



## Save the Children and The Separated Children in Europe Programme Position Paper on:

### Returns and Separated Children

Further information from:

Jyothi Kanics, Programme Manager  
Separated Children in Europe Programme  
Tel + 45 35 36 55 55  
E-mail: [jk@redbarnet.dk](mailto:jk@redbarnet.dk)

Diana Sutton  
European officer  
Save the Children  
Tel + 32 2 502 5853  
E-mail: [savechildbru@skynet.be](mailto:savechildbru@skynet.be)

## Introduction

The Separated Children in Europe Programme (SCEP) is a joint initiative of some members of the International Save the Children Alliance and the United Nations High Commissioner for Refugees (UNHCR)<sup>1</sup>. An integral part of the programme is the network of partners from non-governmental organizations (NGOs) across 28 countries throughout Europe. The Programme was initiated in 1997 and is based on the complementary mandates and areas of expertise of the two organizations: UNHCR's responsibility is to ensure the protection of refugee and asylum seeking children, while the Save the Children Alliance is focused on the full realization of children's rights. In order to reflect the true situation of many children, SCEP has developed a broad definition of the term "separated child,"<sup>2</sup> which recognises that some children may appear 'accompanied' when they arrive in Europe but in practice the accompanying adult may be either unable or unsuitable to assume responsibility for their care. The purpose of this paper is to set out the programme's position to inform on going policy developments at EU level on return.

The 1997 *EU Resolution on unaccompanied minors who are nationals of third countries* recognised the need for guidelines regarding the return of separated children. The resolution outlined some important principles that should be further strengthened in future EU legislation and policy on returns, including that:

- a child must not be returned when return would be contrary to the Convention relating to the Status of Refugees, the European Convention on Human Rights, the Convention against Torture or the Convention on the Rights of the Child (CRC);
- a child may be returned only if adequate reception and care are available;
- family tracing should be undertaken as soon as possible, on a confidential basis and without prejudging the merits of any application for residence;
- an independent legal guardian should be appointed as soon as possible.

According to the principle set out in the CRC, in all actions related to return of children, the **best interests of the child** must be the primary consideration. In keeping with the CRC, a child should be defined as a person who is under 18 years of age. The term separated or unaccompanied<sup>3</sup> child should also be clearly defined.

EU legislation and policy on returns should specifically address the needs and rights of separated children in the return process, Save the Children, having carried out research on this issue<sup>4</sup> and being in contact with NGOs dealing with separated children in all Member States through the "Separated Children in Europe Programme"

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<sup>1</sup> This paper does not necessarily represent the views of UNHCR.

<sup>2</sup> Separated children are children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver. Some children are totally alone while others may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments.

<sup>3</sup> Unaccompanied children are children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver.

<sup>4</sup> See publications on-line at: <http://www.separated-children-europe-programme.org>

funded by the European Commission, would be pleased to assist in identifying good practice and in developing guidelines on return of children. This paper provides a framework for such guidelines with reference to all the issues related to returns such as the criteria and procedures for deciding return of separated children, enforcement of return decisions and return programmes.

### **The Situation of Separated Children in EU Member States**

Separated children who are illegally resident or have temporary status are one of the most vulnerable groups of people in the EU. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations or armed conflict in their own country. They may be the victims of trafficking for sexual, labour or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation. Children may be illegal residents because they entered the EU illegally or because their asylum application has been rejected. Besides illegal residents, there are a large number of children who have temporary status on humanitarian grounds. In many cases this kind of temporary status expires when the child reaches 18. As a consequence, among the adults that are illegal residents are many young people who received a residence permit as a child and integrated into the host country, but who subsequently lost their residence permit upon reaching the age of 18.

Whatever the circumstances behind a child's departure from their country of origin and the situations in which they find themselves in the country of arrival, the most important consideration must be to find a durable solution for them. In some instances return to the country of origin will be the most appropriate durable solution, whereas in other situations being allowed to remain in the country of destination will be the most durable solution.

At present there are great differences among Member States as far as return of children is concerned. Some Member States have developed good practices: the child is returned only if return is considered to be in his/her best interests; there are schemes for family tracing and assessment in the country of origin; the child is assisted and protected during return.

