



CHAIRMANSHIP OF CROATIA
Council of Europe
May - November 2018

PRÉSIDENCE DE LA CROATIE
Conseil de l'Europe
Mai - Novembre 2018



Tomáš Boček

Special Representative of the Secretary General on migration and refugees

Presentation of the HELP course on refugee and migrant children

Good afternoon, Ladies and Gentlemen,

I am very honoured to attend this year's HELP Annual Network Conference. It is my first occasion to join this event and please let me share my admiration and appreciation for what the HELP team at the Council of Europe and its partners in this network manage to do for the implementation of human rights at the national level in Council of Europe member states.

The rights of refugee and migrants has become a topical subject in Europe in the past three years. For reasons, to be disclosed further in my presentation, I have been given the honourable task of presenting the course developed by HELP this year on refugee and migrant children. The content of the course has not yet been disclosed online. So you are among the very few privileged to learn about it before everyone else.

In 2016 over 100,000 children arrived to Europe. Data for 2017 show a decrease in arrivals to almost 33,000; but an increase to 60% in the proportion of unaccompanied or separated children. Over 15,000 unaccompanied and separated children came to Italy alone. As children travelled to and through Europe, many - research says up to 75% - experienced various dangers, such as violence, exploitation and abuse.

Already in 2016 the Secretary General of the Council of Europe made work on improving the situation of refugee and migrant children a priority for the entire organisation. Children on the move, especially in an irregular way, remain one of the most vulnerable groups in Europe today.

In the same line, in February 2016 the Secretary General appointed me as his Special Representative on migration and refugees and included in my mandate a special focus on children in migration. Since then, all 6 of my fact-finding mission reports in different countries concluded on further need to strengthen child protection systems and to build capacity for the protection of all children in member states.

Additionally, in May 2017 the Committee of Ministers of the Council of Europe adopted the Action Plan on protecting refugee and migrant children in Europe. The Action Plan contains a non-exhaustive list of activities, run by seventeen different entities within the Council of Europe. Its aim is to improve the children's access to rights, to enhance their effective protection from different forms of violence and to support their integration. Another scoop is that yesterday we launched a web page on the Action Plan¹, with updated information on the status of implementation and very useful links to Council of Europe freshest resources.

The course I am about to present is a cornerstone action in this Action Plan.

The course was designed in response to documented training needs in Council of Europe member states. As we go through its structure, it will become clear how it complements other activities of the Council of Europe focused on defining standards, on monitoring and on cooperation.

The course reflects the principle on which the Action Plan is based: in the context of migration, children should be treated first and foremost as children.

The substantive content of the course was developed by a working group involving experts from Greece, the United Kingdom and Spain, including the chair of the CAHENF – the Ad Hoc Committee for the Rights of the Child - who acted as an expert on family law; as well as in-house experts from the Office of the Commissioner for Human Rights, the Children's Rights Division, the Social Charter division and my Office. The group also included a UNHCR representative.

The course has drawn on the experience developed in the preparation of other two HELP courses: one of Asylum and the European Convention on Human Rights, and another on Child-friendly justice, to be presented by Regina Jensdottir today. This has secured coherence between the content of the courses but also allowed using the lessons learned during the national adaptations of those courses, in particular the one on Asylum and the ECHR. For me personally, it is amazing how the HELP methodology enables these courses to stay "alive" and evolve with each adaptation.

Cooperation with UNCHR and other organisations outside the house is essential for integrating our work in a wider context and for fostering synergies. Particularly that the course reflects how Council of Europe, European Union and United Nations instruments apply – sometimes simultaneously – in the migration context.

¹ www.coe.int/action-plan-child-refugee

It should be noted that the course refers to existing standards but outlines the discussions in the international community which may result in updated standards. This is relevant for example for age-assessment and immigration detention of children. I will get into more details when we discuss the content of the course.

It goes without saying that the purpose of the course is to make the implementation of human rights a reality on the ground. The course on refugee and migrant children seeks to achieve this by addressing the threefold objective of the Action Plan:

- to improve the children's access to rights through child-friendly procedures and child-friendly tools;
- to enhance their effective protection from different forms of violence through effective identification, guardianship and use of alternatives to detention; and finally
- to support their integration, through family reunification and respect of their social and economic rights.

