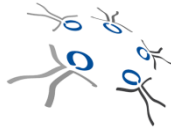




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**CHILD CENTRE**  
Expert Group for Cooperation on  
Children at Risk, EGCC



## **Child Exploitation – Cross-National Child Protection in Practice**

### **‘PROTECT Children on the Move’**

## **First Expert Meeting**

**Case assessment and best interest determination:  
Special considerations and procedures in transnational cases of  
children exposed to exploitation, trafficking, and children at risk**

**CBSS Secretariat, Stockholm  
28-29 January 2014**

## **Summary Report**

## **Background**

In 2014 and 2015, the Council of Baltic Sea States (CBSS) Children's Unit, in collaboration with the Central Board of the State Border Guards in Latvia, the State Child Rights Protection and Adoption Service in Lithuania, and the Stockholm Social Emergency Authority in Sweden, is organising five Expert Meetings with partners in Europe and beyond. The Expert Meetings are part of the project 'Child exploitation: Cross-national child protection in practice', funded by the European Return Fund (EC). The aim of the meetings is to identify child rights standards and key agencies responsible for protecting children exposed to exploitation and trafficking in cross-border situations. The outcomes will include a report and an online tool outlining relevant laws, policies and procedures as well as responses to issues faced by child welfare and migration authorities in relation to the return of child victims of exploitation and trafficking.

The first Expert Meeting was convened at the CBSS Secretariat in Stockholm, Sweden, on 28-29 January 2014. It focused on the theme '*Case assessment and best interest determination: Special considerations and procedures in transnational cases of children exposed to exploitation, trafficking, and children at risk*'. The participants, a group of over forty experts, represented local and national authorities, UN Agencies, national and international NGOs, service providers and practitioners from the Nordic and Baltic States, representatives from Member States of the European Union and the Council of Europe..

This report summarises, in synergy, the key outcomes and conclusions that resulted from the meeting. A more detailed conference report, the speakers' presentations, and meeting agenda are available from the CBSS website.<sup>1</sup>

### ***A human rights imperative: The best interests of the child as a general principle under international law***

Under Article 3.1, the UN Convention on the Rights of the Child (CRC) affords that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". The principle of the best interests of the child is applicable to decisions concerning individual or groups of children as well as to the planning and implementation of policies on all matters concerning the child population more broadly, including legal and administrative reform and budget allocation.

Article 3 is considered one of the general principles of the Convention. It needs to be understood in relation to all the other human rights of the child afforded under the CRC, including specifically the other general principles, i.e. the right to non-discrimination (CRC Art. 2), the right to life, survival and development (CRC Art. 6), and the right of the child to have his or her views heard and taken into account (CRC Art. 12).

In 2013, the Committee on the Rights of the Child issued a General Comment No. 14 on the best interests of the child. This General Comment clarifies the concepts and procedures of a best interest assessment and determination. It provides guidance on how to understand, interpret and apply the principle of the best interests of the child. In particular, it notes that the principle needs to be understood as a three-fold concept: a substantive right; a fundamental, interpretative legal principle; and a rule of procedure. The discussants at the conference concurred that the understanding and awareness of the best interests of the child needs to be strengthened significantly in relation to each of these three dimensions.

The principle of the best interests of the child has been enshrined into national laws and policies in many countries. It is also a central element of European and international laws, policies and regulations. Yet, its application in practice is still often very weak. There is clearly a risk that the

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<sup>1</sup> See: <http://www.childcentre.info/presentations-from-the-expert-group-meeting> Expert Group for Cooperation on Children at Risk, Report and presentations on best interest assessment in transnational cases of children exposed to exploitation and trafficking - Stockholm 28.1.-29.1.2014.

principle is understood primarily as a legal concept and that its implementation stops short at legal reform, introducing the wording into relevant laws and policies on children. Countries do not always provide advanced guidance, in national law, policy and procedures, on the elements that need to be considered when the best interests of the child are being assessed.

### ***The best interests principle as a key for individual assessments***

The principle of best interests of the child is a key concept for the individual case and needs assessment, care planning and case management. It requires that professionals and officials consider and assess each case individually, according to the specific background, situation, views and needs of each boy or girl. The individual approach to case assessment and management still needs to be strengthened, including specifically for non-national children.

