

COUNCIL RESOLUTION of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.1 thereof,

Whereas, pursuant to Article K.1 (3) (a), (b) and (c) of the Treaty, the conditions of entry of, and residence by, nationals of third countries on the territory of Member States and measures to combat unauthorized immigration and residence by nationals of third countries on the territory of Member States constitute matters of common interest;

Whereas Article K.1¹ of the Treaty provides that asylum policy is to be regarded as a matter of common interest for the Member States;

Whereas third-country minors sometimes enter and stay in the territory of Member States without being accompanied by a responsible person and without obtaining the necessary authorization;

Whereas unaccompanied minors who are nationals of third countries can be the victims of facilitators, and it is important for Member States to cooperate in combating such form of facilitating;

Whereas unaccompanied minors who are nationals of third countries generally are in a vulnerable situation requiring special safeguards and care;

Whereas recognition of the vulnerable situation of unaccompanied minors in the territory of Member States justifies the laying down of common principles for dealing with such situations;

Whereas, in accordance with Article K.2 (1) of the Treaty, this Resolution is without prejudice to the international commitments entered into by the Member States pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

Whereas this Resolution is without prejudice to the international commitments entered into by the Member States pursuant to the United Nations Convention on the Rights of the Child, 1989;

Whereas, pursuant to Article 2 of that Convention, States Parties shall respect the rights set forth in the Convention without discrimination;

Whereas, pursuant to Article 3 of that Convention, in all actions concerning children, the best interests of the child shall be a primary consideration;

¹ OJ No C 274, 18. 9. 1996, p. 13.

Whereas Article 22 of that Convention aims to protect and assist minors who seek refugee status or who are regarded as refugees;

Whereas it is of great importance for the Member States, true to their common humanitarian tradition and in accordance with the provisions of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, to grant refugees appropriate protection;

Whereas on 20 June 1995 the Council adopted a Resolution on minimum guarantees for asylum procedures (1);

Whereas this Resolution is without prejudice to the Strasbourg Convention of 28 January 1981 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data;

Whereas the unauthorized presence in the territory of Member States of unaccompanied minors who are not regarded as refugees must be temporary, with Member States endeavouring to cooperate among themselves and with the third countries of origin to return the minor to his country of origin or to a third country prepared to accept him, without jeopardizing his safety, in order to find, whenever possible, the persons responsible for the minor, and to reunite him with such persons;

Whereas the application of such principles should not interfere with the application of national laws on public policy, public health or public security,

HEREBY ADOPTS THIS RESOLUTION:

Article 1
Scope and purpose

1. This Resolution concerns third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such a person.

This Resolution can also be applied to minors who are nationals of third countries and who are left unaccompanied after they have entered the territory of the Member States.

The persons covered by the previous two sentences shall be referred to herein as 'unaccompanied minors'.

2. This Resolution shall not apply to third-country nationals who are members of the family of nationals of a Member State of the European Union, nor to nationals of a Member State of the European Free Trade Association party to the Agreement on the European Economic Area and the members of their family, whatever the latter's nationality may be, where, pursuant to the Treaty establishing the European Community

or the Agreement on the European Economic Area respectively, rights to freedom of movement are being exercised.

3. The purpose of this Resolution is to establish guidelines for the treatment for unaccompanied minors, with regard to matters such as the conditions for their reception, stay and return and, in the case of asylum seekers, the handling of applicable procedures.

4. This Resolution shall be without prejudice to more favourable provisions of national law.

5. The following guidelines are to be notified to the competent authorities responsible for matters covered by this Resolution, and such authorities shall take them into consideration in their action. Implementation of these guidelines is not to be subject to any form of discrimination.

Article 2 Admission

1. Member States may, in accordance with their national legislation and practice, refuse admission at the frontier to unaccompanied minors in particular if they are without the required documentation and authorizations. However, in case of unaccompanied minors who apply for asylum, the Resolution on Minimum Guarantees for Asylum Procedures is applicable, in particular the principles set out in paragraphs 23 to 25 thereof.

2. In this connection, Member States should take appropriate measures, in accordance with their national legislation, to prevent the unauthorized entry of unaccompanied minors and should cooperate to prevent illegal entry and illegal residence of unaccompanied minors on their territory.

3. Unaccompanied minors who, pursuant to national provisions, must remain at the border until a decision has been taken on their admission to the territory or on their return, should receive all necessary material support and care to satisfy their basic needs, such as food, accommodation suitable for their age, sanitary facilities and medical care.

Article 3 Minimum guarantees for all unaccompanied minors

1. Member States should endeavour to establish a minor's identity as soon as possible after arrival, and also the fact that he or she is unaccompanied. Information on the minor's identity and situation can be obtained by various means, in particular by means of an appropriate interview, which should be conducted as soon as possible and in a manner in keeping with his age.

The information obtained should be effectively documented. In requesting, receiving, forwarding and storing information obtained, particular care and confidentiality should be

exercised, in particular in the case of asylum seekers in order to protect both the minor and the members of his family. This early information may in particular enhance the prospects of reunification of the minor with his family in the country of origin or a third country.

2. Irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care in accordance with the provisions of national law.

3. Member States should, with a view to reunification, endeavour to trace the members of the family of an unaccompanied minor as soon as possible, or to identify the place of residence of the members of the family, regardless of their legal status and without prejudging the merits of any application for residence.

