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Undocumented migrant children in an irregular situation: a real cause for concern

Reply¹ to Recommendation 1985 (2011)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly [Recommendation 1985 \(2011\)](#) on “Undocumented migrant children in an irregular situation: a real cause for concern”, which it has transmitted to governments, the Council of Europe Commissioner for Human Rights and to relevant bodies and intergovernmental committees.²

2. The Committee of Ministers shares the concerns expressed by the Assembly and recalls that the rights of the child are a priority for the Organisation. It is also concerned by the vulnerability of undocumented children, which exposes them to violence, abuse, neglect and exploitation. The Committee is aware that the issue in question is a complex one, not only in the light of the different circumstances surrounding each undocumented migrant child, but also in the light of the various bilateral, national and international agreements and instruments in place which concern unaccompanied minors.

3. The Committee of Ministers considers that all migrant children must be treated in line with the guiding principles of the United Nations Convention on the Rights of the Child that represent the underlying requirements for all children to enjoy their rights, irrespective of their nationality, statelessness, origin or migratory status. Member States should take all measures required to ensure the protection of children as required by international binding human rights instruments such as the European Convention of Human Rights and the European Social Charter. They should in particular guarantee the right to food, clothing, shelter and medical assistance as reflected in the conclusions and decisions of the European Committee of Social Rights. The Committee of Ministers also draws member States' attention to its Recommendation Rec(2000)3 on the right to the satisfaction of basic material needs of persons in situations of extreme hardship.

4. The issue of undocumented migrant children in the context of the Council of Europe falls primarily within two transversal fields of activity, the rights of the child and migration. The Council of Europe Strategy for the Rights of the Child (2012-2015) for its part supports member States in improving the protection of migrant children and children “on the move” including “asylum-seeking, refugee, unaccompanied, separated, internally displaced and stateless children”. Given that these children are particularly vulnerable to violence and abuse, in particular trafficking and smuggling, multi-disciplinary and comprehensive protective measures should be established and implemented in accordance with the child's best interest principle. For this purpose, the Organisation is promoting the effective implementation of the relevant Council of Europe instruments such as the Committee of Ministers' Guidelines on child-friendly justice and its Recommendations CM/Rec(2007)9 on life projects for unaccompanied migrant minors, CM/Rec(2008)4 on strengthening the integration of children of migrants and of immigrant background and CM//Rec(2009)13 on the nationality of children. This is also the approach followed in the Framework for Council of Europe Work on Migration Issues 2011-2013 where work on migration has shifted from focusing on developing new standards to promoting more effective use of the

1. Adopted at the 1153rd meeting of the Ministers' Deputies (24 October 2012).

2. The Steering Committee for Human Rights (CDDH), the European Committee for Social Rights (ECSR), the Governmental Committee of the European Social Charter, the European Committee on Legal Co-operation (CDCJ), the Steering Committee on Education (CDED) and the European Committee for Social Cohesion (CDCS).

already rich body of existing standards and ensuring appropriate follow-up. The Committee of Ministers would highlight the possibilities for States to obtain assistance, should they so wish. Moreover, in accordance with the above-mentioned document, the Migration Co-ordination Division is currently developing its co-ordination with the European Union, in particular the European Commission. This co-ordination should cover, *inter alia*, issues relating to the rights of undocumented migrant children.

5. In response to other specific recommendations of the Assembly, the Committee of Ministers would signal that the issue of access to education (paragraph 10.1.1) is being taken into account in the Committee's ongoing work on education.

6. With regard to minimum health-care requirements, the Committee of Ministers considers that whilst undocumented migrant children may not be guaranteed the right to social security, efforts should be made where possible to grant them the right to subsidiary social protection, including adequate medical assistance.

7. With regard to paragraph 10.2, the Committee of Ministers would refer to paragraph 7 of the [reply to Recommendation 1969 \(2011\)](#) in which it took "note of the Assembly's request that the Committee of Ministers give instruction for the elaboration of guiding principles on the protection of unaccompanied children" and brought it to "the attention of those responsible for the Programme "Building a Europe for and with Children"".

8. Paragraph 10.3 of the recommendation raises the issue of housing for undocumented migrant children. The Committee of Ministers acknowledges the complexity and indeed importance of this question and whilst reiterating the obligation to provide at least a shelter for undocumented migrants in an irregular situation, it considers that the question of housing as such falls to each member State to address in the framework of their relevant national policies.

9. Finally, with regard to paragraph 10.4, the Committee of Ministers agrees that unaccompanied young migrants, whether minors or young adults, need protection from trafficking and sexual or economic exploitation to which they may be exposed. In this respect, governments may consider reviewing how their current protection measures are defined and whether they might be improved to ensure that the minors or young adults concerned are not subjected to trafficking or physical, sexual or psychological harm. Recalling the relevance of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the Council of Europe Convention for the protection of children against sexual exploitation and sexual abuse (CETS No. 201, the Lanzarote Convention) in this field, the Committee invites all member States that have not yet done so to consider signing and ratifying these instruments.