccompanied minors, according to the Council of Europe Resolution of 26 June 1997, are *"third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such a person"*;
- 2) The protection of minors, unaccompanied minors and young asylum seekers, being particularly vulnerable groups and those most at risk of social exclusion, must be a priority for the European Union, for its partner countries and for local and regional authorities;
- 3) On account of the inherently irregular nature of the entry into partner countries of particularly vulnerable groups, such as victims of trafficking, asylum seekers and unaccompanied minors, managing such migration flows involves procedures under broader policies against irregular immigration;
- 4) These particular migration flows fall into a regulatory grey area between initially irregular entry and subsequent legal stay, in accordance with the duty of protection guaranteed by national and international law;
- 5) It is currently difficult to obtain EU-level data on this issue, because national authorities employ different methods of classifying unaccompanied minors. In some countries they are classified for statistical purposes as asylum seekers, in other countries as economic migrants and in others as abandoned minors;

- 6) The United Nations High Commission for Refugees (UNHCR) estimates that there are approximately 25 million refugees worldwide and that 50% of these are children. According to recent estimates, between 2% and 3% of these are unaccompanied minors;
- 7) UNICEF estimates that the number of children trafficked annually, internally and externally, is around 1.2 million (UNICEF report – *Stop the Traffic*, July 2003). The *Separated Children in Europe Programme*, a joint initiative of the *International Save the Children Alliance* and the UNHCR, conservatively estimates that there are at least 100 000 unaccompanied minors in Europe. In Italy, according to the national authority for the protection of foreign minors (*Comitato Minori Stranieri*) unaccompanied minors number approximately 8 000 annually, with numbers rising in recent years. In Spain, the authorities estimate between 3 000 and 4 000 unaccompanied minors annually, while in France, Holland, Belgium it ranges from 5 000 to 6 000 each year. The number of unaccompanied minors is undoubtedly much greater when irregular entry is taken into account, and the difficulty in accounting for those present following irregular entry;
- 8) These unaccompanied minors come predominately from North African countries, and, in particular, Morocco, from sub-Saharan Africa (Senegal, Mali, Guinea, Cameroon, etc.) from Asian countries, especially Afghanistan, and from countries in Eastern Europe, particularly Romania, Moldova, Albania and the former Yugoslav republics;
- 9) The task of assisting unaccompanied minors often falls entirely to local and regional authorities, which have to take emergency measures to deal with this phenomenon as they do not have policies to refer to, effective powers to solve the problem at source, the legal capacity to adopt decisions relating to unification or assisted return, or action plans. This reduces their effectiveness and usefulness, while requiring a considerable investment of resources;

adopted the following opinion at its 66th plenary session, held on 12 October 2006:

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1. Opinions of the Committee of the Regions

The Committee of the Regions

- 1.1 **considers it essential** to coordinate and manage migration flows in the EU efficiently, while respecting the subsidiarity principle and protecting individual rights, particularly of the most vulnerable groups, not only to fight racism, xenophobia and other causes of insecurity, but also because it represents a necessary pre-condition to achieving the Lisbon growth objectives and, more generally, to realising the potential of the internal market;
- 1.2 **recognises** that first and foremost, if consistent and planned measures are to be implemented for dealing with unaccompanied minors, the main objectives must be:
- a) to achieve a fully reliable analysis of the situation followed by an objective, statistics-based comparison of data at EU level among the partner countries;
 - b) to develop a priority programme of intervention in these minors' countries of origin.
- 1.3 **has decided**, in this context, to draw up this own-initiative opinion on the situation of unaccompanied minors in the migration process, through which it proposes to illustrate the importance of this phenomenon as a part of migration flow management, given the specific vulnerability of such minors and the fact that they are used to abuse the protection system through activities encouraging child exploitation and labour;
- 1.4 **points out**, that given the particular nature of the situation and given the urgent need for the partner countries to deal with the issue, the key elements in achieving an objective analysis of this phenomenon cannot be implemented without the active and continuous involvement of the local and regional authorities responsible for the care of these minors;
- 1.5 **is convinced** that in the approach to migration flow management a qualitative leap is needed regarding irregular migration, recognising the importance of border controls and, more generally, of efforts to coordinate the work of Member States' interior ministries, but placing emphasis on the equal importance of social and civilian territorial controls, without which, all countermeasures will be ineffective and will not produce the vital effects of governance called for repeatedly by the Commission. Efforts are needed to prevent minors from leaving their countries and to support assisted repatriation, by building up a system of protection in the countries concerned, focussing on measures to safeguard minors there;
- 1.6 **notes** that the European Commission gives insufficient attention to the issue of unaccompanied minors and hopes that the Strategy on the Rights of the Child (COM(2006) 367 final) will effectively address this issue;