*Italian law provides that separated children can be returned to their country of origin only by means of "assisted repatriation" with appropriate assistance in order to be reunited with their family. Before a child may be returned, an assessment must be made in the country of origin in order to trace the child's family and to assess whether return is safe. During the procedure, the child must be consulted. The decision on the child's return is taken by the Committee for Foreign Minors, a part of the Ministry of Labour and Social Welfare, that has the mandate to defend the rights of foreign minors according to the CRC. Family tracing and the assessment in the child's country of origin are undertaken by 6 NGOs, according to an agreement with the Committee. Reintegration programmes are offered to returned children. Law on Immigration n.286/98; Decree on the Committee for Foreign Minors n. 535/99.*

While other Member States return children simply on the basis of their illegal status, without taking into account the best interests of the child, without assessing if return is safe and if the child will be cared for in the country of origin, without providing appropriate assistance during return and without taking into account the views of the child.

*A Kurdish boy from Turkey went to Europe to join people from his home town. He was returned to Turkey; arrested at the airport for illegal departure, and tortured in detention. He was sent back to his home town and was constantly under police surveillance. When a policeman in his area was killed he ran away, knowing he would be arrested. He managed to leave Turkey again.*

Ayotte, Wendy. *Separated Children Coming to Western Europe*, Save the Children, 2000.

At EU level the principle of the best interests of the child has entered legislation through references in the Charter of Fundamental Rights and in the EU Constitutional Treaty, as well as in some EU Directives. Within the specific context of return policy, references to children's rights and the provision that "in all actions related to children, the child's best interest must be a primary consideration" are contained in the 2002 Green Paper<sup>5</sup> and the 2002 Communication on a Community Return Policy on Illegal Residents<sup>6</sup>. Nevertheless, except for very limited references (e.g. regarding detention pending return), in these documents there are no specific provisions for protecting children's rights.

Member States are applying the best interests principle at the national level, particularly in child welfare and protection legislation, although to a lesser extent in immigration legislation. National courts regularly use agreed and prioritised criteria to make decisions in child welfare cases based on the best interests of the child. In contrast, using the principle of best interests in matters relating to the return of separated children to their country of origin is not as well developed in law and practice. Decisions can only be accepted with confidence if approved independent procedures are established for adjudicating whether return is in the best interests of the child.

### **Return and the best interests of the child**

Children are entitled to special rights under a number of international and regional instruments. The CRC, ratified by all EU Member States, provides the most important legal framework for policy responses concerning children. It is important that future EU legislation and policy states that children can only be returned in accordance with international obligations under the CRC and that in all actions related to return of

<sup>5</sup> COM (2002) 175 final. Green Paper on a Community Return Policy on Illegal Residents, 10.04.2002.

<sup>6</sup> COM (2002) 564 final. Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents, 14.10.2002.

children, the best interests of the child must be the primary consideration. According to the CRC, the best interests principle must apply to all children without discrimination, therefore also to foreign children who are illegal residents (Art. 2).

The CRC also provides a number of other principles that are relevant with reference to the issue of return, such as the right to maximum survival and development (Art. 6), the right to protection from violence, abuse, exploitation, trafficking etc. (Art. 34, 35 etc.), the right to special assistance if the child is deprived of the family (Art. 20, 22), the right to participate (Art. 12), the right to family unity (Art. 9 etc.), the limitation of detention as a measure of last resort (Art. 37), the right to identity (Art. 8).

The duty of States to protect children from exploitation and trafficking is also provided by a number of other international instruments, such as the optional Protocol to the CRC on the sale of children, child prostitution and child pornography, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the UN Convention against Transnational Organized Crime and the ILO Convention (182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

In order to assess whether or not return to the country of origin is in the best interests of a child, a number of interrelated factors should be considered and balanced against each other. The following factors should be considered:

safety	family reunification	the child's view	voluntary return
legal guardian and carer's views	soci-economic conditions in country of origin	child's level of integration in host country	age and maturity of the child

### 1) *Safety*

A primary consideration must be that the child will be safe and secure upon their return. A child's return should not be considered safe simply because their country of origin has been designated as a "safe country of origin." In addition to the Convention relating to the Status of Refugees, the European Convention on Human Rights, the Charter of Fundamental Rights of the EU, the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment, when children are concerned also the provisions of the CRC apply, and in particular those concerning the right to protection from violence, abuse, exploitation, trafficking, unlawful deprivation of liberty and direct involvement in armed conflicts (Art. 9, 19, 32, 33, 34, 35, 36, 37, 38).

