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Child-Friendly Justice in Europe - Participation and Restorative Justice: Online event – 12 May 2020

Statement by Ambassador Drahoslav Štefánek, Special Representative of the Council of Europe Secretary General on Migration and Refugees

Child-friendly approaches in the area of migration: standards, practices and challenges

Excellences, Ladies and Gentlemen,

Thank you for the invitation to join you at this high-level event addressing a topic which remains pertinent in new contexts of migration today as well as in all interactions of children with the law enforcement authorities.

International and Council of Europe legal instruments, as well as the national legal framework of our 47 member states provide a sound basis for the protection of children in general. However, the situation of refugee and migrant children in 2015-2016 revealed that there was insufficient understanding of their protection needs, insufficient or no training to interact with children at borders, in migration and asylum proceedings, and often uncoordinated response on behalf of authorities encountering them during their journey across Council of Europe member states. Even today in 2020, refugee and migrant children, accompanied by their families or travelling alone, represent a particularly vulnerable group of people in Europe. And it is a group of tens of thousands. For example, in 2020 Greece alone is struggling with over 25,000 children newly arrived in 2019 and over 5,000 of who are unaccompanied and separated.

Since my appointment in January 2020, I have not been yet on a fact-finding mission but due to my previous background in Bosnia and Herzegovina, I have seen the situation of refugee

and migrant children there. Good intentions and efforts on behalf of overwhelmed authorities do not always succeed in providing children with safety and support they need or in catering for their needs depending on their level of maturity, vulnerability or adaptability. Certainly, it is also not easy.

Many children, adolescents in particular, want to assert agency and independence and often present themselves as adults, despite their risk of exploitation and trafficking. Although girls are generally considered more vulnerable, reality on the ground demands individual assessment of situations which expose boys to various forms of violence just the same as girls. Then children are often seen and treated as extensions of their parents, which means that their situation is not addressed distinctly from that of the parents, with no administrative documents drawn up separately for them and with the consideration of their best interests absent or simply absorbed by the consideration of the parents' rights and interests.

I am well aware that these general points are valid for most many states. Guardianship for refugee and migrant unaccompanied and separated children is a concept which in many countries needed to be created, either by adapting existing guardianship arrangements for national children or by setting up new schemes altogether.

The effective protection of refugee and migrant children has been a priority of the Council of Europe over the last years. The Strategy for the Rights of the Child (2016 -2021) and the Action Plan on Protecting Refugee and Migrant Children (2017-2019) reflect the Organisation's comprehensive response to various challenges identified in terms of access to rights and procedures, protection from different forms of violence, and integration. As you may know, my predecessor, Ambassador Tomáš Boček, had been given a specific mandate on the protection of refugee and migrant children, with the aim to support Council of Europe member states in promoting children's access to their rights throughout migration and asylum related processes by ensuring a child-friendly and human-rights compliant approach.

In the area of migration, the starting point is also the United Nations Convention on the rights of the child. With all Council of Europe member states having ratified it, this is a common standard. Its pertinence for the migration context is reconfirmed by the predominantly migration-related cases before the UN Committee on the Rights of the Child since the entry into force of the Third Optional Protocol. Being a career diplomat, I was honoured to chair the working group which led to the Third Optional Protocol to the UN CRC. We did not think back in 2009-2011 that the jurisprudence of the UN CRC committee would focus so much on migration cases. It is impressive to see that so many cases pending before the committee today concern non-refoulement, age determination, administrative detention of migrant children, separation of children from parents, family reunification, and access to asylum proceedings.

The UN CRC is used by the European Court of Human Rights to interpret the European Convention on Human Rights and this has been the case of a number of judgments addressing children's access to information and protection in the context of migration.

These conventions are reinforced at Council of Europe level by the 2011 Guidelines of the Committee of Ministers on child-friendly justice. The guidelines are clearly applicable to the area of migration, where the goal of a child-friendly approach is to embed children's rights in migration processes and procedures and to ensure that a child's rights are protected. Such an approach demands that those who work with and for migrant and refugee children are suitable and appropriately trained, treat children with care and respect, with services and systems that are independently monitored.

How can this be done in practice you may ask? How do we implement legal standards in daily working methods and procedures?

Well, I am glad to note that the answer is not purely theoretical. As part of a research and raising awareness exercise, my office has collected in the past years good and promising practices which promote a child-friendly approach in migration. There are many projects, initiatives, programmes and interventions offered by states and non-governmental bodies across Europe that support the vindication of the rights of refugee and migrant children. It is true that these are not always available; nor are they consistently applied. One barrier that exists to a wider application of child-friendly approaches is a lack of awareness of good practice.

So I use this opportunity to disseminate the 2019 publication "[Promoting child-friendly approaches in the area of migration](#)", which illustrates examples of everyday practices implemented in Council of Europe member states at all stages of relevant procedures: from identification and registration upon arrival at our borders, consideration of children's best interests to finding durable solutions for them. We hope that such examples can support the legal professionals, policy makers and front-line professionals who seek to implement or advocate for a child-rights-based approach to migration.

The outlined practices to align with the child-friendly approach insofar as they reflect "child-friendly" elements such as: the child's best interests; respect for dignity, integrity, identity and private life; inclusion; non-discrimination and gender equality; participation; child-friendly information; appropriate assistance/representation; accessibility; appropriate environments; a multidisciplinary approach, etc.

I like a lot the examples which depict different solutions found for guardianship or mixed models of reception in different states, outlining that there is not one-to-fit-all way of promoting child-friendly approaches. I also wish to outline the philosophy of creating systems of foster-care which make detention of children irrelevant as a migration management tool.

The picture would not be complete without the fundamental contribution of the [Handbook for frontline professionals](#) on how to convey child-friendly information for children in migration, developed by our colleagues in the Children's rights division here at the Council of Europe. This is a practical guidance into the implementation of right to information as a precondition for the effectiveness of all the rights of the child, because children in migration face additional barriers due to linguistic, cultural and other barriers. The handbook includes examples of promising practices on how to communicate with children in migration about their rights and the procedures affecting them, practical tips, questions for children and golden rules for child-friendly information.

Drawing on these examples, and in order to fulfil the aims set by the international and European instruments, states can only be further encouraged to:

1. Commit and where appropriate recommit to the implementation of all international and European standards that promote good practice in child-friendly related migration procedures;
2. Undertake a gap analysis to identify those aspects of their migration procedures where compliance with international standards is weak and/or needs improvement;

3. Examine the existing good practices, including those collected by the Council of Europe, with a view to identifying those practices most relevant and applicable in the national context;
4. Evaluate their migration practices against the international children's rights standards, taking account of children's views and lived experiences, and undertake to extend, expand and strengthen those practices that are child-friendly and compliant with children's rights.

Empowering children to access their rights through child-friendly approaches in the context of migration means better protection from all forms of violence, abuse and exploitation. It means building a safer future today for all children in Europe.