- 1.7 **points out** that the only way of addressing migration in the medium- and long-term is to introduce cooperation policies encouraging the sustainable development of immigrants' countries of origin, giving their citizens and their young people, in particular, opportunities in those countries;
- 1.8 **commends** the Communication's adoption of a novel perspective which casts the country of origin as a stakeholder in migration management (COM(2005) 389 final); in this context, considers it essential to promote association agreements with countries of origin, which should establish a direct link between migration and the development that these countries need;
- 1.9 **notes** that in many cases it falls to local and regional authorities to receive and assist unaccompanied minors and that this includes the obligation to ensure housing, social and medical assistance and education. Where appropriate, they must integrate them into employment and carry out the major administrative task of documenting each individual case, shouldering the resulting financial burden;
- 1.10 **believes** that the management of the European Fund for Integration should take into account the specific requirements of regional and local authorities, and supports their participation in negotiating national programmes and the relevant operational programmes;
- 1.11 **notes** that the scale which this migration has now assumed, the impact that it has in the regions in terms of fulfilling specific needs and providing particular services and the rising trend over recent years, indicate that local and regional authorities must be fully involved in efforts to achieve effective governance of the phenomenon in such regions; it is also necessary for the national authorities to pursue a more active policy, facilitating cooperation between local and regional authorities, particularly with regard to vulnerable groups;
- 1.12 **highlights**, in spite of the lack of data available, the extraordinary work being carried out by the relevant administrations in each of the Member States, which has come to light in researching this opinion and recognises the high level of professionalism and service ethic of officials, as well as the vital support of Non-governmental Organisations and child protection bodies and their work in recent years to protect the most vulnerable, including young asylum seekers and victims of trafficking;
- 1.13 **regrets** that not all Member States have unified procedures and structures with regard to the protection of unaccompanied minors and calls for Member States to implement existing EU measures as uniformly as possible; also regrets the implementation of haphazard measures, often involving a conflict of powers between the various levels of government, with a high risk of real and substantial discrimination in the treatment of minors by the various Member States, but particularly within individual Member States;

- 1.14 **emphasises** from the start that the problem of unaccompanied minors predominately affects regions bordering on their areas of origin, and the more economically-developed municipalities and regions with more job opportunities, and that therefore there is a risk of paying insufficient attention to the difficulties faced by densely populated municipalities and regions with direct repercussions on their ability to effectively protect minors; similarly, small and medium-sized local and regional authorities also have scarce resources, hampering their ability to act;
- 1.15 **restates** its disappointment regarding the Commission's approach, in its use of loose phrasing in recent proposals – COM(2005) 389 final, COM(2005) 390 final and COM(2005) 391 final – which refer to the forced return of unaccompanied minors and trafficking victims, without any explicit or binding reference to any specific article of the European Convention for the Protection of Human Rights and Fundamental Freedoms or of the Convention on Children's Rights of 1989;
- 1.16 **considers** it essential to provide local and regional services, with specialised staff, to meet the particular needs of unaccompanied minors, asylum seekers and trafficking victims, who are at high risk of discrimination and social exclusion, and to carry out checks to combat the abuse of rights and fraud to which child protection systems are subjected to, by means of:
- specific trauma-related healthcare, including ethnopsychiatry;
 - specific services for minors subjected to detention within the juvenile justice system;
 - support for fostering procedures, perhaps involving families of the same cultural origin;
 - more active cooperation with the countries of origin and support for localised cooperation between the community of origin and the host community, based on the experience gained by local and regional authorities;
 - educational initiatives to help integrate unaccompanied third-country minors into the school system, with a special focus on learning the language of the host country;
 - protection of unaccompanied minors who are refugees in EU states against further contact with illegal immigrant smuggling organisations.

2. **Recommendations of the Committee of the Regions**

2.1 **Towards greater awareness of the issue of unaccompanied minors**

The Committee of the Regions

- 2.1.1 **considers insufficient** the current legislation at European level and in certain Member States on asylum-seeking unaccompanied minors and therefore **calls for** measures to offset:
- the absence of specific procedures for requesting asylum that offer suitable protection,
 - the absence of specific services with the requisite professional input and adequate resources, both economic and material,

- the absence of specific references in recent asylum directives (Dublin Convention II),
 - the absence of procedures for appointing a guardian, fully versed in asylum issues, who could receive support up until the closure of the procedure for recognising the minor's refugee or other status,
 - the absence of measures aimed at preventing discrimination and social exclusion, with particular regard to the detention of minors under the juvenile justice system;
- 2.1.2 **calls for** an urgent debate with the Council, the Commission and the Parliament on approaching the issue of unaccompanied minors at local level, looking in detail at the difficulties faced by local and regional authorities and how they can contribute specifically. It would also be aimed at emphasising the need for a statistical assessment of the phenomenon at EU level. For this reason, the Committee proposes practical measures for better governance of the situation;
- 2.1.3 **hopes** that during this EU-level debate on such an important issue as unaccompanied minors, particular importance will be given to the situation and role of the communities and families of origin;
- 2.1.4 **hopes** that planned new legal and political measures and programmes regarding unaccompanied minors, while in the context of migration flow management, will always be aimed at upholding the principles of the UN Convention on the Rights of the Child of 1989 and in particular, Article 3 therein, the principles set out in the Treaty establishing the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms and other key international instruments relating to unaccompanied children and, more generally, that they will always be in the best interests of minors, including measures geared to avoiding the removal of minors from their family and cultural environment, and ensuring maximum protection for minors when they have to leave their countries of origin because of their ideas or beliefs.