Thus decision makers must be fully satisfied that the child would not be at risk of persecution<sup>7</sup>, harm, exploitation, abuse or trafficking, including reprisals by traffickers.

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<sup>7</sup> Including risks of persecution on account of race, religion, nationality, membership of particular social group or political opinion and risks of being subjected to the death penalty, torture or other inhuman or degrading treatment

Risk must be assessed both within the context of external or internal conflict situations and with regard to more localised factors such as abusive family relationships. Persecution and ill-treatment may be caused by non-state actors. In such cases there should be a careful assessment of the state's willingness and ability to offer protection. For example, some states may be unable or unwilling to offer protection to children who are subject to offences related to the honour of the family. In situations of instability or generalised conflict an assessment must be made of the likelihood of this impacting upon the child.

Special attention should be paid to asylum seeking children, who very rarely achieve refugee recognition under the Convention relating to the Status of Refugees<sup>8</sup> but still in many cases cannot be safely returned. Additionally, special consideration should be shown to trafficked children, who are often rejected by their family and community, especially in cases of trafficking for sexual exploitation, and who are frequently re-trafficked. These children are particularly vulnerable and in need of international protection.

## 2) *Family reunification*

The CRC provides that a child should grow up in his/her family and should not be separated from his/her parents against their will, except when this is in the best interests of the child; the parents have the primary responsibility for the upbringing and development of the child (Preamble, Art. 7, 8, 9, 10, 18, 27). It also provides that, in case of separated children, States should trace the family for reunification purposes, and that children deprived of their family should be entitled to special protection and assistance (Art. 20, 22).

Family reunification is the most important factor in favour of a child's return. Conversely, if family reunification is not in the child's best interests, this is an important factor against a child's return. For instance, occasionally children may be sold into trafficking by their families and clearly in such circumstances return to the family environment is not in the child's best interests.

The process of returning a separated child to their family will need to start with an assessment of the ability and willingness of the family to receive the child. The family will need accurate information about the circumstances surrounding their child in the receiving country and the assessment will need to be mindful that the family may have invested heavily in sending their child abroad and may be relying upon the child to supplement their income. This is likely to inform the feelings of carers towards receiving their child back into the family and may also impact negatively on how the child is perceived upon return.

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or punishment, or to unlawful deprivation of liberty. Special attention should be paid to child-specific forms of persecution, such as, but not limited to, recruitment of children into armies and female genital mutilation.

<sup>8</sup> "The low recognition rate of children is likely to be the result of: the lack of policy and guidelines on child-specific violations of human rights; the increasingly restrictive interpretation of the 1951 refugee definition in European states in relation to all asylum applicants, and the procedural inadequacies and cultural biases in the asylum process..." Ayotte, Wendy. *Separated Children Coming to Western Europe*, Save the Children, 2000.

To decide whether return and family reunification are in a child's best interests, it is necessary:

- to trace the child's family;
- to assess whether the family is responsible for violence, abuse or neglect;
- to assess if the family agrees to provide immediate and long-term care to the child;
- to assess the family's views on the child's return.

If parents or members of the extended family are aware of the location of their child and wish the child to return to them, these views must be given consideration even when the child is opposed to return. A child welfare court is the appropriate setting to assess these differing perspectives. Consistent with standards of good childcare practice the court may recognise that there may be legitimate reasons why the child does not want to be reunited with their family or the court may consider the steps and support that may be needed to allow for the family to be reunited.

Family tracing should not prejudice the merits of any application for residence. In particular, a separated child should never be refused asylum just because his/her family has been traced. A child should only be returned to the care of their immediate family, the extended family or failing this, and if appropriate, a named individual who is recognised as the legal or customary care giver in the country of origin. Where it is not possible to meet these criteria, for example a child has been abandoned or the family cannot be traced, return should not be considered a suitable or durable option.