### ***A holistic approach to the best interests assessments and determinations***

There is a need to strengthen holistic and inter-disciplinary approaches to the assessment and determination of the best interests of the child. The various authorities involved in the case of a child may take different approaches to assessing the child's best interests and in gathering and balancing relevant information. Social workers are trained to conduct assessments and care planning in a holistic way, giving due consideration to all the rights afforded under the Convention. The responsibility for conducting the assessments and taking formal decisions over the best interests of the child are however not always in their hands. In many countries, the decision over the best interests of a national child or a child who is residing regularly in a country is taken by a court of law.

For non-national children, however, the immigration authorities have a leading role in assessing the child's case in order to decide about the child's stay within the country, return or transfer to another country. The social workers assess the best interests of the child with regard to the child's safety, well-being and relevant care arrangements. In some countries and for some groups of children, police officers or border guards are taking decisions over children, including with regard to immigration detention. The communication and cooperation between these different authorities may pose a significant challenge to ensuring a balanced and holistic approach to the assessment and determination of the child's best interests.

Speakers from different countries and backgrounds reiterated the challenges of achieving a holistic approach and to integrate the assessments conducted by different authorities. Strengthening and institutionalising the cooperation and consultation among these authorities was considered essential for ensuring that all the human rights of the child are given due weight, being considered as inter-related and indivisible, as afforded under international standards.

### ***Inter-disciplinary approaches to case assessment and best interests determinations***

Inter-disciplinary approaches and models for interviewing child victims and witnesses of crime, including children who have been exposed to abuse, exploitation and trafficking, should be established and promoted more consistently. The internationally recognised best-practice model of the Children's House in Iceland was presented. The Children's House staff conduct forensic interviews with child victims and witnesses of crime and with children who have potentially been exposed to abuse. This model would be well-prepared to conduct interviews also with child victims of trafficking and can guide professionals in developing more child-sensitive approaches to interviewing child asylum seekers.

In addition, a best interest assessment tool developed by Save the Children in the Southern African region was presented. The tool guides social workers in developing more comprehensive and holistic case assessments for children on the move. It is complemented by cross-border multi-agency cooperation groups that support the cooperation of authorities in the country of origin and destination. They facilitate the information gathering and case assessment and help strengthening the awareness, knowledge and implementation of the best interests of the child in the region.

In the UK, the Children and Families Across Borders is supporting the development of Joint Courts for determining the best interests of children in transnational cases, uniting the Family Court and the Immigration Tribunal to promote a more holistic approach to the formal decision making process. A Bill for establishing such joint courts is currently at Parliament.

### ***Incoherent standards and procedures for different groups of children***

The standards and practices for case assessment and best interests determination have not been harmonised throughout Europe and differ for different groups of children. Children arriving from third countries are commonly referred to the asylum reception system. EU migrant children are usually referred to the general child protection system operating locally in the municipality where they are identified. For child victims of trafficking, special procedures have been developed in most European countries.

Whereas the standards for referral, case assessment, care and protection have been rather well defined for asylum seeking children and child victims of trafficking, they are less clearly defined for EU migrant children. The responses followed for EU migrant children are barely standardised and are often decided upon ad-hoc, resulting in significant variation between municipalities, regions and countries.

Overall, the participants in the expert meeting noted that the responses and procedures that apply to different groups of children are highly heterogeneous. Institutional responsibilities, regulations and procedures vary significantly between and within countries. As a result, this might lead to differential treatment of children on the grounds of their national or ethnic background and their immigration status.

### ***The best interests of the child as a primary consideration: Policy coherence***

The best interests of the child are not always given a primary consideration in decision making processes concerning individual children. There are cases, in which other interests may override the best interests of the child and may take precedence. This is particularly the case when the human and financial resources of social services are limited and do not allow the responsible authorities to provide services in line with the best interests of the child. In other cases, family matters and the interests of parents or alleged parents may override the consideration given to the rights and interests of the child. For non-national children, there is particularly a risk that immigration regulations take precedence over the best interests of the child.

Professionals or officials working with and for children are often confronted with dilemmas that arise from unclear mandates and limitations in their scope of action when they have to balance the interests of the child with other interests, demands and constraints. It is therefore important to review national laws, policies and practice from a perspective focused on the best interests of the child. This will help identifying incoherent and inconsistent laws and policies. Reform of policy and practice and training need to be promoted to harmonise different sectoral laws, such as immigration laws and child protection laws, and to build competence on holistic and rights-based approaches to case assessments and best interests determinations.