2.2 **Urgent need for EU measures to protect unaccompanied minors**

The Committee of the Regions

- 2.2.1 **calls** for greater awareness of the problem at EU level and believes that certain recent legislation has overlooked the need to protect the rights of these minors. The effect of the absence in some Member States of a unified procedure at national level has been to oblige local and regional authorities to assume responsibility for managing the phenomenon at local level and for the resulting financial burden;
- 2.2.2 **stresses** the urgent need for establishing a common and consistent approach to the issue of unaccompanied minors, as an element of migration, which takes account of the extremely delicate nature of the issue of minors and their protection, of the vital role of communities and families of origin and finally, of the need to give particular attention to the role of local and

regional authorities, with whom responsibility lies for receiving these minors and providing social support;

- 2.2.3 **calls for consideration** to also be given to the role of the juvenile justice system in relation to unaccompanied minors, due to the possible risk of discrimination and social exclusion, taking account, where appropriate, of the possibility of returning minors to their family environment.
- 2.3 **Strengthening the role of local and regional authorities, through a bottom-up approach – proposals for approaching the issue of unaccompanied minors, potential asylum seekers and trafficking victims**

The Committee of the Regions

- 2.3.1 **welcomes** the fact that increasingly measures for governing migration are being taken at EU-level. If Member States were to have sole responsibility, this would be out of keeping with the complex relationship between the assorted policies for managing migration flows and the responsibilities that lie with local and regional authorities regarding reception and social inclusion at local level of the most vulnerable groups, including trafficking victims, asylum seekers and unaccompanied minors;
- 2.3.2 **calls for** full involvement of local and regional authorities, in order to achieve effective governance of the phenomenon at local level, particularly with regard to vulnerable groups. It is also essential to achieve complementarity and cooperation between all the NGOs involved, so that all action is coordinated with the respective authorities, unless this conflicts with the overriding interest of the child. Dialogue and coordinating mechanisms must be established at an early stage of the crisis and be maintained throughout the whole process. The scale which this migration has now assumed, the impact that it has in the regions in terms of fulfilling specific needs and providing particular services and its increase in recent years, necessitate such an approach. A forecast study should be drawn up on the basis of this analysis.
- 2.3.3 The Committee of the Regions therefore **believes** it necessary to:
- a) introduce EU legislation that recognises the status of unaccompanied minors, including those seeking asylum and those who are victims of trafficking, which recognises the fundamental rights of minors and their particular need for protection, by means of clear rules regarding:
 - specific procedures for determining the age and identity of the minor as accurately as possible;
 - practical measures to prevent fraudulent use of the law and abuse of rights in recourse to protection systems;
 - specific terms for appointing a guardian;
 - preference for the fostering process;

- recognition of the rights involved in joining society as an adult, from their eighteenth birthday, once the relevant legal authority has been consulted;
 - the search procedure for tracing family members with the aim of family reunification;
 - the promotion of measures that support protection initiatives in the countries of origin;
 - the involvement of the communities and families of origin;
 - provisions on assisted return, only when in the best interest of the minor and always following consultation with the family, taking into account any international conventions on the protection of minors, ratified by the country of origin;
 - the definition of procedures and conditions in the event of an emergency;
 - consultation with the minor on all matters concerning him/her, guaranteeing the public prosecutor's involvement in the defence of his/her interests;
- b) establish a local intervention programme, in the form of a network (European network for the protection of minors) focusing on unaccompanied minors, which would provide specific services that could be integrated with the existing network of social services and which would provide for reception, integration and support for the communities and families of origin and would also support pilot projects by local authorities involving local cooperation, based on the initiatives promoted and established by local and regional authorities in close cooperation with non-governmental organisations and establishing criteria for the even distribution of unaccompanied minors throughout the European Union. To this end, the Committee of the Regions is undertaking to collate the best practices of the EU's local and regional authorities, in order to create a catalogue of experiences regarding reception, social inclusion and family reunification; to this end, a monitoring committee could be set up to oversee in the field the conditions in which these procedures are carried out, and which would be able to propose specific measures whenever it saw the need for improvements;
- c) establish, in cases where minors remain in the host country, the measures needed in order to integrate them properly into the education system, to enable them to learn the language of the host country and to become familiar with the democratic values of the host society
- d) identify the areas from which the majority of the minors originate and target cooperation initiatives, neighbourhood policy and specific child- and adolescent-centred initiatives on these areas, with the involvement of the communities of origin;
- e) introduce a social protection residence permit, by means of cooperation with the interior ministries, in order to facilitate a way out of exploitation and to combat criminal organisations effectively;
- f) schedule a biennial European conference on unaccompanied minors and similar conferences at national level and encourage attendance by non-governmental organisations, immigrant associations and other associations specialising in immigration;

- g) ensure full financing by national and European authorities of resources for the reception and integration of unaccompanied foreign minors.

Brussels, 12 October 2006.

The President
of the
Committee of the Regions

The Secretary-General
of the
Committee of the Regions

Michel Delebarre

Gerhard Stahl