In terms of scope, the Action Plan and the course concern all children in migration who arrive or have arrived in the territory of any Council of Europe member state. The discourse of many governments has sought in the past years to differentiate between refugees and migrants.

However, it is impossible to distinguish in absolute terms who is a refugee and who is not, when they only arrive. Because procedures may take time, it is vital that refugee and migrant children are provided with requisite protection, from the moment they arrive.

The course, just like the Action Plan, concerns all member states of the Council of Europe. Certainly today some states are more affected than others. Some countries within the Council of Europe are countries of origin (for example, the recent wave of refugees fleeing war in Eastern Ukraine), some are countries of transit or of destination. It is not uncommon for countries to be for some persons a country of transit and for others one of destination. In time, the migratory flows have changed itineraries with the almost closure of the Eastern Mediterranean route and the emergence of a new Western Balkan route or a Western Mediterranean route through Spain.

The course certainly is first and foremost addressed to the traditional HELP target group : legal professionals, such as judges, prosecutors and lawyers. Hence the topic of the conference today: "Good training for good judgments".

However before judges get the chance to examine a case, to fully address the dimension of children in migration, it is necessary to add to this list law-enforcement officials dealing with migration, border and asylum. Law enforcement officers, along with professionals working with children, such as guardians and social workers, as well as NGOs come in contact with children from the moment they disembark from a boat or are found on the street.

The way in which we all interact with children will make THE difference in the lives of these children. Those of us who work on the frontline are the ones to identify their need for asylum or for protection as victims of trafficking or/and of exploitation and abuse. Those of us working with children are the ones to explain in a child-friendly way what are their legal venues in Europe. Those of us dealing with court cases are the ones to see in each case a child before seeing a refugee or a migrant.

My experience has been that authorities are often unaware of better and simpler ways of achieving same or even better objectives. I believe this new HELP course will be instrumental in overcoming such obstacles.

Jumping a bit to a subject to be discussed tomorrow, this course is also relevant for university students. Refugee and immigration law and its close connection with human rights law has never been more topical. Events happening today, like the situation with the Acquarius boat last week, show that law may or may not have the answer to all situations. I truly believe that engaging with universities is an effective long-term strategy for the national implementation of human rights.

So, finally, full disclosure! This is the outline of the course. As you see it is not a typical refugee and asylum course. It provides for an approach focused on the situation of children on the move and addresses it from various angles.

The modules explain how critical issues are addressed in the international and European legal framework and provide the relevant case-law of the European Court of Human Rights. The introductory module explains the logic of the other modules and the links between them.

I will briefly go through each module to give you a sense of it.

Child-friendly procedures: This module is in fact like a brief fundamentals course on child-friendly justice with an angle on migration. As already mentioned, it draws on the principles laid out in the HELP course on child-friendly justice. This module is central to the course as a whole because the principles it covers – like the best interest of the child - are relevant to all other modules.

The module clarifies the child-friendly approach to all migration-related proceedings from the identification of children throughout the asylum or regularization procedures, up to developing durable solutions for their integration in Europe or for their return to a safe country.

It also outlines the role of child-friendly information and what it really means to make any such procedures truly child-friendly.

My team is currently working on a compilation of good practices on child-friendly migration-related procedures, which once ready next year, will be a useful resource to complement this module and the course as a whole.

Alternatives to detention: This module is very pertinent considering the on-going discussions on whether children can be detained for the purpose of immigration detention without breaching their rights. On one side, the UN Committee for the Rights of the Child, the EU Parliament and the Council of

Europe are saying that immigration is never in the best interest of the child. On the other hand, there are countries that have just opened new closed detention facilities for families with children.

The module reflects the legal intricacies of immigration detention - its legality, necessary safeguards and material conditions in which it takes place, with special focus on children.

The second part of the module analyses the alternatives to immigration detention, with details on the forms suitable for children, and again along with the safeguards required by human rights instruments such as the European Convention on Human Rights and the Court's case-law.

