



Provisional version

Migrant children: what rights at 18?

Report¹

Committee on Migration, Refugees and Displaced Persons

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A. Draft resolution²

1. Whereas reaching the age of majority is a milestone to be celebrated for most young people, for unaccompanied migrant children it means losing their rights and, in many cases, being obliged to leave the country where they have lived and forged links.
2. Consequently, it is necessary to fill this legal void in order to help those young people make a successful transition from childhood to adulthood, including in the case of young refugees or asylum seekers.
3. The Assembly observes that there is no legal instrument or even consensus with regard to procedures for assessing a person's age and stresses the need to give the benefit of the doubt, bearing in mind the higher interest of the child.
4. The Assembly emphasises the positive aspects of initiatives taken by certain Council of Europe member States, such as France, Hungary, Ireland, Spain and the United Kingdom, to provide alternative care and support solutions.
5. The Assembly notes however that the lack of harmonisation of administrative procedures engenders a great many inconsistencies, in most instances leaving young migrants with no other choice than to carry out undeclared work in poor conditions, as they have no financial support.
6. The impossibility of accessing justice, decent work or housing makes these young migrants even more vulnerable by preventing them from attaining financial independence and exposing them to the risks of being caught up in the nets of drug trafficking, prostitution or trafficking in human beings.
7. The Assembly recalls Committee of Ministers Recommendation (CM/Rec. (2007) 9) on life projects for unaccompanied migrant minors and also the European Union's Stockholm Programme 2010-2013, which aim to help young migrants become fully responsible for themselves and achieve a good level of autonomy.
8. The Assembly is convinced that establishing a life project taking account of a young migrant's past and cultural identity constitutes an important basis for developing their autonomy and sense of responsibility.
9. In this context, establishing a transition category would facilitate successful economic, social and cultural integration while guaranteeing support and assistance measures.
10. In view of the above, the Assembly calls on member States of the Council of Europe to:
 - 10.1 take due account of the specific situation of unaccompanied young migrants who are reaching adulthood, bearing in mind the higher interest of the child;
 - 10.2 give young migrants the benefit of the doubt when assessing their age and ensure that such assessment is made with their informed consent;
 - 10.3 bear in mind that family reunion remains an integral component of the life project, including through voluntary return;
 - 10.4 establish a transition category, between the ages of 18 and 25, to help young migrants, and take political measures geared to:
 - 10.4.1 welfare assistance and education;
 - 10.4.2 access to information on the relevant administrative procedures;
 - 10.4.3 extensions of housing assistance;
 - 10.4.4 access to health care;
 - 10.5 provide for specific training measures for social workers and anyone dealing closely or remotely with young migrants;

² Draft resolution adopted unanimously by the Committee on 13 March 2014.

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10.6 raise the awareness of civil society as an intermediary between the public administration, the authorities and young migrants;

10.7 introduce a school programme along the lines of the EU *Leonardo da Vinci* programme, enabling young migrants to have a special document allowing them to travel;

11. The Assembly also recommends that local authorities demonstrate empathy and creativity in drawing up a policy for the integration and participation of young migrants in local public life.

B. Explanatory memorandum by Ms Reps, rapporteur

1. Introduction

1. For most adolescents, reaching their majority means freedom and independence. But for many migrant children, this stage in their lives is often a nightmare. For these children, reaching their majority also means becoming an undocumented adult migrant and losing a range of rights and protection available to them as children. Unaccompanied children are no more taken in care and social assistance and face a lowering of their living conditions. The vast majority are obliged to leave the country where they have forged links and risk being placed in detention.

2. At present there are no legal instruments designed to protect them and accompany their transition to adulthood, which should be a cause for celebration and an important stage in the life of all children.

3. The first aim of this report is to take stock of the problems encountered by unaccompanied migrants children during their transition to adulthood and to ask states and the authorities concerned to introduce measures to ensure that this transition is successful, irrespective of whether they are refugees or asylum-seekers, and whether they migrated or reside independently, with family members or in state care arrangements, while bearing in mind that the main objective is to make them autonomous and independent.