In cases where family reunification is not possible, return generally should not be considered in the best interests of the child. This is normally the case both because family reunification is the main reason why return may be in a child's best interests and because the quality of the alternative care available in the countries of origin is usually much poorer than in EU countries (i.e. institutional placement rather than foster care, poorer material conditions, less controls on risks of abuse)<sup>9</sup>. Institutional placements are unlikely to adequately support a child through the difficult process of transition and reintegration and experience shows that children placed in institutions are at high risk of being (re)trafficked. In these cases, alternative care in the country of origin should be considered only if the child asks for return.

### *3) The child's view / voluntary return*

The CRC provides that "the child who is capable of forming his or her own views [has] 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." (Art. 12) The views of the child are an important element for assessing whether return is in his/her best interests. Ideally, the return of separated children, regardless of their

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<sup>9</sup> When return of separated children is concerned, it is not possible to apply the same principles that are applied to children still living in their country of origin, such as the principle that international adoption should be a last resort option, that should be considered only if the child cannot be cared for in his/her country of origin. In fact, the two situations are different, both because a separated child has already left his/her country of origin and suffered a disruption, and because return would imply further disruption, especially when the child has been living in the host country for quite a long time.

status, should be on a voluntary basis. Where it is believed that there are exceptional circumstances, the decision to return a separated child against their will should always be made in a court setting under the jurisdiction of child welfare rather than immigration procedures.

Return will be more realistic if it is voluntary as the child will assist in the necessary processes and this should facilitate better preparation and planning which in turn should serve to safeguard the immediate well-being of the child and ensure a long term durable solution. Regardless of the level of support they are receiving from professional agencies separated children facing forced or involuntary return may opt out of official procedures and avoid statutory support. The consequence of such action is that some separated children may find themselves in the 'underground' economy where the likelihood of them being harmed or abused will increase.

Forced return is unlikely to lead to a durable solution. If the child does not want to return, then they may well seek out new opportunities to gain entry to a third country, thus in practice remaining a separated child. Another potential consequence of forced return is that the child may not be welcome upon return to their country of origin and may be at risk of neglect, harm, abuse and (re) trafficking. This is itself an issue of concern but additionally may serve as a factor influencing the child in being forced or deciding to leave their country once again. Similarly forced return is unlikely to have been preceded by sound preparation and once again this may be a factor impacting upon the permanency of return. In short return is likely to be much more effective if it is not forced and appropriate preparation has taken place.

Finally, return can not be considered truly "voluntary" if the child agrees to return simply because s/he is not given any alternative by the host country's authorities. This could be the case when a child is held in detention because of his/her immigration status or is not given any chance of receiving a residence permit. Independent guarantees must be made that the child has not been coerced into a decision or given limited information weighted to sway them to decide that return is their best or only option. If the provision of support and reception procedures for a separated child in a receiving country reflect bad or poor practice then children are unlikely to make informed choices around return. For example, a separated child fleeing indiscriminate fighting who is held in an immigration detention centre where their needs as a child go unmet may feel that return and the risk of harm or injury associated with conflict is a preferable option to prolonged detention. Conversely, a separated child may wish to return but may be influenced by others to indicate otherwise. In such cases when the family's expectations may lead the child to oppose return, even in cases when s/he would wish to return, efforts should be made to raise awareness among family members about the child's rights and about the real situation of the child in the host country.

#### *4) The legal guardian and carer's views*

The legal guardian and the child's carer should act in the best interests of the child and be in contact with the child in his or her daily life. The views of the legal guardian



or carer should be taken into account in deciding whether return is in a child's best interests.

#### *5) Socio-economic conditions in the country of origin*

Historically, when considering the best interests of the child within the context of return to their country of origin, governments have sought to minimise the importance of the standard of living that would be available to the child upon return as a factor in the assessment of the suitability of return. Still, it must be acknowledged that socio-economic conditions can be a barrier to return if the level of deprivation is such that the child's well-being is at risk.

In order to decide whether return is in a child's best interests, the socio-economic conditions in the child's country of origin should be considered taking into account both the family's position and the wider situation in the area where the family lives. In particular when assessing the socio-economic conditions the following provisions should be examined: access to food, housing, clothing, health care, social security, education, vocational training and employment opportunities. It should be considered whether the child may face discrimination in the country of origin that would limit their access to these provisions. Furthermore, the stability of the infrastructure within the country particularly in situations of war or civil conflict should be considered. The financial position of the child's carers and their ability to adequately provide for the child ensuring that they are well fed, clothed and do not suffer from material deprivation is also an important factor. Finally, the potential impact of reintegration assistance including education, training and support to the family should be considered.

