

“Child poverty and well-being: Spotlight on the situation of migrant children in Cyprus and the EU”

The Platform for International Cooperation on Undocumented Migrants (PICUM), in partnership with the Commissioner for Children’s Rights in Cyprus, the Office of the European Parliament in Cyprus, Eurochild, and KISA, Action for Equality Support and Antiracism, organised an expert roundtable meeting on the subject of “**Child poverty and well-being: Spotlight on the situation of migrant children in Cyprus and the EU**” on 17 October 2012.



Held one day prior to a high-level conference on child poverty and well-being, organised by the Cypriot Presidency of the European Union in the context of on-going work towards a European Commission Recommendation on the issues, the event shone a spotlight on the poverty and social exclusion facing migrant children in Cyprus and throughout the EU, considering the specific vulnerabilities of migrant children and relevant good practices, in order to inform developments on both European and national levels.

Opening Remarks

The roundtable began with a welcome and introduction by **Leda Koursoumba, Commissioner for Children’s Rights in Cyprus**, who emphasised the need for legislation and practice to be harmonised to respect international standards of child rights, which all children should enjoy equally. Summarising some of the key concerns around the rights of migrant children, she referred to restricted access to social rights and to a good standard of living as a family, family separation due to deportation, lack of legal representation for children, and ineffective and inefficient implementation of the best interests of the child principle in migration decision-making. The Commissioner also called for a focus on migrant children in poverty reduction measures, as they frequently experience poverty, discrimination and social exclusion.



From left to right: Ms. Lilana Keith, Ms. Leda Koursoumba, Ms. Alexandra Attalides, Ms. Sotiroula Charalambous and Ms. Agata D’Addato.

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Alexandra Attalides from the **European Parliament Office in Cyprus** presented some figures regarding asylum applications and rejections in the EU. She underscored the need for good management of asylum in order to increase mutual trust between member states, and to take responsibility for asylum-seekers and their children with sensitivity and respect for children's rights.

Agata D'Addato explained **Eurochild's** concerns about the daily violations of rights experienced by children due to their migration status, and about the impacts of these violations on their personal, intellectual and psychological development. Ms. D'Addato noted that in the current climate of budget cuts due to the financial crisis, social spending is not being prioritised in many member states. In order to prompt change, she recommended: improved statistical information on the most vulnerable, greater awareness of children's rights among state and finance ministers, and stronger investment in social inclusion through the EU structural funds. The Council Conclusions on "Preventing and tackling child poverty and social exclusion and promoting children's well-being"¹ approved under the Cypriot Presidency of the EU were pointed to as an important step in collective efforts to tackle child poverty and social exclusion, and promote child well-being, beyond material resources. Considering Cyprus specifically, the important steps that Cyprus has taken to improve its institutional framework and tools to protect and safeguard child rights were acknowledged, and remaining challenges highlighted: the gap between law and practice, and specific systemic weaknesses and gaps, such as around the legal representation of unaccompanied children.²

Minister of Labour and Social Insurance, Sotiroula Charalambous, then delivered the key note speech. The Minister highlighted the need to consider migration issues from the perspective of both countries of origin and destination, indicating a role at EU level to address the reasons why people migrate. The goal in so doing, she clarified, would not be to end migration, but to contextualise migration and related issues within discussions on global inequalities and national policies based on human rights values. The Minister pointed to the lack of data, particularly about undocumented migrants, but quoted an estimate that 20 million regular migrants were facing poverty in the EU, showing their high risk of poverty and social exclusion. At the same time, she drew attention to the growing recognition of the contributions of migrants to economic growth and development, both in countries of origin and destination, when human rights are respected. The Minister emphasised the even greater need for appropriate policies to be in place for children who migrate, to ensure that they are able to adjust and contribute to their new environments, and that migration is positive.



Ms. Sotiroula Charalambous

First panel : Migrant children at risk of poverty and social exclusion

Lilana Keith from **PICUM** opened the first panel discussion, inviting Nicos, a young undocumented migrant who has grown up in Cyprus, to share his story.