4. In this context, attention should be drawn to the Committee of Ministers' Recommendation (CM/Rec(2007) 9) on life projects for unaccompanied migrant minors and the European Union's decision to make unaccompanied minors a priority policy issue within its 2010-2014 Stockholm Programme.

5. This report takes account of the conclusions of the consultative meeting on "Challenges faced by young refugees and asylum seekers in accessing their social rights and their integration, while in transition to adulthood", held by the Strasbourg European Youth Centre on 17 and 18 November 2011 (DJS/CM Refugees (2011) 7) and the discussions held at the Round Table with the participation of young migrants, organised in, co-operation with the European Youth Centre in Budapest and the United Nations High Commissioner for Refugees (UNHCR) on 14 and 15 January 2013.

2. The current situation

6. Migrant children in an irregular situation, as all other children, are protected by international law on the rights of children and in particular by the UN Convention on the Rights of the Child which applies equally to all children regardless of their residence or migration status. While there is still a large gap between the rights accorded to migrant children by the UN Convention and their access to rights in law and practice at national and local level, migrant children benefit from certain additional protection measures due to their status as children, especially if they are unaccompanied.

7. In most Council of Europe member states, unaccompanied children have access to alternative care arrangements and support from the State. Children residing with their families in an irregular situation – children of undocumented migrants³ and those that are undocumented themselves – are afforded some additional protection in some member states, for example, regarding access to education, health care and shelter, and in some cases protection from detention and deportation. However, when migrant children become adults they enter a new stage of their life and lose those additional rights and protection, often from one day to another.

2.1. The legal consequences

8. In most Council of Europe member states, once unaccompanied or undocumented migrant children reach their majority there are several situations in which they may find themselves: having to apply for international protection; being returned to their country of origin; or remaining in an irregular situation. Therefore, these children, in order not to be unfounded or credible, have to lodge an application when they arrived.

³ In some Council of Europe member states, there is no legal category of an 'undocumented child' as children are not required to have residence documents. For example, in France until age 18 and in Ireland until age 16, no residence or immigration documents are required. While children in these countries still face limited access to services in law and practice and are affected by the irregular migration status of their parent(s), they are technically not undocumented migrants. Note that children of undocumented parents can also have regular residence status or even citizenship but still be affected by the status of their parent, but as these children would not face the same challenges on reaching the age of majority, they are not the subject of this report.

9. In the United Kingdom, for example, where most unaccompanied migrant children in an irregular situation are from Afghanistan, Iraq, Iran, Eritrea, China and Taiwan, several possibilities are offered, i.e. the granting of a residence status to allow them to stay longer and to have the possibility to seek asylum, which entails the right to housing but not the right to work and no assistance with education. These authorisations are granted on a discretionary and case-by-case basis.

10. Another possibility is that of their return to their country of origin. If this return is voluntary, the migrant children would receive assistance and if not, he or she would be at risk of being placed in detention. However, migrant children in an irregular situation are not deported to their country of origin if they have no documents that identify their country of origin or if the deportation would violate the young migrants' human rights.

11. In Hungary, projects have been set up to allow unaccompanied migrant children to continue their studies, once they become adults. Depending on their degree of interest, diligence and success, the costs of these young migrants' studies may be met by the authorities. In this context, it should be pointed out that Hungary has altered its system for the reception of unaccompanied children and childhood protection bodies now have a more important role to play.

12. In Spain, most unaccompanied migrant children are from Algeria, Morocco, Romania and Sub-Saharan Africa and are aged between 14 and 18. Their objective is to obtain official documents and to work.

13. Spain has set up so-called street education programmes in Madrid and Barcelona to help children living in the streets to gain access to the childhood protection system through non-school education. Indeed most of them refuse to go to school and prefer vocational training. It should be pointed out that children under official guardianship can acquire Spanish nationality after 2 years and if they have a work permit it does not expire when the legal guardianship comes to an end.