It should be noted that socio-economic conditions should never be a barrier to return in situations where a child has asked to be returned, or where their family has requested this. A child should never be separated from his/her family against their will for economic reasons, and it is a duty of the States to provide assistance to the family so that they are able to provide to the upbringing and development of the child (CRC, Art. 18 and 27).

Moreover, socio-economic conditions are not a reason *per se* for deciding that the child should not be returned, except for cases of abject poverty which may have life-threatening consequences.

#### *6) The child's level of integration in the host country*

The level to which a child has adapted and settled in the host country must also be considered as a factor in assessing the best interests of the child. The length of time a child has been in the host country is significant, particularly so for younger children who may have limited memories of their home countries. It is reasonable to assert that the longer the child spends in the receiving country the greater will be their level of integration and formation of emotional ties and in consequence the greater will be the social disruption and culture shock of return. This will be particularly so if the child is

attending school or college, is preparing to take exams, is engaged in vocational training or is working.

In making an assessment to decide whether return is in a child's best interests, it is necessary to consider how integrated the child is in the host country, and in particular:

- the length of time the child has been living in the host country;
- the degree of social and cultural integration both objectively (school, knowledge of language(s) spoken in the host country, vocational training and employment) and subjectively (the child's identity and self-perception);
- the child's emotional ties within the host country (e.g. with a foster family).

However this needs to be balanced against the reality of life in the receiving countries for some separated children. Some may find the cultural transition hard and thus face isolation, loneliness, racism and prejudice. Others may not have residence or work permits and some face an underground existence of drugs, prostitution, and criminal activity.

#### *7) The age and maturity of the child*

The younger a child is, the more important is family reunification and therefore it is more likely that return for family reunification purposes is in the child's best interests. The older and more mature the child, the more weight should be given to their views in assessing what is in their best interests.

#### Case Study Illustrations

*Elion is a 17 year old Albanian boy. His family has been traced, and his parents say that they would prefer that Elion stays in Italy since they are very poor (they are both unemployed, live in a shack and have 6 more children) and think that their child may have a better future in Europe, because there are no education and employment opportunities in the village where they live. Elion says that he does not want to return, as he wants to complete vocational training in Italy, find a job and send some money home to help his family. It is likely that return would not be in Elion's best interests.*

*Said is a 13 year old Moroccan child that was found by a policeman while he was begging, exploited by a criminal organization. His parents have been traced and said that they would take care of their child if he was returned, although they think that he may have a better future in Italy. Said's father has a relatively well paid employment and owns the house they live in. Said says that he would prefer to stay in Italy, but he also misses his mother. It is likely that return would be in the child's best interests.*

#### **Procedures for deciding return of separated children**

It is important that future legislation and policy provides specific standards regarding procedures for deciding return of separated children, taking into account the special

needs and rights of this particularly vulnerable group, consistently with the principles set out in the CRC.

### 1) *The deciding authority*

The competent authority for deciding return of separated children should be a child-welfare authority whose function is to protect children's rights. This authority should be non-political and independent from immigration and asylum institutions – e.g. a judge specialised in children's rights. It should have a multidisciplinary approach.

This authority should decide whether the child should return to the country of origin or stay in the host country after:

- reviewing a report on the assessment in the country of origin (including family tracing)
- listening to the child as well as to the child's legal guardian and/or carer
- reviewing a report on the integration of the child in the host country

### 2) *Legal guardian*

Due to the vulnerability and complex situations of many separated children, an independent guardian should always be appointed as an essential safeguard in the process of ensuring that separated children are able to make a truly informed and independent decision on the question of voluntary return. This is particularly so given the complex framework of legislation within which decisions are made and the fact that separated children, by definition, lack a carer to advocate on their behalf. In order to ensure necessary protection for separated children, appointments of guardians should be made within one month of a child being notified to the relevant authorities.

