

European Appeal Against the detention and forced removal of foreign minors

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Detention of minors should not be allowed on the bases of immigration status. This principle has been reiterated by numerous international bodies (1) who called for the immediate admission of minors in the territory.

In the framework of children's rights for protection and the respect of the principle of the best interest of the child as defined by international law (2), forced return of minors is not allowed.

However, the majority of European countries detain and remove foreign minors (3) whether they are alone or with their family. National legislations allowing for practices of the detention and forced removal of children which have very bad consequences, are regularly denounced by NGOs and childhood professionals who point out that many alternatives to these practices are available.

Currently, EU Member States are discussing an **EU directive on common standards and procedures in Member States for returning illegally staying third-country nationals** (4). The draft text allows for the detention and forced removal of minors.

The organisations below demand that if this directive is adopted, it should respect to international commitments signed by the EU Member States. **We ask that the EU law rigorously prohibits the detention and forced removal of minors. We propose the following amendments to the draft directive :**

Proposed amendments

Article 5- Family relations and the best interests of the child

When implementing this Directive, Member States shall take due account of the nature and solidity of the third country national's family relationships, the duration of his stay in the Member State and of the existence of family, cultural and social ties with his country of origin.

Addition : In accordance with the best interests of the child, as defined by the UN Convention on the Rights of the Child, Member States provide that minors cannot be subject to either a measure of forced removal or of detention.

Article 8 – Postponement

Deletion of Article 8-2 c) (5)

(= Lack of assurance that unaccompanied minors can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return, following an assessment of the conditions to which the minor will be returned.)

Article 15 - Detention of minors

Deletion of Article 15-3 (6)

(= Member States shall ensure that minors are not kept in temporary custody in common prison accommodation. Unaccompanied minors shall be separated from adults unless it is considered in the child's best interest not to do so.)

Addition : Unaccompanied minors should be placed in the care of child-welfare authorities and shall under no circumstances be detained.

(1) The High Commissioner for Refugees, the International Alliance Save the Children in the framework of the Program for separated Children in Europe - Statement of good practice.

(2) Article 3 of the UN Convention on the Rights of the Child.

(3) Informations about minors in detention.

(4) COM 2005 (391).

(5) This deletion suppress all reference to possible forced removal of unaccompanied minors.

(6) Corresponding to article 15-2 al 2 in the French and German versions.

Statement in the framework of the European appeal against detention and forced removal of minors

The principle is that minors shall never be detained or removed by force.

There should be a presumption of minority for a foreign national who declares himself a minor until this has been reversed by a judicial body.

■ Unaccompanied minors

- in the case of their arrival on the territory

Unaccompanied minors should be admitted into the country and never be detained.

Unaccompanied minors shall be immediately placed in the care of child-welfare authorities or shall be able to join members of their family already in the destination country.

- in the case of persons irregularly staying on the territory of a Member States

The notion of irregular stay shall not be relevant for minors, therefore minors shall not be subject to a removal order or to a detention measure.

If the return in the State of origin is in the best interest of the child, it shall never take place in the framework of a forced return procedure.

Ideally, the minor should explicitly agree with returning.

In any case, the judicial authority in charge of child protection shall give a final agreement, after checking that this return corresponds to the best interest of the Child.

■ Minors with Families

Families shall never be detained, alternatives to detention for families should be the absolute rule.

Voluntary return should be the priority.

This position applies to asylum seekers in the framework of a readmission in a European State following the 343/2003 Council Regulation (18/02/03), "Dublin II".