14. In Spain, a programme has been set up to help young migrants to become autonomous and when these young migrants reach their majority, there is a special programme to help them become independent, including transition housing, with programmes designed to help and take care of them until they become completely independent.

15. In Ireland, the responsible authorities for separated children continue to provide support for young migrants in care as they turn 18 and for a number of years. For example, the appointed social worker still attends all interviews and any appeal hearings and any court appearances related to asylum or migration status in the country, and supports their applications. A joint inter-departmental policy has also been developed to place young migrants leaving care that claim asylum in specific family centres within the adult accommodation system that have aftercare support to meet their needs.

16. In France, young undocumented migrants who have successfully complete their education and have their *baccalauréat*, have the right to enroll at university at the same cost as French students. They still face administrative and financial barriers, and remain at risk of detention and deportation, but the right to further education is protected in law and provides additional future perspectives for young undocumented migrants.

2.2. The strategy envisaged

17. Bearing in mind the need to consider these young migrants first and foremost as children, and bearing in mind the Court's judgment in the *Rahimi v. Greece* case (ECHR, case 8687/08 of 5 April 2011)⁴, all young migrants, as children, have the inalienable right to adequate care and to a legal guardian if unaccompanied, and the state has an obligation to provide children with the necessary assistance.

2.2.1. Acknowledging the transitional phase

18. As I already mentioned above, reaching their majority is an important stage in the life of young migrants, who suddenly lose the social, economic and educational rights to which they were entitled as children. Unaccompanied children lose, in particular, the right to accommodation in a special home for young people or in foster care arrangements, economic support and their official guardian. Where undocumented families are in state provided shelter due the child's need, as can be the case in Belgium for example, they are also liable for eviction when the youngest child turns 18. Young undocumented migrants are often placed

⁴ The case *Rahimi v. Greece* concerned the conditions in which a minor, who had entered Greece illegally, was held in the Pagani detention centre and subsequently released with a view to his expulsion. The Court condemned Greece for inadequate care and unlawful detention of an unaccompanied minor seeking asylum.

in detention and deported to their country of origin, which they may no longer remember and with which they no longer have any contacts.

19. Another often neglected aspect is that of the lack of harmonisation of administrative procedures. During my discussions with a number of young migrants, they told me about the obstacle course they had to work through, given the number of administrative inconsistencies.

20. In the eyes of the social welfare services, young migrants who have become adults are no longer entitled to social benefits whereas employment agencies or the States still consider them as minors and do not pay any of the benefits usually paid to adults. Young migrants therefore find themselves without any financial support, and forced to work irregularly, often in poor conditions, in order to survive. They also face challenges renting decent housing in the private market, due to discrimination in law and practice, low and unstable income, and the inability to conclude or enforce contractual agreements. In both the labour and housing markets, the lack of access to justice or redress for violations of rights make young migrants vulnerable to living and working in exploitative conditions. They are also unable to open bank accounts, further reducing their economic empowerment and meaning they have to rely on informal financial services.

21. In this context, many young migrants end up living on the streets, where they are exposed to greater risks of being caught up in the nets of drug trafficking, prostitution or human trafficking.

22. But before they can acknowledge this transition phase, the authorities must be able to determine the age of young migrants. In the light of the above, an erroneous age determination may play an aggravating role. This will be even greater if the age of the child concerned has been wrongly determined, finding him/her older than what he/she is in reality.

2.2.2. Procedures for age assessment or presumption of minority

23. During the discussions which were held but also during my visit to the Fot (Hungary) detention centre, one of the most frequently asked questions was how to assess age.

24. In this context it should be pointed out that, in 2006, the UN Committee on the Rights of the Child said that young migrants' age should be assessed by not only their physical appearance but also their psychological maturity.

25. At present there are no legal instruments or any European regulations for determining age and the principle of the benefit of doubt must therefore be applied.

26. It is true that we now have state-of-the-art equipment and that bone x-rays and other radiology or dental examinations make it possible to assess the approximate biological age of the person concerned. However, the reliability of these have been brought into question and some techniques such as X-rays remain questionable from the medical and ethical point of view and are contested by international organisations.

