



Reaching the heights for the rights of the child

Council of Europe Strategy for the Rights of the Child 2016-2021

High-Level Launching Conference

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Statements

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Ladies and gentlemen, distinguished participants,

May I, first of all, express my gratitude to the organizers of this event, under the Bulgarian chairmanship, for the opportunity to address this session on “children on the move” on behalf of GRETA, the CoE monitoring body for the Convention on Action against Trafficking in Human Beings. This is particularly appreciated because it follows up a similar invitation to GRETA already for the mid-term assessment event in Dubrovnik in 2014, concerning the previous CoE Child Rights Strategy.

The focus of this thematic session is on “children on the move”, and the mobility element links the situation of those children concerned with the mandate of GRETA, in opposite ways. On the one hand, mobility may be seen by young people or their families as a possibility to escape crisis situations, be it as a migrant, or an asylum-seeker; on the other hand, mobility can, however, lead those persons right into deceit, dependency and trafficking into severe forms of exploitation.

These pitfalls for children have been taken up most recently, at the beginning of March 2016, by the Secretary General of the CoE in his “Proposals for priority actions” to protect children



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affected by the refugee crisis. In this document he refers also to GRETA's findings from its monitoring work, citing challenges related to the identification of child victims of trafficking among migrants and asylum-seekers, or the "disappearance" of children from institutions.

The new CoE Child Rights Strategy 2016-2021 launched at this event, also addresses exploitation of children and trafficking and gives a role to play for GRETA in its monitoring activities. Alarming, the Strategy speaks of a possible "lost generation of disillusioned young people", of vulnerabilities for exploitation of migrant children due to the lack of effective child welfare protection, guardianship services and neglect in asylum procedures. And the Strategy, based also on children's own assessments collected through the "What do children think" Study, identifies five priority areas, all of them linked to GRETA's mandate, including to counter discrimination of children on the move, receive feedback from victims, including children, protect children from all forms of violence and exploitation, including in their digital environment, and ensure children's access to justice.

Almost eleven years ago the Convention on Action against Trafficking in Human Beings has been adopted by the Council of Europe. Today, this treaty is ratified by 45 States Parties, which, thus, includes almost all CoE member States, as well as Belarus, and we sincerely invite the few remaining member States as well as other States to consider this step.

Article 36 of the Convention establishes GRETA as its monitoring body, consisting of 15 independent experts meeting at least three times a year in Strasbourg. The essence of our work lies in country evaluations, based, in particular, on an examination of replies to an extensive questionnaire, and on country visits. Lasting usually around five days, GRETA discusses implementation of the Convention with authorities, visits shelters for victims and also meets with civil society. So far, GRETA has published 40 country reports under the first four-year evaluation cycle (2010-2014), and five reports under the second round launched in 2014 (see www.coe.int/trafficking). In addition to GRETA's findings, the Committee of the Parties to the Convention also adopts recommendations, to add their political weight to the conclusions from GRETA.

Our Anti-Trafficking Convention is quite strong on children's rights: it generally advocates for a human rights and victim-centred approach, and contains child-focused provisions on prevention, prosecution of traffickers and protection of child victims; this includes standards for identification of victims and immediate referral to assistance, usually called a "national referral mechanism" (NRM) – in relation to children, in fact, only another type of the concept of integrated child protection systems, promoted both by the CoE and the EU.

Embarrassingly, when reviewing GRETA's reports from a comparative perspective, it becomes clear that protection of the rights of child victims of trafficking remains the weakest part of the implementation of the Convention: in 90 % of reports under the first evaluation round (36 States out of 40 evaluated), GRETA has "urged" governments to improve identification of and assistance to trafficked children – an "urge" meaning the strongest term GRETA uses for its recommendations, and only in cases where immediate action is needed to restore compliance

with treaty obligations. No other topic – identification in general, or provision of recovery and reflection period, or victim’s access to compensation – receives a similar high number of “urges”.

It is against this background that GRETA decided to make child trafficking one priority area for its second evaluation round starting in 2014; and also to pay special attention to children in the context of the current migration/refugee crisis in Europe. For instance, in terms of institutional cooperation within the CoE and beyond, GRETA regularly arranges for exchanges of views, and we addressed the situation of children on the move in all recent discussions with the CoE Commissioner on Human Rights, the UN Special Rapporteur on trafficking in persons and with FRONTEX. In terms of public awareness, GRETA used the opportunity of the Anti-Trafficking Day last October to issue a public statement by our President on child trafficking and migration, reminding States Parties of their obligations to identify child victims of trafficking along migration routes.

Finally, we draw on our own findings from country monitoring for comparative analysis. Our Fifth General Report, published only less than a month ago in March 2016, contains a substantive section on “identification and protection of victims of trafficking among asylum seekers, refugees and migrants”, devoting particular attention to children on the move. Main findings from this review of our reports include the following points:

In general, children may have undergone experiences as a migrant, asylum-seeker, smuggled person or trafficking victim all along the same route; States Parties face serious challenges in linking asylum and migration procedures with processes for the identification and referral of victims of trafficking. Officials, for instance, may lack guidance and training on how to proceed in asylum cases, when reasonable grounds for a trafficking situation become known. Sometimes, trafficking victims may themselves be considered as “members of a particular social group” under the refugee definition, but only few countries, such as Norway, provide guidance to its authorities on how to deal with such cases.

