CHILD CIRCLE RECOMMENDATIONS ON THE APPLICATION OF THE DUBLIN FRAMEWORK TO UNACCOMPANIED CHILDREN WITHOUT FAMILY MEMBERS
January 2015

CHILD CIRCLE is a Brussels based non-profit organisation which supports the strengthening of child protection systems in Europe. In particular, Child Circle promotes European action which improves child participation and supports professionals to work together to protect children from violence, abuse, neglect and exploitation. Child Circle regularly contributes to expert consultations of the Council of Europe and EU institutions and agencies, participates in advisory panels for regional projects and publishes policy reflections. (www.childcircle.eu)

CHILD CIRCLE RECOMMENDATIONS

The Dublin framework should provide both for clear rules to determine responsibility for examining applications for international protection criteria and practical safeguards which Member States operate together to fulfil their common duty to protect children. In relation to the proposed amending Regulation to the Dublin III Regulation,[1] CHILD CIRCLE recommends that:

- An unaccompanied child shall remain in the Member State where they are currently located and have lodged an application, unless it is in their best interests to be transferred to another Member State.
- Unaccompanied children who have not lodged an application in the Member State in which they are present are effectively informed of their right to do so.
- Where they do not lodge an application in the country in which they are present, unaccompanied children may be transferred to the country where they most recently lodged an application, unless this is not in their best interests.
- An assessment of the individual circumstances of each child is required before any transfer of a child to another Member State. Article 6 of Regulation 604/2013 sets out the factors which should be considered in this regard. Other vital provisions of the Dublin framework support the involvement of the child, including through the provision of a specific information leaflet and better representation for the child, through a guardian/representative who is qualified and will pursue their best interests.
- The means and process by which the best interests are examined when applying the Dublin framework should be further developed and supported, either by implementing or delegated rules or future EU Guidance. These could provide, for example, for the involvement of child protection services and the representative in the assessments of the best interests of the child. This will ensure that the authorities are indeed able to carry out these assessments in an effective and meaningful way.
- Similarly, the means and process by which Member States should cooperate, where necessary, to establish and assess the circumstances of a child should be further developed and supported, either by implementing or delegated rules or EU Guidance.

[1] Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) n° 604/2013 as regards the determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State, COM (2014) 382 final

For example, this could clarify the type of information that should be exchanged and the authorities and actors that should be involved in the exchange between States.

ANALYSIS UNDERPINNING THESE RECOMMENDATIONS

The Application of the Dublin framework to Unaccompanied Children

The Dublin framework recognises the need for special rules for unaccompanied children, in light of the obligation of Member States to take the best interests of the child as a primary consideration in all actions in their regard. As a result, it sets out that, where there are family members and relatives in another Member State, unaccompanied children are reunited with these family members and relatives, provided it is in their best interests. The Member State where family members or relatives are legally present becomes responsible for determining their asylum application.

In line with the EU Charter of Fundamental Rights and the UN Convention on the Rights of the Child, the situation where an unaccompanied child has no known family members or relatives within the EU must also be addressed by taking the child's best interests as a primary consideration, as confirmed by the European Court of Justice.[2] The Court found that, where an unaccompanied minor, with no member of his family legally present in the territory of a Member State, has lodged an asylum application in more than one Member State, the Member State in which the minor is present after having lodged an application, is responsible for examining it. The Court ruled that "since unaccompanied minors form a category of particularly vulnerable persons, it is important not to prolong more than is strictly necessary the procedure for determining the Member State responsible, which means that, as a rule, unaccompanied minors should not be transferred to another Member State." The Court underlined that the child's best interests are to be a primary consideration when applying all of the provisions of the Dublin regulation. It further noted the interest of unaccompanied minors in having prompt access to the procedures for determining refugee status.

Current Commission Proposal

In line with the agreement by Council and Parliament at the time of adoption of Regulation 60/2013, the current Commission proposal[3] is intended to reflect the MA judgment in the new Dublin legislative framework.

Accordingly the Commission proposal provides that:

4a. Where the unaccompanied minor has no family member, sibling or relative legally present in a Member State as referred to in paragraphs 1 and 2, the Member State responsible shall be the one where the unaccompanied minor has lodged an application for international protection and is present, provided that this is in the best interests of the minor.

4b. Where an applicant as referred to in paragraph 4a is present in the territory of a Member State without having lodged an application there, that Member State shall inform the unaccompanied minor of the right to make an application and give him or her an effective opportunity to lodge an application in that Member State.

[2] See case C-648/11 MA and Others vs. Secretary of State for the Home Department issued on 6 June 2013 .
[3] Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) n° 604/2013 as regards the determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State, COM (2014) 382 final

Where the unaccompanied minor referred to in the first subparagraph lodges an application in the Member State where he or she is present that Member State shall become responsible for examining that application, provided this is in the best interests of the minor.