Broadly the role of the guardian in relation to the return of a separated child should be to:

<ul style="list-style-type: none"> <li>▪ ensure that all decisions are taken in the child's best interests;</li> <li>▪ accompany the child throughout the process for deciding on return or staying in the host country;</li> <li>▪ inform the child about all possible options for durable solutions and about the different stages of the process;</li> <li>▪ assist the child during interviews and in all stages of the process including, if necessary, appeal against return decision;</li> <li>▪ support the child in assessing his/her situation and planning for the future;</li> </ul>	<ul style="list-style-type: none"> <li>▪ arrange competent legal representation for the child;</li> <li>▪ consult and advise the child as appropriate;</li> <li>▪ ensure that the child has appropriate opportunities to express their opinions;</li> <li>▪ provide a link between the child and the organisations undertaking the necessary assessments and services in relation to return;</li> <li>▪ act as an advocate on the child's behalf;</li> <li>▪ assist in re-establishing and facilitating contact with the child's family.</li> </ul>
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In order to undertake their role effectively guardians should have relevant experience working with children. They should be familiar with relevant law and have an understanding of the particular needs of separated children. Guardians should submit to appropriate employment checks in accordance with national law and receive ongoing training and professional support.

### *3) Assessment in the country of origin and family tracing*

Before any separated child is returned there must be a thorough assessment in their country of origin to determine whether return is safe and in the child's best interests taking into consideration the family situation and the overall socio-economic conditions in the country of origin. The assessment must be undertaken by a professional and independent body and should objectively identify whether conditions in the country of origin are such that return would be in the child's best interest. A network of organisations at EU level would be useful to improve the quality and timeliness of family tracing. It will be helpful to assess whether there have been changes in the carers' situation or perceptions since the child left as this may indicate whether or not return is a durable solution.

Family tracing should be undertaken and contacts between the child and his/her family should be facilitated, not only for return purposes but also to help the child to keep in touch with his/her family. However, tracing for a child's family should not be done when it risks endangering the child or members of the child's family in the country of origin. For example, family tracing may expose them to reprisals from traffickers in cases where the child has served as a witness. Family tracing should be done on a confidential basis.

### *4) Child's information, support and preparation*

Separated children should be consulted and informed at the first opportunity of the intention to implement a durable solution to address their needs. This must be done in a sensitive and supportive manner by trained childcare staff, and should introduce the child to a range of options around durable solutions, one of which may be return to the country of origin. Children should be fully informed at all stages of the process. Planning and preparation are an essential element in helping a child decide whether to pursue return. Where return is the option to be pursued, each separated child should be involved in the composition of an individual plan to assist them in their preparation for reintegration in their home country. This should allow for the child to acquire skills if desired that will provide opportunities upon return to the country of origin thus minimising the need for the child to leave home again.

There is considerable advantage to separated children in allowing them to visit their country of origin in order to make a personal assessment of whether return would be a durable solution. This allows them to make an informed choice. The obvious prerequisite is that it is safe to do so and it should be noted that this might not be an appropriate course for younger children. Initiatives of this nature would rely on governments allowing separated children to re-enter the receiving country either on a permanent basis or whilst they prepare for eventual return to their country of origin.

Return is more likely to be durable if separated children are offered support to help them reintegrate into the society of their country of origin and if their progress is monitored and assessed accordingly.

#### *5) A child's right to be heard*

A child who is capable of forming their own views has a right to express those views on matters that will affect them (CRC, Art 12). Furthermore, opportunities for the child to be heard must be made in any judicial or administrative proceedings that will affect the child (CRC, Art 12). This right only becomes meaningful if the views of the child are listened to and are allowed to inform outcomes that impact upon him or her.

Children should have the right to be heard in proceedings concerning return decisions, and to express their views on return, the reasons why they left their country of origin, their plans for the future and the conditions under which they would return. They should be heard directly or, when this is not possible taking into account the age and maturity of the child, via their legal guardian. Children should be accompanied by their legal guardian at every interview.

#### *6) Accelerated procedures and access to the territory*

Separated children should never be returned under accelerated procedures such as those related to the concepts of "safe third country" or "safe country of origin." Furthermore, they should never be refused entry or returned at the point of entry, as these measures lack the necessary safeguards for deciding return in the best interests of the child.

#### *7) Timeliness*

The decision on a child's return should be taken in a timely fashion, so that the child is not kept waiting for long periods of time in a state of uncertainty, which may have serious consequences for his/her process of development. Moreover, the chances that return is in a child's best interests decrease the longer the child remains in the host country, as the degree of integration in the host country and the social disruption and culture shock of potential return increase. However, measures to ensure timeliness should never lower the standards of quality or the legal rights of the individual.

