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Shortcomings in the Asylum Regulation Related to Unaccompanied Minors –

The Ombudsman's Report

Last year the number of foreign children entering Hungary illegally unaccompanied by parents or adults significantly increased. The ombudsman suggests clarification of the laws setting out the work of police and the immigration authority so that the children's rights of minors regardless of their citizenship can be enforced. The problem described in the ombudsman's report is also addressed by the European Union. The Commissioner for Fundamental Rights participated in the meeting of the Committee on Legal Affairs at the European Parliament last week in Brussels, in which the preparation of EU directives was addressed.

Police caught 700 unaccompanied minors only between 1 January 2012 and 30 September 2012 who had entered the country, crossing the border illegally, without their parents or other accompanying adults. Among them, there were some children under 14 as well. Several young people were sent back to Serbia, where they had come from. Others were, though, accommodated in the designated children's homes, however, each two out of three children soon disappeared without a trace. Nothing has been known about them since then.

Máté Szabó ombudsman inquired the case of those twelve Afghan children between the ages of five and fifteen ex officio who were caught by police last September in the region of Röszke at the green border. The inquiry pointed out the shortcomings of the legislation and the Commissioner for Fundamental Rights proposed their correction. For example, expertise has to be requested in case there is some doubt about the age of the minor arriving without documents. The age is determined by a police doctor. Consent of the legal representative or the representative ad litem is set out in one of the Acts governing the situation, however, in the other one, it is not set out.

Pursuant to the Act on the Admission and Right of Residence of Third-Country Nationals, the immigration authority may expel those from the country who have crossed the border illegally or those who do not fulfil the conditions for the residence here. For minors, this is only possible if in their country of origin or host country, family reunion and/or state care or other institutional care is duly ensured. No provision as to how the immigration authority is obliged to verify the existence of the condition was set out in the laws in force at the time of the inquiry.

The ombudsman also pointed out that pursuant to the Convention on the Right of a Child being in force also in Hungary, a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the State. This is incompatible with that children's homes designated for temporary accommodation in Hungary were not willing to admit one third of the unaccompanied minors of the inquiry with various reasons detailed in the ombudsman's report in spite of free

capacity. According to the police officers interviewed in the course of the inquiry, it is not rare that minors handed over to the authorities of neighboring Serbia earlier are caught again while crossing the border illegally. An educator of a children's home also told the ombudsman's colleagues that several of the returning unaccompanied minors said that the paid human smuggler offered to attempt to get them over through the green border three times in case of a failure. Although, the unaccompanied minors illegally crossing the border said without exception that they had got to Hungary by means of human smugglers' contribution, no criminal proceeding was launched for either human smuggling or human trafficking or any other crimes. It is evident that the children's vulnerable situation and their resulting grievances might be connected to crimes. However, as the ombudsman pointed out, immigration authorities are not obliged to notify about this the authority responsible for victim assistance by the legislation in force.

The Commissioner for Fundamental Rights asked the National Chief of Police, the Minister of Human Resources and the Minister of Public Administration and Justice for measures within their competence, amendment of laws and their supplementation.

The report is available in Hungarian at <http://www.ajbh.hu/allam/jelentes/201202731.rtf>