

Protecting Children's Rights: Europe should do more

Human Rights Comment

STRASBOURG | 18/11/2014 |



Building a Europe for and with Children

25 years of child rights protection

Twenty-five years ago, on 20 November 1989, the UN General Assembly adopted the Convention on the Rights of the Child (UNCRC). It was a landmark development: for the first time, states recognised children as fully-fledged bearers of a range of human rights, just like adults. Today, the Convention is still the most important international text for the protection of children's rights globally. The monitoring system it established is a crucial tool to assess achievements and gaps at the national level. What is more, the mechanism allowing for individual complaints before the Committee on the Rights of the Child has opened a new avenue for children to have their voice heard and their rights recognised.

Substantial progress has been achieved since 1989 in Council of Europe member states. Legislation has been amended to improve compliance with the Convention's provisions, justice systems have been reformed to better address children's needs, national strategies for children have been designed in several member states and specific institutions have been set up to monitor respect for children's rights.

At the same time, member states still appear too ready to neglect their obligations in the field of children's rights. During my country visits, I have often heard that measures to protect children's rights cannot be implemented due to financial constraints, especially in times of austerity. I have also heard arguments against the enforcement of children's rights, in particular in the area of juvenile justice, on grounds that they allegedly unduly interfere with the right of parents to educate their children as they wish. Considerations relating to security or immigration control tend to routinely outweigh the child's best interests in many national contexts.

The main reason behind this lack of compliance with the provisions of the UNCRC is that children are still often not considered full bearers of rights by politicians, decision-makers, sometimes by professionals working with them and even by their parents. This results in persisting violations of their rights throughout the continent.

Four key challenges regarding children's rights in Europe

There are four areas in particular where member states can and must do better to ensure compliance with the provisions of the UNCRC and effective protection of children's rights.

Firstly, migrant children can still be detained in several member states, on the sole basis of their migration status or that of their parents. As recently highlighted by the Parliamentary Assembly of the Council of Europe, politicians are often pandering to rhetoric criminalising irregular migrants, including children, and immigration detention is therefore increasingly used in the member states. Although some countries prohibit the detention of migrant children, the ban is not always implemented in practice. Detention has long-standing harmful effects on children. It undermines their physical and psychological well-being and development, even more so when they are separated from their parents. However, children should also not be detained with their family in order to keep the family together, a practice still in force in several states, which the European Court of Human Rights (ECtHR) said the authorities should limit. I strongly believe that migrant children, whether travelling alone or with their families, should never be detained.

Secondly, it is of deep concern that large numbers of children, especially Roma children and children with disabilities, are still barred from education in mainstream schools throughout Europe. They are kept in separate and/or remedial classes or schools, with very limited opportunities for integration into ordinary schools. Segregation of children in education is in my view one of the worst forms of discrimination. Sadly it is still widespread, as confirmed by various judgments of the ECtHR. It is a violation of the child's right to education on the basis of equal opportunities, and to develop his/her personality, talent and abilities to the fullest potential, as prescribed by the UNCRC. I have raised this concern with the authorities of various countries, including the Czech Republic, France, Hungary, Italy, Montenegro, Portugal, the Netherlands, Romania, Spain and "the former Yugoslav Republic of Macedonia". I have also highlighted that the chances for these children to integrate successfully in society at a later stage are very slim. They are in most cases likely to face a grim future of marginalisation and poverty.

Another issue I have dealt with in several countries is the persisting and self-perpetuating problem of statelessness among children. Around 680 000 persons are still stateless in Europe, a large number of whom are children. In some countries they are at risk of statelessness because of the lack of a birth certificate. This is often the case for children belonging to excluded and discriminated ethnic minority groups, such as the Roma. In other countries, children "inherit" the statelessness from their parents. They can also be born stateless as a result of their parents' migration and of a conflict between the nationality law of their country of birth and that of their parents' country of origin. The UNCRC guarantees the right for every child to acquire a nationality. This should happen at birth or as soon as possible after birth because stateless children are rightless children and they run a higher risk of human rights violations, such as trafficking and exploitation, detention, lack of access to education, health and social care and justice.

The fourth and last challenge that deserves to be highlighted is poverty, which is affecting a growing number of children. According to the European Union, 28% of children were at risk of poverty or social exclusion in the 28 EU member states in 2012 (against 24.8% for the overall population). Higher levels of child poverty are reported in several non-EU member states. The economic crisis and subsequent austerity measures adopted by many European governments, including the dismantling of social safety nets and cuts in programmes supporting families, have had a highly detrimental impact on the life of many children. Consequently, opportunities to access adequate health and social services, adequate housing and quality education have been shrinking. Children growing in poverty are also more vulnerable to child labour and other forms of exploitation; they are at times taken away from their family on the grounds of poor socio-economic conditions, a practice the ECtHR has found to be incompatible with the right to private and family

life; and they have limited chances of accessing justice to seek redress and protection. This situation has a potentially devastating long-term impact for European societies, given that chronic poverty in childhood is one of the major root causes of poverty and social exclusion in adulthood.

What should be done to improve protection of children's rights?

These violations of children's rights can and must be remedied. It is crucial to raise awareness among decision-makers, but also the population at large, that children are full bearers of rights and that enforcing their rights in practice is not optional but an obligation of states.

States should expeditiously and completely end immigration detention of children, as advocated by the UN Committee on the Rights of the Child and the International Detention Coalition. Alternatives to detention should be put in place, on the model of existing good practices. Some states, such as Belgium or Sweden, have developed alternatives which are more respectful of human rights, less costly, and which have also proven effective in ensuring compliance of the persons concerned with migration-related decisions. They include accommodation in open facilities in the community, supported by a system of individual supervision, possibly in conjunction with reporting or registration obligations.

States must prohibit segregation in education, in all settings. They should actively pursue education of all children in inclusive schools, where adequate support is provided to children who need it. This requires that the authorities take active steps to convince the majority of the population and educators that ending segregation and promoting inclusion is in the best interest of all children, including of children without disabilities and those belonging to the majority population. States should also draw up ambitious plans for desegregation with targets and timelines, provide adequate support to the children and educational staff concerned by desegregation and promote integration activities at the local level.

States should ensure that no child born on their territory is left stateless and eliminate discriminatory laws and practices regarding access to nationality. They should in particular grant nationality to children born on their soil who would otherwise be stateless, in line with UN and Council of Europe relevant standards, in order to break the vicious circle of perpetuation of statelessness. The birth of all children should always be adequately registered, as a prerequisite for access to a legal identity and ultimately to a nationality.

States should acknowledge that child poverty is a major human rights challenge, assess on a regular basis the extent of the problem and take vigorous measures to reverse the trend.. They should in particular evaluate the impact of austerity measures on the enjoyment by children of their rights, including their rights to adequate living standards, to the highest attainable standard of health, to education and leisure and to participation in society. The strategies elaborated by a number of member states to mitigate the negative impact of austerity measures on children are necessary, but not sufficient: governments must devise long term policies to tackle the root causes of child poverty. Further efforts should also be made to enable children in a situation of social exclusion to access justice and other remedies in case of violations of their rights.

Nils Muižnieks