#### *8) Judicial remedy*

Children should have a right of appeal, with suspensive effect, against return decisions. A legal representative should be available at no cost to the child and deadlines for appeals should be reasonable.

#### *9) Integration in the host country*

If return is not in the best interests of the child, a durable solution in the host country should be provided. This should include provision of a long-term/permanent residence permit, long-term/permanent care arrangements and integration projects.

#### *10) Age assessment and identification of separated children*

In order to apply the necessary safeguards for their return, it is important that separated children are identified as such. Procedures should be put in place to identify separated children both at ports of entry and within the territory. Where an adult accompanies children, it is necessary to establish the nature of the relationship between the child and adult. Where the age of a person is uncertain, due to the absence of papers or to false identity papers, they should be given the benefit of the doubt<sup>10</sup> and provisionally treated as children. Age assessment should be carried out by independent professionals and should take into account physical, psychological as well as cultural factors and should never be forced.

#### *11) Staff training*

All professionals dealing with return of separated children such as staff of the deciding authority, agencies undertaking family tracing, law enforcement agencies, social workers and legal guardians should receive appropriate training on separated children's special needs and rights.

### **Enforcement of return of separated children**

It is important that future EU legislation and policy provides special safeguards on enforcing return of separated children consistent with the principles stated in the CRC, in particular the best interests of the child principle (Art 3), the right to special protection and assistance if the child is deprived of his/her family (Art. 20 & 22) as well as the limitation of detention as a measure of last resort for the shortest appropriate period of time (Art. 37).

Return of children should always be carried out in a child-appropriate manner and must not be traumatising for the child. Separated children should never be detained for reasons relating to their immigration status. Coercive measures should not be used during return procedures. Separated children should never be returned within the context of forced group returns, as the acts of violence and desperation that frequently occur in these situations may be highly traumatising.

On their return journey a separated child should be accompanied by a trained and familiar childcare professional in order to ensure that they arrive safely and to offer support to help them deal with any emotional matters associated with return. A child should never be handed over to the border authorities when it is unclear how the child will be cared for in the future. Finally, carers should receive a hand-over detailing the significant events that have happened in the child's life since they left their country of origin.

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<sup>10</sup> See UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994.

## **Decisions regarding return of young adults upon turning 18 years old**

Young people who arrived in Europe as minors but who, upon reaching the age of 18, will not be allowed to remain in the host country should be treated as vulnerable individuals since the special protection needs and vulnerability that characterise children do not cease immediately after the 18<sup>th</sup> birthday. Although 18 year olds no longer fall within the definition of a 'child,' careful consideration should be given to the youngster's ability and opportunities to successfully reintegrate into the society of their country of origin and where this is likely to be problematic, return should not be considered as a durable solution. However, this needs to be balanced against the harsh realities of a clandestine existence should the youngster choose to stay illegally. As with children, support for planning and preparation of return and for reintegration in the country of origin should be provided and detention should only be used as a last resort and for shortest possible time.

## **Reintegration programmes**

The future work of the EU in this field should also develop reintegration projects for returned children. These efforts should assist returned children to reintegrate into their country of origin and to reduce as much as possible the sense of failure frequently related to return, this way increasing the sustainability of return. Reintegration projects for children should be planned on a case by case basis taking into account the child's and his/her family's needs and wishes. These projects should provide support for education, vocational or other training, job placement or starting up a business as well as financial support for the family.

Reintegration projects should be planned along with the child, starting when s/he is in the Member State, and with his/her family, starting from the contacts made by the organisation undertaking family tracing. A follow-up should be carried out, a certain period of time after return, to assess the situation of the child. Exchange of information and best practices on return programmes should be developed at the EU level. Child rights agencies in countries of origin should be involved in reintegration programmes.

Only by improving living conditions in countries of origin can returns of children truly become durable solutions for the long-term. Return programmes should be supported and integrated in a serious and effective development co-operation policy in countries of origin, with special attention to children's rights. Moreover, development aid should never be conditional on migration measures, as the reduction of development aid would cause the worsening of living conditions and, as a consequence, could also increase the incentive to migrate.

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