

## **A child is a child: Defining the EU's role in protecting the rights of undocumented migrant children**

BRUSSELS, 14 November 2013 – The Platform for International Cooperation on Undocumented Migrants (PICUM) together with French MEP Nathalie Griesbeck, Group of the Alliance of Liberals and Democrats for Europe (ALDE), today called on EU institutions to fulfill their legal obligations under the United Nations Convention on the Rights of the Child to ensure protection and access to basic rights and services for undocumented migrant children and cease their immigration detention.

On the occasion of a public hearing considering the role of the European Union institutions in ensuring the rights of undocumented migrant children and their families, held at the European Parliament, Nathalie Griesbeck MEP, Group of the Alliance of Liberals and Democrats for Europe (ALDE) and host of the event, highlighted:

*“The current situation of undocumented children in the European Union and the protection gaps existing in the European and national legislations urgently needs to be tackled with concrete and targeted measures, to ensure that their rights are respected. And there must be two key principles when dealing with undocumented children. First, they are first and foremost children and second, their best interest should be the leading principle of any action that concerns them”*

Undocumented children face a triple vulnerability as migrants, as they have irregular status, and as children. In many EU member states, there has been a dangerous trend to prioritise immigration control over the rights of undocumented children and their families. Child rights remain largely absent in migration policies and practices, with little systematic consideration of the impacts of policies on children. This is the case when authorities make decisions to grant or refuse status, to detain, to deport, or to restrict access to essential services such as health care and education.

At the same time, in many countries, undocumented children are not considered by, or are even excluded from, public policies and services. As a result, undocumented children are often deprived of their basic rights and entitlements and left in precarious situations facing poverty and exclusion, with long-term impacts on their health, well-being and development.

The Committee on Social Rights, which oversees the application of the European Social Charter, has issued key decisions on the social rights of undocumented children. Although the Charter was not originally foreseen to apply for irregularly residing migrants, the Committee has found that certain rights are so linked to human dignity that it would be contrary to the Charter, a human rights instrument, to deny these rights due to residence status. The Committee has found, in four separate cases so far, that governments should provide rights to undocumented children on their territories.

Petros Stangos, Vice-President of the European Committee of Social Rights, Council of Europe said:

*“The Committee, with four decisions adopted between 2004 and 2012 following European NGOs' complaints against some European states (France twice, the Netherlands and Belgium), neutralized the impacts of this clause on unaccompanied migrant children. With these four decisions the Committee has formed European jurisprudence which allows the qualification of the Committee as the only European jurisdictional body that so far incisively ruled on fundamental social rights violations – such as the right to protection against*

*homelessness, the right to health and the right to education – committed by European countries against the children we are worrying about here.”*

Children are also still detained throughout Europe for immigration reasons despite detention being a direct violation of the Convention on the Rights of the Child (CRC), which has been ratified by all EU member states and thus entails legal obligations for these countries.

Drawing on good practice examples, panelists at the hearing emphasised that the EU should end the immigration detention of children, follow the Committee on the Rights of the Child's recommendations that it is never in the best interests of the child to be detained.

EU policymakers, service providers and representatives of civil society organisations participating in the debate also stressed that access to justice should never be denied to children because of their or their parents' residence status. The key recommendation is to clearly separate immigration control from access to services, protection and justice, including the prohibition to share personal information between service providers and immigration authorities. The European Union Agency for Fundamental Rights (FRA) has developed guidelines for EU member states to enable undocumented migrants to access services such as medical care and education without fearing immigration control.

Participants concluded that the EU needs to urgently address the protection gaps in its existing legislation and policy to ensure that children's rights are systematically and explicitly considered and guaranteed in all decisions affecting undocumented migrant children, and promote greater awareness and exchange of positive measures that guarantee the protection of their rights, as children first and foremost.

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PICUM's toolkit [Children First and Foremost: A guide to realising the rights of children and families in an irregular migration situation](#) is available in [English](#), [Italian](#), [Dutch](#), [French](#) and [Spanish](#). It is the outcome of PICUM's two-year project 'Building Strategies to Improve the Protection of Undocumented Children in Europe'.

To read the European Union Agency for Fundamental Rights' (FRA) guidelines: '*Apprehension of migrants in an irregular situation – fundamental rights considerations*', click [here](#).

To view a documentary showing the realities of undocumented migrant children and their families in Europe, please click [here](#).

#### **About PICUM**

[PICUM](#) - the Platform for International Cooperation on Undocumented Migrants, is a non-governmental international organisation (NGO) that promotes respect for the human rights of undocumented migrants within Europe. PICUM provides a direct link between the grassroots level, where undocumented migrants' experience is most visible, and the European level, where policies relating to them are deliberated. PICUM provides regular recommendations and expertise to policy makers and institutions of the United Nations, the Council of Europe and at EU level. In 2009, PICUM was awarded participatory status with the Council of Europe.

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