Access both to international protection and to identification as a trafficked person becomes even more difficult following placement in reception centres or in administrative detention, often with limited access to information for potential victims, and/or inadequate procedures and sufficiently trained staff to refer such cases to an existing trafficking identification mechanism.

GRETA has observed a general lack of dedicated child-focused identification and referral procedures and staff qualified to deal with this target group. Establishing mechanisms for adults is not at all any guarantee for a functioning identification of trafficked children - maintaining mobile teams for identification without child specialists will neither work nor will children benefit from assistance after identification, if no specialized shelter exists. Identification is also a prerequisite for applying the non-punishment principle (Art 26), which declares that authorities should refrain from imposing penalties on trafficking victims for offences they were compelled to commit due to the trafficking situation, such as irregular entry/stay in a country, or children forced to commit petty crimes. States Parties often lack capacities to address child-specific needs, vulnerabilities to dependency and exploitation, to

ensure child-sensitive interviews, psychosocial as well as legal assistance, provide access to child-friendly information as well as interpretation and arrange for the necessary involvement of additional stakeholders such as child protection authorities. GRETA has also raised concerns with inadequate age assessments procedures, limited to physical appearance/medical tests only, and reminded States Parties of the benefit of a doubt rule in favour of children, as expressed also in Art 10/3 of the Anti-Trafficking Convention.

Moreover, the situation of unaccompanied/separated children warrants particular attention, and typical examples for GRETA “urges” include recommendations for effective guardianship services or the need for policies to address the increasingly discussed phenomenon of children gone missing (“disappearing”), including recently by Europol. Children may leave institutions and go into hiding, pressed by traffickers, or trying by themselves to reach other places where they might hope to reunite with relatives and communities. This has been reported by GRETA already in previous years, but the situation now will further deteriorate in the context of the current crisis situation in Europe, with even less sufficient structures, qualified personnel and services in place. It should be noted here that GRETA has remained critical of efforts by some governments to respond to children gone missing by the establishment of closed institutions. In such cases GRETA recalled general child rights standards on deprivation of liberty; on the other hand we have commended authorities for special protection measures and qualified guardianship services, such as in The Netherlands, or accommodating children in small residential and foster care homes, as in Ireland.

Finally, a repeated area of concern for GRETA has been compliance with the obligation to ensure safe return for trafficked children, while protecting their best interests. This relates in particular to the obligation to prevent re-trafficking of children in such cases where children have been trafficked with the involvement of their parents, which would preclude return to such environment. However, for such assessment, clear guidance for case managers is needed, as well as well-established mechanisms for cross-border cooperation between child protection authorities and monitoring. Furthermore, it should be stressed that the CoE Anti-Trafficking Convention also upholds the obligation of non-refoulement of persons at risk to life or other serious threats to their rights (see Articles 16 and 40/4).

What does this mean in terms of an outlook for the future? As mentioned in the beginning, the new CoE Child Rights Strategy will provide a strong policy framework also for issues falling under the mandate of GRETA and I see clear complementarities here – both in regard to GRETA’s dialogue with governments as part of the monitoring process, and in regard to further engagement with other CoE monitoring bodies and institutions, such as the Child Rights Division and the Secretary General’s Special Representative on Migration and Refugees. In relation to trafficking and children on the move, I would take the following lessons learned from GRETA’s experience:

There is a need for dedicated child-focused identification and referral mechanisms, based on our convention’s positive obligations in this regard: identification should be proactive, reaching out to children, not follow mere ad hoc responsiveness.

Mechanisms for the effective identification of trafficked children need to be mainstreamed in all procedures and settings related to asylum and migration, including in reception centres, administrative detention or at international borders; particular attention must be paid to “accelerated procedures” concerning their feasibility to allow for such identification.

Once children are identified, specialized accommodation and assistance should be ensured, both to comply with protection rights of children and to prevent further vulnerability to exploitation. Such measures should include immediate access to guardians if separated, access to child-friendly legal assistance and adoption of specific policies to immediately address children gone missing.

Prior to any return of children, individual risk assessments based on a comprehensive child best interests determination should be ensured, to prevent the risk of re-trafficking, and to comply with obligations of non-refoulement.

There is a need to institutionalize cross-border cooperation between child welfare/child protection authorities and service providers, including from civil society, at least on a regional/European level, similar to existing cooperation in the police and judicial field.

By paying special attention to the situation of children on the move within our mandate, GRETA aims to contribute also to the implementation CoE Child Rights Strategy, to ensure children not only “growing with rights”, but actually “reaching the heights for the rights of all children” free from exploitation and trafficking!