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The common European asylum system and the rights of the child: an exploration of meaning and compliance

Smyth, C.M.

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Author: Smyth, Ciara Mary

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A significant proportion of people seeking asylum in EU countries are children. These children may be totally alone, with people who are not their customary caregivers or with members of their immediate family. The child asylum seeker poses unique challenges to reception and refugee status determination systems, not least because the child is entitled to have his or her rights as a child respected under the UN Convention on the Rights of the Child. Since the beginning of the new millennium, the EU has sought to harmonise the law in the area of asylum in the form of a Common European Asylum System. The instruments that make up the Common European Asylum System often make specific provision for children, demonstrating an awareness on the part of the EU legislator of the existence and special needs of asylum-seeking children. However, the question arises as to whether these provisions and the instruments as a whole comply with the rights of the child. This question is particularly pertinent at the moment because respecting and promoting the rights of the child is a new legal and policy imperative of the EU and, furthermore, the Common European Asylum System is moving from its first to its second phase – a process that involves recasting most of the instruments.

This book identifies key rights of the child that are relevant to the asylum context and explores the meaning of those rights as a matter of international and regional human rights law. It contrasts the normative requirements of those rights with the treatment of children in the Common European Asylum System, Phase One and proposed Phase Two. The question of whether the Common European Asylum System complies with the rights of the child is an interesting one, not simply as a critique of the work of the EU legislator in integrating child rights into asylum policy, but also for Member States, national courts and the Court of Justice of the EU which must attempt to interpret the legislation in a manner that is consistent with the rights of the child. This book will also be an important resource for asylum and child-rights practitioners and scholars.

This is a volume in the series of the Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University. This study is part of the Law School's research programme 'Securing the Rule of Law in a World of Multilevel Jurisdiction'.

The Common European Asylum System and the Rights of the Child

An Exploration of Meaning and Compliance

C. SMYTH