Unaccompanied minors may also be encouraged and assisted in contacting the International Committee of the Red Cross, national Red Cross organizations, or other organizations for the purpose of tracing their family members. Particularly, in the case of asylum seekers, whenever contracts are made in the context of tracing family members, confidentiality should be duly respected in order to protect both the minor and the members of his family.

4. For the purposes of applying this Resolution, Member States should provide as soon as possible for the necessary representation of the minor by:

(a) legal guardianship, or

(b) representation by a (national) organization which is responsible for the care and well-being of the minor, or

(c) other appropriate representation.

5. Where a guardian is appointed for an unaccompanied minor, the guardian should ensure, in accordance with national law, that the minor's needs (for example, legal, social, medical or psychological) are duly met.

6. When it can be assumed that an unaccompanied minor of school age will be staying in a Member State for a prolonged period, the minor should have access to general education facilities on the same basis as nationals of the host Member State or alternatively, appropriate special facilities should be offered to him.

7. Unaccompanied minors should receive appropriate medical treatment to meet immediate needs. Special medical or other assistance should be provided for minors who have suffered any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts.

Article 4
Asylum procedure

1. Every unaccompanied minor should have the right to apply for asylum. However, Member States may reserve the right to require that a minor under a certain age, to be determined by the Member State concerned, cannot apply for asylum until he has the assistance of a legal guardian, a specifically appointed adult representative or institution.

2. Having regard to the particular needs of minors and their vulnerable situation, Member States should treat the processing of asylum applications by unaccompanied minors as a matter of urgency.

3. (a) In principle, an unaccompanied asylum-seeker claiming to be a minor must produce evidence of his age.

(b) If such evidence is not available or serious doubt persists, Member States may carry out an assessment of the age of an asylum-seeker. Age assessment should be carried out objectively. For such purposes, Member States may have a medical age-test carried out by qualified medical personnel, with the consent of the minor, a specially appointed adult representative or institution.

4. Member States should normally place unaccompanied minors during the asylum procedure:

(a) with adult relatives,

(b) with a foster-family,

(c) in reception centres with special provisions for minors, or

(d) in other accommodation with suitable provisions for minors, for example such as to enable them to live independently but with appropriate support.

Member States may place unaccompanied minors aged 16 or above in reception centres for adult asylum seekers.

5. (a) During any interview on their asylum application, unaccompanied minor asylum-seekers may be accompanied by a legal guardian, specially appointed adult representative or institution, adult relative or legal assistant.

(b) The interview should be conducted by officers who have the necessary experience or training.

The importance of appropriate training for officers interviewing unaccompanied minor asylum-seekers should be duly recognized.

6. When an application for asylum from an unaccompanied minor is examined, allowance should be made, in addition to objective facts and circumstances, for a minor's age,

maturity and mental development, and for the fact that he may have limited knowledge of conditions in the country of origin.

7. As soon as an unaccompanied minor is granted refugee status or any other permanent right of residence, he should be provided with long-term arrangements for accommodation.

Article 5

Return of unaccompanied minors

1. Where a minor is not allowed to prolong his stay in a Member State, the Member State concerned may only return the minor to his country of origin or a third country prepared to accept him, if on arrival therein - depending on his needs in the light of age and degree of independence - adequate reception and care are available. This can be provided by parents or other adults who take care of the child, or by governmental or non-governmental bodies.

2. As long as return under these conditions is not possible, Member States should in principle make it possible for the minor to remain in their territory.

3. The competent authorities of the Member States should, with a view to a minor's return, cooperate:

(a) in re-uniting unaccompanied minors with other members of their family, either in the minor's country of origin or in the country where those family members are staying;

(b) with the authorities of the minor's country of origin or with those of another country, with a view to finding an appropriate durable solution;

(c) with international organizations such as UNHCR or UNICEF, which already take an active part in advising governments on guidelines for dealing with unaccompanied minors, in particular asylum-seekers;

(d) where appropriate, with non-governmental organizations in order to ascertain the availability of reception and care facilities in the country to which the minor will be returned.

4. In any case, a minor may not be returned to a third country where this return would be contrary to the Convention relating to the status of refugees, the European Convention on Human Rights and Fundamental Freedoms or the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment or the Convention on the Rights of the Child, without prejudice to any reservations which Member States may have tabled when ratifying it, or the Protocols to these Conventions.

Article 6

Final provisions

1. Member States should take account of these guidelines in the case of all proposals for changes to their national legislations. In addition, Member States should strive to bring their national legislations into line with these guidelines before 1 January 1999.
2. Member States shall remain free to allow for more favourable conditions for unaccompanied minors.
3. The Council, in conjunction with the Commission and in consultation with UNHCR in the framework of its competences, shall review the application of the above guidelines once a year, commencing on 1 January 1999, and if appropriate adapt them to developments in asylum and migration policy.

ANNEX

MEASURES TO COMBAT TRAFFICKING IN MINORS

Member States, mindful of the particular vulnerability of minors, should take all measures to prevent and combat the trafficking and exploitation of minors, and cooperate in this regard.

MEASURES TO PREVENT ILLEGAL ENTRY

Measures which Member States may take to prevent the unauthorized arrival in the territory of the Member States of unaccompanied minors who are nationals of third countries may include:

- (i) collaboration with competent authorities and bodies including airline companies in the countries of departure, in particular through the use of liaison officers;
- (ii) observation at airports of arrival of flights from sensitive countries;
- (iii) consequent application of international obligations including carriers' liability legislation where unaccompanied minors who are nationals of third countries arrive without the appropriate documentation.