An important part of the modules are the additional materials made available for those seeking a deeper understanding. In this module the readers are offered the most recent legal and practical analysis of alternatives to immigration detention, issued this year by the Council of Europe's Steering Committee on Human Rights. This is one among many other useful resources.

Family reunification will be an even more topical subject in the near future considering the number of children arriving to Europe, unaccompanied or separated. The picture in this slide is in fact taken in a Children's centre I visited in Melilla, a Spanish city in Northern Africa. The centre was overcrowded as many children kept arriving, mostly from Morocco, seeking a better life for themselves and their family on the other side of the border. Most of them terribly missed their parents. Family reunification for them, either in Spain or back in Morocco was not a given fact.

Getting back to the course, this module will help the readers navigate through the different standards applicable to family reunification, depending on whether the applicant is a refugee or not, is a child seeking to be joined by or joining parents in Europe. The module aptly explains the interplay between EU law and the applicable principles of the ECHR.

My team is currently working on the development of a handbook on standards and good practices in family reunification, which should be an excellent complementary material for this training module. A great resource already included in the course is the issue paper of the Commissioner for Human Rights, delivered in May 2017 on family reunification and its role in integration.

This takes us to the next module on social rights and integration. Many children remain in Europe, either because they obtain protection, legal residence or simply cannot be returned to their countries of origin. With this reality in mind, integration is the best solution for these children but also for the hosting states.

For this reason, the module covers aspects of social rights vital to integration – education, housing, safe work and durable solutions.

Just last week the European Committee for Social Rights has issued a decision against France, finding several violations of the right of unaccompanied foreign minors to social, legal and economic protection in France. The decision offers a wonderful support to the national implementation of social rights, which may have received less attention, compared to civil and political rights covered by the European Convention on Human Rights.

The Council of Europe has developed in 2007 a Recommendation on life projects for unaccompanied minor migrants, its implementation is currently under review by the CAHENF. In addition, the youth sector is currently working on another text dealing with temporary support measures for young refugees in transition to adulthood. Both are good examples of durable solutions, which may provide children good prospects of a decent and fulfilling life in host countries, which, in turn, gain dedicated and invested members.

Politically, states prefer addressing the arrivals and the management of flows as main priorities. With the passage of time, it is becoming urgent to have a plan for the integration of children which are to stay in Europe.

Guardianship and age-assessment are in fact two separate modules. The reason why I decided to address them together is because of the on-going process in CAHENF developing guidelines on each of them. It is my understanding that work on effective guardianship is more advanced and that before the end of the year we may have a draft text submitted to the Committee of Ministers. The work on age-assessment is advancing at a slower pace but a draft text should be submitted to the Committee of Ministers also in the near future. The modules as they stand today reflect the discussions in CAHENF but to secure coherence and consistency, it is planned to review the modules once work on guidelines is complete.

In terms of content, the module on guardianship covers essential aspects such as timing and appointment of a guardian; volunteer and professional guardians; guardians and legal representatives. The module on age-assessment provides relevant resources developed by the European Union but also elaborates on non-invasive and holistic age assessment procedures, informed consent, benefit of the doubt. The module also reflects the most recent cases on age-assessment pending before UN Committee for the Rights of the Child, to further develop the criteria for acceptable age-assessment procedures.

Age-assessment, similar to immigration detention, is among the most controversial migration practices currently used in Council of Europe member states. We put our hope in that this course will bring more knowledge and awareness on how to enforce migration policies and to respect human rights at the same time.

This takes us to the main question - what is now to come? Apart from the publication of the course in July 2018, what's next? Next is actually the most important. It is the national implementation of the course.

The first step towards it was done at the end of May with a training session for trainers. A second step will be to support the national adaptation of the course in several of the most affected Council of Europe countries: Turkey, Greece, Italy and Spain.

The completion of this course is only the beginning of an important journey meant to bring on board as many professionals as possible and to improve the daily lives of children arriving in Europe. We count on the HELP network in implementing the course in as many countries as possible. We will gladly support the national adaptation in other countries, with your willingness and interest as partners. These adaptations are key to good training and to making the HELP course a living instrument.

Good trainings for good judgments.

Thank you for your attention!