27. In Resolution 1810 (2011) the Parliamentary Assembly already underlined and drew the relevant authorities' attention to the lack of consensus on procedures for assessing age and recommended, among other things, that *"age assessment should only be carried out if there are reasonable doubts about a person being underage"* and that *the assessment should be based on the presumption of minority by an independent authority(...). If doubts remain that the person may be underage, he or she should be granted the benefit of the doubt"*.

28. I would also like to underline the importance of and the need to carry out such tests with the agreement of the child or of his or her guardian and the involvement of experts from different disciplines.

3. A single objective: autonomy

29. In the light of the above, it goes without saying that the objective is to provide young migrants with the best possible help in making the transition to adulthood so that they can become fully responsible for themselves and achieve a good level of autonomy.

30. The aim of this report is not to create dependency through ongoing help and assistance, but to ensure that they can act independently as responsible adults.

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31. In this context, attention should be drawn to the work already carried out at the Council of Europe on life projects for unaccompanied migrant minors (Recommendation CM/Rec(2007) 9).

3.1. The importance of a life project

32. A life project is a plan that is drawn up by and negotiated between a child and the authorities of the destination country. It is a personal plan as it takes account of the child's past and his cultural identity and aims to give him or her prospects for the future, while taking into account the best interests of the child. Life projects offer an important basis for giving young migrants the possibility to develop their autonomy and their sense of responsibility so that they can become active members of society as quickly as possible, irrespective of whether or not they remain in the destination country.

33. It goes without saying that the persons closest to young migrants, whether it be in the context of the life project or in their everyday lives (at school, friends, etc..) play a very important role in helping them to become independent when the time comes.

34. In this context, it was extremely interesting that for unaccompanied young migrants, for economic reasons, their family in their country of origin remained most important for young people as it provided support at both the emotional and financial and educational level and protection.

35. Family reunification must therefore continue to be an integral part of the life project, either through voluntary return to their country of origin or family reunification in the destination country.

36. During the discussions I had with these unaccompanied young migrants, it was pointed out that social workers played an important, if not the most important, role.

37. It is social workers who should guide, inform, keep an eye on and advise young migrants. Unfortunately a large number of factors (e.g. staff shortages, teaching crisis and lack of training) show that most of the time these social workers do not have the necessary training. This applies to virtually all Council of Europe member states.

38. Giving young people the possibility to attain a certain degree of independence is not enough. In the light of expectations, it would seem necessary to establish a transition status for migrants who have just reached their majority and to continue to grant them, during the transition phase, the most elementary rights, which are a condition *sine qua non* for autonomy, and a successful integration.

3.2. Establishing a transition category

39. From the different discussions it became clear that young migrants are often helpless when faced with the lack of information concerning their rights, the procedures to be followed, the documents to be presented and the different forms to be completed.

40. This is all the more relevant when they enter the transition phase to ensure their successful economic, social and cultural integration. But in order to achieve this goal it is crucial that measures are introduced to support and assist them.

41. In view of the above, if young migrants were considered as a separate group, they could, when they reach their majority, benefit from policies and practices that meet their specific needs.

4. Conclusions and Recommendations

- Policy-makers should take account of the specific situation of unaccompanied migrant children who are reaching adulthood.
- A special transition status should be established, between the ages of 18 and 25, depending on the individuals concerned, to help them until they can act independently, by taking policy measures on :
 - Welfare assistance and education.
 - Access to information on the relevant administrative procedures.
 - Extensions of housing assistance until solutions are found.
 - Access to health care.
 - Measures to ensure specific training for social workers.

- Furthermore, it will also be necessary to;
 - Raise the awareness of civil society as an intermediary between the public authorities and young migrants.
 - Ask the authorities concerned to give young migrants the benefit of the doubt when it comes to assessing their age; such assessment should not be made without the informed consent of the person concerned.
 - Introduce a school programme along the lines of the EU *Leonardo da Vinci* programme, enabling young migrants to have a special document allowing them to travel.