



# Article 24 of the Charter

THE RIGHTS OF THE CHILD

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# SCOPE OF RIGHTS

- “The rights of the child, namely the principle of the best interests of the child being a child’s right to life, survival and development, non-discrimination and respect for the child’s right to express their opinion and be genuinely heard in all matters concerns Union policies.”
- Stockholm Programme, 2009

# CHILD 1<sup>st</sup>- THEN MIGRANT

Work at EU level includes:

- Action Plan on Unaccompanied Minors 2010 – 2014
- EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016
- Development of guidance on child protection systems

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# EU CONNECT PROJECT

- Italy, the Netherlands, Sweden and United Kingdom
- Children going missing from care
- Trafficked children
- Children with additional disadvantages
- Information gathering for asylum determination purposes



# STATE OBLIGATIONS

- Integral part of Common European Asylum System?
- Only partial acknowledgement of children's rights?
- Of direct effect even if State has not incorporated UN Convention on the Rights of the Child

# CEAS

- Recast Reception directive – Article 23.1 & 24.3 – obligation to trace family if in child’s best interests
- Recast Procedures directive – Article 25 best interests to be applied when providing representation, medical assessment of age & during interviews



# MA & Others v UK C-648/11

- Although express mention of best interests of child was only made in first half of Article 6 of Dublin II, the effect of Article 24.2 of the EU Charter (with Article 51(1)) is that the child's best interests must also be a primary consideration in second half.



# RECENT DIRECTIVES

- More recent directives eg Returns, Anti-Trafficking and combating sexual abuse and exploitation and child pornography further embed and expand children's rights within recital and articles
- They also stress need for assessment of best interests



# EU RETURNS DIRECTIVE

- Article 5 – when implementing directive must take due account of child’s best interests
- Article 10 - consideration of best interests before return decision
- Article 17 – the best interests of the child shall be a primary consideration in the context of detention of child pending removal

# TRAFFICKING DIRECTIVE

- Paragraph 8 of the recital recognises that child are more vulnerable than adults
- Article 16.2 – obligation to find durable solution for child based on individual assessment of best interests of the child



# DURABLE SOLUTION

- Means to protect unaccompanied children into adulthood?
- Building on the totality of the Charter of Fundamental Rights
- Best practice in determining and implementing durable solutions for separated children in Europe project

# Protection for trafficked children

- Article 13.2 - presumption that he or she is a child
- Article 8 – insufficient to protect child victim of trafficking from prosecution
- L & Others [2013] Crim 991
- Article 16.3 - need for legal guardian



# IMPACT ON BRUSSELS IIR

- Potential conflict between Anti-Trafficking Directive and Brussels II Revised 2201/2003 – which allocates jurisdiction for family case related to parental responsibility
- Re S (Care: Jurisdiction) [2008] EWHC 3013

# Directive combating child sexual abuse & exploitation

- Paragraph 30 of recital – need to undertake best interests assessment
- Article 18 – Member State must provide assistance, support and protection taking into account the best interests of the child

## DUBLIN III

- Article 6.1 – best interests a primary consideration in all procedures
- Article 8.2 – family reunion in another Member State, if in child's best interests
- Article 8.4 – Current State responsible if child makes application, if in his or her best interests

# FAMILY REUNIFICATION

- Article 5.5 of Directive includes best interests principle
- C – 540/03 Parliament v Council – when a State is weighing up different interests must have due regard to the best interests of minor children





# ARTICLE 24.1 OF CHARTER

- Right to protection and care necessary for their well-being
- C-244.06 – paragraph 41
- Permitted to express their views freely
- Views taken into account in accordance with age and maturity

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## ARTICLE 24.2

- In all actions relating to children, whether taken by public authorities of private institutions, the child's best interests must be a primary consideration
- Mirrors Article 3.1 of the UN Convention on the Rights of the Child



## ARTICLE 24.3

- Right to maintain regular & personal relationship & direct contact with both parents unless that is contrary to child's best interests
- Paragraph 58 of C-540/03 – recognised best interests principle & right to maintain relationship with parent



# BEST INTERESTS PRINCIPLE

- What is the content of this best interests principle
- Compare the Committee on the Rights of the Child's General Comment No. 14 which states that it is in a child's best interests to have the full and effective enjoyment of all the rights in the UNCRC

# CONCEPT IN CHARTER

- Interpret in context of substantive rights to dignity in Chapter 1 of the Charter, for example
- Article 2 – right to life
- Article 4 – prohibition of torture
- Article 5 – prohibition of slavery and forced labour

# ALSO TAKE INTO ACCOUNT

- Rights to freedom in Chapter 2, for example
- Article 7 – right to family and private life
- Article 14 – right to education
- Article 18 – right to asylum

# INTERPRETATION

- As in General Comment No. 14 a Member State should treat Article 24 as:
  - (a) a substantive right;
  - (b) a fundamental interpretative legal principle
  - (c) a rule of procedure

# THE RIGHT TO ASYLUM

- Article 24 requires Member State's to adapt their response to applications for asylum and other international protection where the applicant is a child
- This should compensate for fact that the Refugee Convention does not specifically provide for applications from children



# Guidance by UNHCR/UNICEF

- Safe & Sound: What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe (2014)
- Should a the assessment of a durable solution be part of the asylum & immigration determination process?



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