Nicos informed participants that he travelled to Cyprus at the age of five with a family, who were friends of his family in Syria. However, after a short time, the family decided to leave Cyprus, and left Nicos with some other friends. So Nicos became undocumented and was left to fend for himself from an early age. He only attended school for one year. By age 12 he found employment on a

¹ Council of the European Union, "Preventing and tackling child poverty and social exclusion and promoting children's well-being - Council Conclusions", Brussels, 5 October 2012 (14437/12).

² PICUM uses the term "children" instead of "minors". Following the UN Convention on the Rights of the Child (CRC), 'a child means every human being below the age of eighteen years.' However, the age when someone is no longer defined as a "minor" varies from country to country. Further, especially in a climate where undocumented migrants are de-humanised, referring to undocumented children as "minors" rather than "children" has potentially negative connotations and risks their exclusion from the child rights/ child protection frameworks.

construction site, doing small jobs until he was 14, when he took on the work of a normal employee. When he was 16, he was badly injured in an accident at work but was too afraid to seek medical assistance. One day he was travelling with a friend on their motorbike when they were stopped by the police. The police did not believe that Nicos was only 16 and had no papers. He was beaten by the police. He persuaded them to verify his identity with his teacher from the primary school he attended for one year, who recognised him and confirmed that he was an undocumented child. Nicos was then taken to the welfare services, but was refused support because he was undocumented.



Nicos

A few months later, the NGO Kisa was made aware of his case. They found him and helped him file a claim for asylum and register in school, for a training course to become a plumber. With the assistance of the school, he found a job as a plumber, but the Labour Office did not approve his employment because asylum seekers are only permitted to work in farms and agriculture in Cyprus. At the same time he was unable to find irregular employment as before, due to the economic crisis in Cyprus. At age 18, he was destitute again, without any welfare or other support.³ Shortly after

his 18th birthday,⁴ Nicos was called for his asylum interview and asked questions about Syria – like what he would do if he returned there – that he could not answer, having little memory of his country of birth. Nicos described his feelings of frustration at a system that considers him a migrant, when he has spent his whole life in Cyprus and considers Cyprus his home, speaks Greek, and has a Greek Cypriot girlfriend. He asked what he could do to survive while waiting for resolution of his status, with no welfare support and no job. He explained he wanted only the same as other children and young people.⁵

Participants then heard from **Hara Tapanidou, Head of Section for Families and Children of the Cypriot Social Welfare Services** who described some of the measures undertaken to reduce poverty and protect all children, including migrant children. These included, economic and social assistance, assessment of high risk groups, and community networking. She highlighted the vulnerability of unaccompanied children, for example to trafficking, and the challenges of recruiting foster families, as well of safeguarding the rights of undocumented children and families.

Providing a perspective from elsewhere in Europe, **Goos Cardol** from the **Child Protection Board in the Netherlands**, shared some details about the situation in the Netherlands, and protections for all children regardless of migration status. Mr. Cardol noted that while the Netherlands has very strict migration policies, some rights are clearly protected regardless of status. For example, commenting on a circular requesting schools in Cyprus to inform immigration authorities about foreign pupils, which is unimplemented but has not been withdrawn, he explained that there is no communication between schools and immigration authorities in the Netherlands, protecting the right to education. Young undocumented migrants can also attend university without a social security number, but remain at risk of deportation. Other rights and services protected in the Netherlands include health care, judicial assistance and youth care. In principle there is no difference in treatment for children (those under the age of 18) by the Child Protection Board. However, he noted the difficulties in the strict focus on children, which does not address wider family issues, and the lack of specialised services to address the specific circumstances of undocumented children. Nevertheless, he

³ For more than a year he received welfare support and lived with other young migrants. However, he was then told he had to find a (foster) family to live with, as the welfare cheque could not be issued in the name of a child. He managed to find a family and lived with them for six months, but the family did not receive any payments and he left because he felt ashamed to be a burden for the family.

