

PAPER PROPOSAL

DETENTION OF MIGRANT CHILDREN: IF SO, UNDER WHAT CONDITIONS?¹

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Recent events like Trump's 'zero-tolerance' immigration policy emphasize the importance of tackling this issue. Detention of migrants and asylum seekers has become a policy tool for migration and border control. Children as well as adults are held in custody only because they are illegal immigrants. The UN Committee on the Rights of the Child has established nevertheless that "detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof" (General Comment Nº 6 (2005), para. 61). At the regional level the European Court of Human Rights (ECtHR) confirms that the child's extreme vulnerability takes precedence over considerations relating to the status of illegal immigrant (*Tarakhel vs. Switzerland*). Although International Human Rights Law allows the detention of migrant minors to prevent unauthorized entry or to effect deportation, it should be only a measure of last resort and for the shortest appropriate period of time. As a result of a broad international consensus regarding the special need of protection when children are concerned, the Convention on the Rights of the Child (CRC) has developed stringent standards to ensure that, if detained, they are protected in detention. Every child deprived of liberty must be treated in accordance with his/her rights as established in the CRC, since a reliable indication of the needs of a child are his/her rights. The detained child is entitled to all the Convention rights, with the exception of freedom of movement or the right to liberty. Article 37(c) CRC establishes additional requirements that treatment in detention must be taken into account: specific needs according to his/her age; separation from other adults unless the best interest is contrary; and to maintain contact with his/her family. At European level, the ECtHR has developed a specific framework of protection based on the ECHR. The detention of migrant children under certain conditions constitutes inhuman or degrading treatment contrary to Article 3 of European Convention on Human Rights (ECHR) (see, *inter alia*, *Mayeka and Mitunga vs Belgium*, *Popov vs France* or *Rahimi vs Greece*).

Taking as a starting point the link between CRC and ECHR, an individual assessment of best interest of the child must be a primary consideration. It is therefore necessary to focus on different elements in determining whether the conditions of detention are appropriate:

- a) Factors such as degree of maturity, age, stage of development or personal circumstances.
- b) Measures adopted by State authorities to fulfil their obligations to provide care (informing the parents, appointing a lawyer to assist the applicant, etc.).
- c) Conditions of the detention centres (facilities for leisure or education, access to open air, children's furniture or toys, etc.).

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This paper deals with the analysis of these issues through the Strasbourg case law in order to assess the whole picture at the current stage of the migrant children's protection in Europe.