

NO Ad-Hoc Query on Issues Related to Care Orders

21. February – 17. March 2014

SUMMARY

Background

Norway has experienced cases where the Child Welfare Authorities have issued a care order for a foreign child whose parents are staying illegally in the country. A care order is a decision to place the child outside the family home, and will normally apply to cases of neglect, abuse or other serious issues, where the situation cannot be alleviated through voluntary assistance measures within the family. The implementation of such a care order will normally result in the placing of a child in foster care, and may in some cases split the family on a temporary or permanent basis.

Considerations of the best interest of the child and facilitating the return of persons who do not have legal residence in Norway, to their country of origin, are both priorities in Norwegian immigration policy. In order to balance the two factors, Norwegian authorities are currently mapping the need for national guidelines in cases where Immigration Authorities and Child Welfare Authorities' interests overlap. These guidelines will only cover families with children and not unaccompanied children.

In this regard, the Norwegian Ministry of Justice and Public Security issued an ad hoc query through the EMN requesting information on the following questions:

- 1) What is your national policy in cases where child welfare authorities issue a care order for a child that is seeking asylum or is illegally in the country, and what is the general experience with the implementation of this policy?
- 2) Does your country give residence permits to foreign children subject to a care order? If yes, what kind of permit is given and under which conditions?
- 3) If the child subject to a care order can be granted a residence permit, are their parents, if illegally in the country, also entitled to a residence permit? If yes, what kind of permit is given and under which conditions?
- 4) If the parents are not entitled to a residence permit, which factors are considered relevant in determining their cases?
- 5) Are alternative care arrangements in the child's country of origin considered so that the whole family may return? If yes, how is this assessed and what steps are taken, e.g. are the authorities of the country of origin contacted?
- 6) How do the immigration authorities and child welfare authorities cooperate in such cases?

Summary

Norway received 17 responses in addition to our own response.

Though almost all of the Member States who have responded, have described well established routines for the actual protection of children no matter their residential status (citizen, immigrant, asylum seeker, unauthorized migrant) in their country, and almost all the Member States who responded have described regulations and practices for children under family supervision or in foster care, few have experience with, or regulations and practices for, immigrant families needing care orders, or family supervision. The responses also indicate a strong element of the need for case-by-case consideration.

In some cases, the Member States have a relevant legal framework and some experience even when the need for care orders/family supervision is coupled with issues related to families seeking asylum. However, based on the responses we have received, almost no one has specific regulations, practices or any experience of dealing with children of immigrants living illegally in the country and who need family supervision and/or foster care. Most Member States indicate that they have no actual experience with the latter and to a certain extent, the responses given are a reflection of *an interpretation of the laws of the land* rather than actual practice. Note that some of the responses provide interesting legal analysis.

Determining a child's best interest is not usually a simple matter. Responses to the ad hoc query reflect this but also indicate that the authorities first and foremost give priority to protecting the rights of the child though at the same time, consideration is given to the legal dilemmas related to adhering to immigration law. Clearly the best interests of the child prevail as the single most important guideline; and in many cases the response indicates that actual decisions would understandably depend on any number of factors that would be special in each case.

Most Member States provide some kind of regulated residence permit for children during the duration of family supervision or for children under care orders; this especially applies to asylum seekers. In most cases, these permits are issued to the child(ren) for limited periods of time and extended as need be. In many cases, the child(ren) is only protected until they turn 18 at which point in a number of Member States, they will be returned to their home country (where presumably their parents were previously returned). In most cases a child that has been put under a family supervision order or has been placed under guardianship of an agency, because of parenting problems, is granted a regular residence permit on temporary humanitarian grounds for the duration of the family supervision order, which can be extended if the supervision order is extended. In case of guardianship, a residence permit for the child is granted for one year, which can be extended. As is the case in Norway, most Member States will normally issue the child a residence permit if the child welfare authorities have issued a permanent care order. The permit can be given for a limited time period if the care order is temporary. The permits are given on the grounds of strong humanitarian considerations or a particular connection with the Member State. In relation to children, practices are fairly similar among Member States.

It is fairly clear too that most of the Member States who responded do not give (much) consideration to parents living illegally in the country. Most will only consider issuing temporary residence permits in extreme cases and on a case-by-case basis: there is no policy as such. Finland has the most liberal practices in terms of granting permits to parents under

family supervision or to parents whose children are in foster care and who have been granted a residence permit. Generally, the nature of the care order and details regarding the kind of contact the child(ren) can have with the parents will determine decisions about possible permits for the parents. In practice, a number of countries issue the parents a time-limited residence permit based on compassionate grounds or alternatively, visitor's permits for periods of less than 6 months a year as long as the child is in some kind of foster care and until the child reaches 18.

Most Member States are adamant about wanting persons who are living illegally in the country to actually leave. However in cases where there is child neglect, abuse etc. the situation of course becomes very complicated. Most Member States clearly do not advocate a liberal attitude towards parents who subject their children to unauthorized residence in their countries; but the rights of the child prevail at least at some level.

Interestingly enough, several countries actively consider return possibilities for families to their countries of origin, at least at the point in time when the parents have regained custody of their child(ren). This consideration seems to primarily be based on hypothetical cases though. Only The Netherlands and Sweden appear to actually have routines regarding the return of families and/or children to their country of origin. (Refer to main document for all details.)

We would like to mention at this point, that Norway conducted a study of unauthorized immigrants and the report, *No way in no way out? A study of living conditions of irregular migrants in Norway*, was published in 2011 by the research institute Fafo. To gain free access to this report, paste this link into your browser: <http://www.udi.no/en/statistics-and-analysis/research-and-development-reports/no-way-in-no-way-out-a-study-of-living-conditions-of-irregular-migrants-in-norway-2011/>