⁴ The asylum service of Cyprus does not currently examine the asylum applications of unaccompanied children until the applicants become adults.

⁵ A couple of days after the meeting, Nicos received a positive answer to his claim for asylum - a refugee status.

emphasised that families are not separated by immigration control or social services in the Netherlands, and where possible, children with families are helped through collaboration with other organisations and social assistance for the child.

Discussion

As chair, Ms. Keith opened the discussion, directing an initial question to Ms. Tapanidou to ask if there are specific activities of the Cypriot Social Welfare Services to ensure that migrant children are included in the available social services. Ms. Tapanidou clarified that while there are no specific programmes for migrant children, the services in place are designed to provide equal support to all vulnerable groups. In response, a participant again drew attention to the gap between law and practice, as evidenced by, for example, Nicos' case. The importance of considering the reality of access and conditions on entitlements was underscored. Several other participants raised concerns and shared experiences of providing or accessing services, as asylum-seekers, unaccompanied children or parents.

A common issue was the length of procedures and long periods of uncertainty while statuses were being resolved, with many living in 'limbo' for years, with numerous impacts on health and well-being and integration. For example, some described 'learned exclusion', when children are integrated at school but find themselves unable to go on school trips, to play for the school football team despite talent, or go on to further education. The impracticality of the long procedures was also brought starkly into focus by a young undocumented girl who shared that her family has been refused asylum and asked to leave after 11 years of living in Cyprus. She expressed her request that her and her siblings, all top students in school, would be able to continue their education and have the opportunity to realise their dreams.



From left to right: Ms. Leda Koursoumba, Ms. Lilana Keith and Mr. Goos Cardol.

Fear of accessing services and lack of information about rights were also raised as key barriers. To address this, concrete proposals suggested included, outreach in schools to link migrant families with social services and issuing a circular and announcement in schools to inform all about entitlements for migrant children. The Commissioner noted that a circular about rights to access health care for children and pregnant women has been circulating, but practical implementation problems remain, as professionals need also to know how to apply the law. With reference to the difficult experiences of many migrant children, such as those shared during the conference, she reiterated the need for the Convention on the Rights of the Child (CRC) and the best interests of the child principle to be implemented.

The discussion also considered the policies for unaccompanied children that claim asylum. While the official policy was clarified, and options for foster families and children's homes presented, the practice of children being called for their asylum interview after they turn 18 years of age, when they are no longer eligible for legal assistance, was denounced by several participants. The guardianship system in the Netherlands was seen by some as a potential inspiration for improved policy in this area.

Second panel: Protecting children's rights in migration decisions

Chair, **Ninetta Kazantsis** from the Pancyprian Coordinating Committee for the Protection and Welfare of Children, opened the panel by emphasising the importance of all children's rights being protected without discrimination.

Nicoletta Charalambidou from **KISA** provided an overview of the key rights derived to parents from the CRC and the EU Charter of Fundamental Rights, in particular rights deriving from the right to private and family life and the rights of European Union citizens to free movement within the European Union. Ms. Charalambidou presented some of the relevant case law from the Court of Justice of the European Union (CJEU), clarifying their binding nature on Cyprus. She pointed to the potential impact of the *Zambrano* case⁶ - which found that a third-country national parent of an EU citizen child should in certain circumstances have the right to reside and to work to support their child - in Cyprus where there are many mixed status families of Cypriot children with parents from outside of the EU. The interpretation of the *Zambrano* case leading to state aid being stopped for some third-country national parents of Cypriot children was criticised as contrary to CJEU case law and the CRC. The lack of recognition of additional rights that should be granted to asylum-seekers under EU law was also criticised. In conclusion, Ms. Charalambidou indicated the need to strengthen the legal framework in Cyprus to protect the rights guaranteed in international and European Union law.