Where the unaccompanied minor referred to in the first subparagraph does not lodge an application in the Member State where he or she is present, the Member State responsible shall be the one where the unaccompanied minor has lodged his or her most recent application, unless this is not in the best interests of the minor.

4c. The Member State requested to take back an unaccompanied minor shall cooperate with the Member State where the unaccompanied minor is present in order to assess the best interests of the minor.

4d. The Member State, which is responsible pursuant to paragraph 4a, shall inform the following Member States, as applicable, thereof:

(a) the Member State previously responsible;

(b) the Member State conducting a procedure for determining the Member State responsible;

(c) the Member State which has been requested to take charge of the unaccompanied minor;

(d) the Member State which has been requested to take back the unaccompanied minor.

That information shall be sent using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003."

Issues Emerging in the Reflections of the Council and the European Parliament

Discussions at Council level[4] have considered whether this provision should apply in cases where a first instance decision has been already taken on the asylum application in another Member State.

The discussions have been based on the consideration of whether a transfer of the child back to the Member State where a first instance decision has been delivered best serves the objective of not prolonging the procedure, in line with the statements in the Court's judgement. The Court judgement in Case 648/11 itself did not address these specific circumstances.

However, in line with the obligation to take the best interests of the child as a primary consideration, it is clearly necessary carefully to assess whether sending the child back to the Member State where a first instance decision has been taken, would indeed ensure a more prompt access to a decision on international protection. Moreover it would be necessary also to consider the possible negative effects of a transfer on the child, when considering the best interests of the child.

Going to the issue of prompt access to a decision on international protection, there is in fact no guarantee that a transfer back to a country where a first instance decision has been taken would ensure a quicker completion of the asylum procedures. A Dublin transfer in and of itself may take up to six months to effect, once a decision has been taken. The decision making procedure might then be further delayed by the need to

[4] As reflected in Council doc 15567/14 ASILE 33 CODEC 2257

appoint a new guardian in the Member State to which the child is returned. The child should have access to legal assistance as well before any further step in the proceedings.

Indeed, when examining the best interests of the child, an important factor to consider in each case is whether the adoption of the first instance decision in another country would in fact contribute to an effective completion of the overall procedure. The Court might have found that this would not be the case if a first instance decision was based on insufficient information or was taken in the course of a procedure which did not provide adequate support for the child (for example, in terms of information, assistance and support). The existence of deficiencies of this kind might arise from, or have contributed to, the onward movement of the child to another Member State. In such a case, the fact of a first instance decision is unlikely to be considered as a compelling factor to transfer the child back.

Moreover, it is also vital to examine whether the best interests of the child would be affected in any other way by a transfer. This includes consideration of whether there is a risk to the safety or development of the child, a risk of further disappearance or vulnerability to trafficking, a diminished ability to find a durable solution for the child, or other negative repercussions from a transfer. In making a decision taking the best interests of the child as a primary consideration, consideration must clearly be given to whether the risk of such negative repercussions from a transfer outweighed any possible benefits of a transfer.

Indeed, it seems likely that, in many cases, it is more efficient for the Member State where the child is located to take over the application and that indeed it would serve the child's overall best interests better to remain where they are currently located. In these cases, a transfer of information between these States on the first instance decision would be a more appropriate measure than the transfer of the child.

We welcome that the draft report of the LIBE Committee[5] reflects this position and explicitly recognises the need for individual best interests' assessments before any transfer of a child to another Member State.

With these basic rules in place, it will be vital to ensure that national authorities also know in practical terms how to assess the best interests of the child. This will involve better understanding of what information to gather, what services should be involved in the assessment, how the views of the child should be heard, how Member States can cooperate in terms of information to be exchanged and between which actors (e.g. child protection services, past and present guardians, etc).

We believe that the need for clearer and more detailed operating procedures (within and between Member States) is evident from the first experiences in applying the family reunification provisions in Dublin III, which have been explored in several EU funded projects last year, led respectively by Nidos and IOM.

CHILD CIRCLE urges the EU actors to consider carefully what further implementing or delegated rules, or other forms of EU support and guidance, are needed. This should occur in close consultation with the relevant stakeholders involved in the situation of the child.

[5] Draft LIBE Report (2014/0202) of January 1 2015 of Cecilia Wikistrom MEP.

CONCLUSIONS

In conclusion, CHILD CIRCLE underlines the need for:

- **clear rules** which place the best interests of the child at the heart of any responsibility allocation decisions (as established in the Commission proposal, consistent with the European Court of Justice ruling in Case 648/11),
- **concrete steps** to examine the best interests of the child before any transfer (as explicitly recognised in the draft report of the European Parliament) and
- **practical and effective means** for Member States to work together to examine the best interests of the child (as contained in our recommendations for further implementing/delegated rules or EU Guidance).

For further information, see www.childcircle.eu.

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