### ***Training, capacity and attitudes to ensure the implementation of the best interests' principle***

In some contexts and cases, the attitudes, knowledge and awareness of the social workers or other competent authorities are inhibiting rights-based and holistic approaches to the best interest assessment and determination. Professional training, information and awareness raising are required to support social workers and other professionals and officials involved in case assessments and best interests determinations. In addition to a strong legal mandate, there is also a need for effective tools that support the relevant professionals or officials in conducting best interest assessments and determinations in a child-sensitive, rights-based and holistic way. They need to be trained to communicate effectively with the children whose cases they are assessing

and to listen to what the child is saying. It is further essential, that the competent professionals or officials have access to technical advice, supervision and coaching on how to strengthen their performance in this regard.

### ***Strategic litigation to strengthen case law on the best interests of the child***

In addition to the standards afforded under international law, the European Commission and the Council of Europe have a key role in further promoting and clarifying the rights of the child and the principle of the best interests of the child in Europe. They enact important regional law and policies, as well as regulations, recommendations and guidelines that enhance the regional debate and awareness of child rights and the best interests' principle. It remains a challenge to implement these standards effectively and consistently into child rights practice. Although European countries have achieved significant progress, the status and quality of implementation remains highly heterogeneous and there are still gaps in national child protection systems that leave children unprotected. Non-national children and children belonging to ethnic or other minorities are particularly at risk in this regard.

The monitoring and judicial systems established under the Council of Europe and the European Union have contributed to enhancing legal clarity in the interpretation and application of the best interests' principle. Relevant case law from the European Court of Human Rights and the European Court of Justice has helped to promote the human rights of children and the best interests' principle at national and regional level. The European Court of Justice, for instance, ruled in 2013 that it would be an infringement of EU law to transfer children to the state where they had first been registered as asylum seekers. The ruling was based on European law and the obligation to comply with the CRC. It recognises the CRC and the principle of the best interests of the child as an integral part of EU law. As a result, unaccompanied asylum seeking children are now exempted from the transfers under the Dublin Regulation and have a right to apply for asylum in any EU Member State.

Whereas this and other relevant case law constitutes an important achievement for promoting children's rights in Europe, it is also pointing to shortcomings and gaps in the way that European states are implementing the Convention on the Rights of the Child and other international or regional child rights standards. Taking cases to the European courts constitutes a huge burden for any person, especially for a child. Claiming respect for human rights can often only be achieved when a child has access to legal and other support throughout the entire process. Strategic litigation is essential to enhance the implementation of international and regional standards and should therefore be pursued more actively, with the support of child rights advocates. At the same time, governments need to strengthen national laws, policies and practice to ensure that all children enjoy their human rights without having to actively claim them at court.

### ***Children's perspective on their best interests***

Children's own perspectives on their best interests are not always given due consideration when their cases are being assessed. There is not always sufficient time available to establish a trusted relationship between the authorities and the child. A child-sensitive procedure is as important as meeting and accommodating the child in a friendly and welcoming environment that supports the child in building trust, feeling respected and safe.

A child whose asylum application was rejected might leave the reception centre without informing the authorities of his or her whereabouts in order to avoid deportation. By taking the decision to leave, children make strong statements about what they consider is in their best interests, under the limitations and constraints imposed by the immigration regime. A child who prefers to remain in Europe as an undocumented migrant, living under highly precarious, insecure and risky conditions, expresses thereby that returning to his or her country of origin would be an even worse alternative. This constitutes a statement on the interests of the boy or girl concerned, that the authorities should take seriously into account when assessing or re-assessing the case.

In some cases, children are encouraged or induced by parents, family members, peers or traffickers to migrate to and within Europe, sometimes getting involved in illegal or exploitative situations. Exploiters and traffickers might even be the most important persons of 'trust' for exploited children – or they may threaten the child with harming them further or their family – and it is therefore important to understand loyalties, expectations and pressure imposed on children. Building trust, taking time and meeting the child in a friendly environment are therefore all considered essential to get children to talk about their experiences and to freely express their views about their own best interests.

***Establishing jurisdiction: A precondition in transnational cases***

For non-national children, the assessment of a case is often hampered by unresolved questions about the jurisdiction over the child. The communication and information exchange between the competent authorities in countries of origin, transit and destination are not always effective and might cause delays in the decision making process. It would be important to strengthen the cooperation between authorities, harmonising procedures within Europe, and providing more clarity in practice on how to establish the jurisdiction over a non-national child. In this regard, it is important to consider the situation of the child in the home community. In addition to individual case assessments, there is also clearly a need to strengthen the national and local level child protection systems in European countries and beyond, in order to ensure that children enjoy their rights to a safe and healthy development in their home communities.