

## CHILD PROTECTION – WHAT SHOULD STATES DO?

Our brief overview for local and national authorities, NGOs and activists on the key international legal standards where children are taken into care

### A: REMOVING CHILDREN FROM THEIR FAMILY

1. A child should not be taken from his or her parents against their will according to international human rights standards such as the UN Convention on the Rights of the Child (CRC),<sup>1</sup> unless competent authorities find that such a separation is necessary for the best interests of the child in line with applicable law and procedures.
2. Removing a child is a significant interference with the right to respect for family life under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>2</sup>
3. Removal should only happen if it is in the best interest of the child, when there is a risk of abuse or neglect.<sup>3</sup> Such action must not be based exclusively on a family's poverty.<sup>4</sup>
4. Removal should be a last resort measure, in accordance with the principle of proportionality. States have an obligation to find the least intrusive forms of intervention, and to provide support to families to overcome the difficulties that they face.
5. States have an obligation to take into account the family's particular situation and vulnerabilities.<sup>5</sup> The Roma have been recognised as an especially disadvantaged and vulnerable category. As a result, special consideration must be given to their needs and their living situation, both in the relevant regulatory framework and in reaching decisions in particular cases.<sup>6</sup> Furthermore, States have specific positive obligations to avoid the perpetuation of past discrimination or discriminative practices towards Roma.<sup>7</sup>
6. States should ensure procedural safeguards that allow parents and children to participate effectively in any child protection decisions.<sup>8</sup>

### B: RACIAL PROFILING AND DISCRIMINATION

7. Police action based on grounds such as race, color, national or ethnic origin, with no objective and reasonable justification, is racial profiling, which should be clearly defined and prohibited by law.<sup>9</sup>

The perceived difference in physical appearance between parents and children is exclusively based on social constructions of "race". Police action based on this ground constitutes racial profiling and should not result in the removal of the child, unless there is solid evidence that a crime has been committed. If measures are applied collectively to a whole group this is discrimination.<sup>10</sup>

8. Article 2 of the CRC prohibits all forms of discrimination based on the child's or the parents' nationality, race, color or ethnicity. Similarly, discrimination in this kind of situation is forbidden under article 14 of the ECHR, taken with Article 8.

No difference in treatment which is based to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.<sup>11</sup>

<sup>1</sup> Article 9 CRC, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

<sup>2</sup> Article 8 ECHR, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>3</sup> *K. and T. v. Finland*, ECtHR, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59587>.

<sup>4</sup> *Wallowa and Walla v. Czech Republic*, ECtHR, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-77713>.

<sup>5</sup> *R.M.S. v. Spain*, ECtHR, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-120962>.

<sup>6</sup> *Oršuš and others v. Croatia*, ECtHR, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97689>.

<sup>7</sup> *Horvath and Kiss v. Hungary*, ECtHR, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116124>.

<sup>8</sup> Press Unit of the European Court of Human Rights, *Factsheet - Parental Rights*, September 2013, available at [http://www.echr.coe.int/Documents/FS\\_Parental\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Parental_ENG.pdf).

<sup>9</sup> ECRI General Recommendation no. 11 (2007) on Combating racism and racial profiling in policing, [http://www.coe.int/t/dlapil/codexter/Source/ECRI\\_Recommendation\\_11\\_2007\\_EN.pdf](http://www.coe.int/t/dlapil/codexter/Source/ECRI_Recommendation_11_2007_EN.pdf).

<sup>10</sup> General Comment no. 6 (2005) Treatment of unaccompanied and separated children outside their country of origin, <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>.

<sup>11</sup> *Timishev v. Russia*, ECtHR, § 58, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-71627>.