From left to right: Ms. Kamena Dorking, Ms. Leda Koursoumba, Ms. Nicoletta Kazantsis, Mr. Constantinos Karmellos and Ms. Nicoletta Charalambidou

The second speaker, **Constantinos Karmellos** from the **Ministry of the Interior**, welcomed the statements from the other speakers and participants, expressing his Ministry's determination to work together to improve the situation. He emphasised that it is the goal of all governmental policies to safeguard the best interests of migrant children, a vulnerable group, and that migration can be positive for all when policies are in place to foster integration. Recognising the wide range of issues raised, he called for an integrated approach. In summarising some of the key legal and policy instruments of the Ministry, protections for the child's best interests, the right to family life, refugees and

victims of trafficking were cited, as well as the policies of non-detention for undocumented children and postponed detention of mothers of younger children. Participants were also informed about discussions on the role of regional and local authorities in the design and implementation of integration policies, to be held within a Cyprus Presidency conference in November 2012, and about the national 'action plan on integration of legally residing migrants', to be reviewed for 2014.

Participants then heard from **Kamena Dorling**, from the **Coram Children's Legal Centre** in the United Kingdom, who briefly described the legal advice and awareness-raising activities of the Migrant Children's Project. She presented some figures for the UK, and pathways into irregularity for migrant children, noting that irregular status often results in poverty, social exclusion and limited access to services. The conflict between immigration control and children's rights in British migration policy was illustrated by the reservation that the UK had on the CRC until 2008, indicating it did not consider the principle of non-discrimination to apply in immigration and nationality matters. While there have been changes in policy, considerations of the best interests of the child in migration decision-making remain tokenistic and insubstantial in many cases. Ms. Dorling informed participants

⁶ *Zambrano v ONEm* Case C-34/0 the Court of Justice of the European Union, 8 March 2011.

of developments from the UK Supreme Court, and in particular, the case *ZH Tanzania*,⁷ which clarified the weight that should be given to the best interests of the child, reiterating that they should be considered first, and elaborating concrete aspects that should be considered.

The Home Office has introduced the need for a best interests assessment in its policy on assessing asylum claims from unaccompanied children, and is expected to make reference to forthcoming UNICEF and UNHCR Guidelines on Best Interests Determination,⁸ which are applicable for all children and will set standards against which the Home Office can be held accountable. This policy and developing case law will help ensure that there is substantive consideration of the best interests of the child, appropriate weight is given to the child's best interests over immigration control interests, and the voice of the child is heard and taken into account. However, the recent cessation of free (state-provided) legal advice for immigration cases was raised, as this will have a significant impact on the ability of migrant children to access legal advice and representation and make their voice heard. Further, it was emphasised that on-going restrictions on routes to regularise status prolong periods of uncertainty for children.

Discussion

The open discussion following the second panel returned to the question of the gap between rights in law and access in practice in Cyprus. A case where a mother and two children were deported to Iraq was presented to question that the best interests of the children were being considered in practice, and the need for a clear, continuous and documented process for BID and proportionality considerations was reiterated. Likewise, the policy of non-detention was welcomed, but the inaction to stop the illegal detention of children in practice highlighted. The practices to determine age were also questioned, and recommendations for medical examinations only to be carried out as a last resort and with consent were presented.

Lack of appropriate regulation, consistency and objective criteria, as well as administrative, bureaucratic and practical requirements were cited as key barriers to access rights in practice. The lack of access to rights while applications are processed, and the long processing times, were again emphasised as key shortfalls in the system. The need to address the long-standing irregularity of many migrants, including families with children born in Cyprus, was considered. There were strong calls for mechanisms to resolve and regularise statuses and have a clear pathway to citizenship based on a number of years of residence, recalling the situation of some families who have lived in Cyprus for 20 years without being granted citizenship. The problems with the policies that restrict the sectors in which migrants and asylum seekers can work, the lack of possibilities for the majority of migrants to access permanent residence on the basis of family reunification, and the impact of these policies of creating irregularity, were also underscored. The practices where schools were being used to detect undocumented families were strongly criticised, as well as deportation orders with immediate effect when children are attending school.

