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

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Propositions relating to the dissertation

THE COMMON EUROPEAN ASYLUM SYSTEM AND THE RIGHTS OF THE CHILD: AN EXPLORATION OF MEANING AND COMPLIANCE

by Ciara Smyth

1. The rights of the child in the asylum context are significantly different in content than corresponding rights in general human rights law.
2. Whatever about Phase One CEAS, the entry into force of the EU Charter of Fundamental Rights means that the EU legislator is bound to ensure that the rights of the child are respected and promoted in the legislation making up Phase Two CEAS.
3. The right of the child to be heard is not respected in either the Asylum Procedures Directive (2005/85/EC) or its proposed recast (COM (2011) 319 final).
4. The definition of a refugee and a person eligible for subsidiary protection in the recast Qualification Directive (2011/95/EU) can generally be interpreted consistently with the rights of the child but the European Asylum Support Office could usefully provide guidance in this regard.
5. The CEAS instruments in both phases show the EU legislator oscillating between paternalism and scepticism when it comes to asylum-seeking children, suggesting a less than complete understanding of the tensions within child-rights law.
6. The right of the child to liberty as interpreted by the European Court of Human Rights means that asylum-seeking children can only be detained in the most exceptional of circumstances.
7. 'Mainstreaming' the rights of the child into the CEAS may not be the most effective way of ensuring that the CEAS complies with the rights of the child.
8. It is hard to see how the plethora of extraordinary asylum procedures as laid down in the Asylum Procedures Directive (2005/85/EC) and retained for the most part in the proposed recast (COM (2011) 319 final) could ever be in the best interests of the child.
9. The EU legislator's child-rights agenda is overwhelmed in the asylum context by the broader migration-control agenda.
10. Asylum *is* an appropriate remedy for children, however counter-intuitive this may seem.