The representative from the Ministry of the Interior supported the need to address the issues raised, and welcomed the examples from other countries of regularisation and citizenship possibilities according to criteria such as years of residence, language and school attendance, rather than residence status. He pointed to the role of case law and developments in societies, as well as that of politicians, in working towards more coherent law and policy to support migrant children to have the same opportunities as citizen children to progress. Some of the positive measures and programmes

⁷ *ZH (Tanzania) v. Secretary of State for the Home Department*, [2011] UKSC 4, United Kingdom: Supreme Court, 1 February 2011.

⁸ See Home Office *Processing an asylum application from a child*, at <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary>

funded by the EU and the state were revisited, but not received without further criticism by participants, in terms of their practical application.

Concluding Remarks

The **Commissioner for Children's Rights in Cyprus, Ms.Koursoumba** closed the roundtable meeting with some concluding remarks.

- The Commissioner noted the testimonies of migrant children, and the presentations and interventions of the conference participants, as evidence that migrant children face violations of their rights as protected under the Convention on the Rights of the Child and under EU law, and that there is no coordinated and coherent state policy of addressing and solving the problems of these children, despite state authorities being repeatedly informed of the problems by the Commissioner for Children's Rights and NGOs.
- The main problems mentioned were summarized as follows:
 - The refusal of the state to allow the Commissioner to carry out her role as a legal representative of unaccompanied children in asylum application procedures, which results in their applications not being considered until after they have come of age. This is despite the fact that the Commissioner has taken all appropriate measures and specifically trained lawyers to represent her in such cases.
 - The lack of specific policies and measures to meet the needs of unaccompanied children, so that they are promptly identified, taken under the protection of the state and integrated into society, as well as given appropriate supervision, information about rights and multidisciplinary support. A special action plan for unaccompanied children was therefore deemed necessary.
 - The lack of respect and promotion of the rights of migrant children on the part of state authorities and other stakeholders such as the media, or recognition that children are entitled to care and services, as independent rights holders, rather than out of philanthropy or charity.
 - The lack of policies and procedures to ensure that the best interests of the child are considered in the decisions of immigration and asylum authorities on the basis of objective criteria and taking into account the individual circumstances of each child.
- The Commissioner welcomed the recognition from the Minister of Employment and Social Insurance of the problems mentioned, particularly that of legal representation of unaccompanied children seeking asylum, and called on the Ministry to therefore act to resolve them⁹.
- The need to comply with Court decisions both on the national level and those of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights was emphasised, noting also the necessity of always taking into account the CRC and the General Comments of the Committee for the Rights of the Child.

⁹ In an effort to finally resolve the issue of representation of unaccompanied children seeking asylum in the asylum determination procedures, the House of Representatives, upon submission of a Bill by the Council of Ministers, passed in February 2013, the Refugees (Amendment) Law of 2013 (Law No 9(I)/2013). The relevant legislation amends Article 10 (1B) of the Refugee Law, whereby the competence of representation of unaccompanied children seeking asylum is transferred from the Commissioner for the Protection of Children's Rights to the Director of the Social Welfare Services. The law does not clarify however, whether the representation of children in the procedure by the Director consists of legal representation or a different type of representation, which was the main issue of controversy.

- Finally, the Commissioner urged the Ministry of the Interior, as the competent authority to take decisions regarding migrant children, to acknowledge the severity of the problems faced by migrant children and give clear and precise instructions or guidelines to the relevant Departments of the Ministry (e.g. the Department of Immigration and the Asylum Service), on how to treat migrant children and how to assess the best interest of the child in their decisions. Adoption of procedures that guarantee that the best interest of the child is always taken into account were called for, including through amendment of the legislation when necessary, to be clear and leave no room for ambiguous interpretation by the administrative authorities.