



**Building a Europe
for and with children**

**Construire une Europe
pour et avec les enfants**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

COUNCIL OF EUROPE REPORT

**WITH A VIEW TO SUPPORT THE PREPARATION OF
THE**

**UNITED NATIONS GLOBAL STUDY ON
CHILDREN DEPRIVED OF THEIR LIBERTY**

24th July 2018

This report has been commissioned by the Children's Rights Division of the Council of Europe and brings together all relevant standards, recommendations, case-law, studies that are relevant to upholding the rights of children deprived of liberty in the 47 member States of the Council of Europe. This work has been compiled thanks to the Secretariat of the Council of Europe and does not necessarily reflect the official position of relevant Council of Europe Committees. It has been prepared with a view to reflecting accurately the acquis of the Council of Europe in this area in order to assist in the preparation of UN Global Study on Children Deprived of Liberty.

The views expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe.

About the author

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Introduction

Introduction

1. Children deprived of their liberty are recognised as being one of the most vulnerable groups of children in society. This inherent vulnerability is recognised by the work of the Council of Europe in a variety of ways. The Report has been commissioned by the Council of Europe Children's Rights Division as a comprehensive contribution reflecting the work of the Council of Europe which aims at supporting the preparation of the UN Global Study on Children Deprived of Liberty. The Report has been prepared with contributions from the different services of the Council of Europe Secretariat.

Aims of the Report

2. This report aims to provide an overview of the work of the Council of Europe to support its 47 member States in upholding the rights of children deprived of their liberty, and it will highlight specific actions taken by the Council of Europe in pursuance of this goal. This report builds on work undertaken by a variety of bodies within the Council of Europe, which have contributed to the development of the standard-setting texts in this area through the adoption of Conventions, recommendations, guidelines and resolutions, aiming to assist CoE member states in respecting and upholding the rights of all children.

3. The report aims to detail these relevant legal standards, as outlined above, as well as relevant jurisprudence of the European Court of Human Rights (ECtHR) and represent the overall approach of the Council of Europe to promoting respect for the rights of children deprived of their liberty. In addition, it highlights a range of recommendations, reports, manuals and toolkits from monitoring bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and others, which provide insight into the situation of children deprived of their liberty in Europe.

Methodology

4. The methodology undertaken to compile this report consisted of a comprehensive desk-based review of key legal standards, guidelines, resolutions, recommendations, judgments of the European Court of Human Rights, reports, studies available through Council of Europe databases and websites, as well as a call for contributions to the Secretariat of the Council of Europe. The following services contributed with information and materials to the preparation of this report:

5. Registry of the European Court of Human Rights, the Office of the Commissioner for Human Rights, the Parliamentary Assembly of the Council of Europe the Children's Rights Division, the Office of the Special Representative on Migration and Refugees, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Steering Committee on Human Rights (CDDH-MIG), the European Committee on Crime Problems (CDPC), the Council for Penological Co-operation (PC-CP), the European Committee on Legal Co-operation (CDCJ), the European Committee of Social Rights (ECSR), the Council of Europe Committee on the Protection of Children from Sexual Exploitation and Sexual Abuse, and the monitoring body of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA) have. It should be

emphasised that this report has not been subjected to the approval or consideration of any of the bodies cited above.

Structure of the Report

6. Chapter 1 of this report sets out general principles established by the Council of Europe through relevant standards and the jurisprudence of the European Court of Human Rights which are applicable to all children deprived of their liberty, regardless of the context.

7. The following chapters continue to look at the specific actions taken in relation to the different groups of children deprived of their liberty in various contexts, in line with the methodology of the UN Global Study on Children Deprived of their Liberty. Chapter 2 concerns children deprived of their liberty in the administration of justice and the criminal justice system; Chapter 3 considers the situation of children living in places of detention with their parents; Chapter 4 examines the detention of children in the context of migration; Chapter 5 looks at children deprived of their liberty in institutions; finally, Chapter 6 highlights actions taken in respect of children deprived of their liberty in the context of armed conflict and on national security grounds.

Chapter 1: **The Council of Europe and Children Deprived of their Liberty –** **General Principles**

8. The purpose of this chapter would be to highlight the key overarching principles applicable to all children deprived of their liberty, regardless of context, and the guidelines and principles established by Council of Europe bodies in this area highlights these key principles, before considering their application in specific contexts in the remainder of this report.

9. Many Council of Europe entities and bodies have responsibility for promoting respect for the rights of children including children deprived of their liberty. These bodies include the Committee of Ministers of the Council of Europe, the Parliamentary Assembly, the European Court of Human Rights, the Commissioner for Human Rights, and many others.¹ The wide range of bodies with responsibility for the development and implementation of standards and principles in this area is reflective of the mainstreaming approach taken to children's rights across the Council of Europe.²

10. The current and previous Council of Europe Strategies for the Rights of the Child have also emphasised the need to uphold the rights of children deprived of liberty. The current Strategy will extend until 2021 and its implementation is followed by the Ad hoc Committee for the Rights of the Child (CAHENF),³ and coordinated internally of the Council of Europe by its Children's Rights Co-ordinator. Through the work of these bodies the Council of Europe has for many years developed a wide range of legal instruments, guidelines and standards, and legal principles developed by the European Court of Human Rights have emerged.

Standard-setting by the Council of Europe

Legal Standards

11. The *European Convention on Human Rights* sets out the fundamental rights and freedoms that should apply to all individuals, including children and is the key standard of the Council of Europe upholding the human rights of all, including children. All 47 member States are bound by the Convention. While the Convention is of general application, a number of articles have particular relevance to children deprived of their liberty, especially Article 5 (which sets out the circumstances in which individuals may be deprived of liberty), Article 3 (containing a prohibition on torture or inhuman or degrading treatment or punishment) and Article 8 (protecting private and family life).

¹ Including the Office of the Special Representative on Migration and Refugees, the European Committee for the Prevention of Torture (CPT), the Steering Committee on Human Rights (CDDH-MIG), the European Committee on Crime Problems (CDPC), the European Committee of Social Rights (ESCR), the Committee on the Protection of Children from Sexual Exploitation and Sexual Abuse, and the Group of Experts on Action Against Trafficking in Human Beings (GRETA)

² See further <https://www.coe.int/en/web/children/children-s-rights-mainstreaming>; Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016), para.10

³ See further <https://www.coe.int/en/web/children/cahenf>

12. The *European Social Charter* sets out social and economic rights, and its implementation is monitored by the European Committee on Social Rights. Of particular relevance to children who are detained is Article 7, which stipulates that children have the right to special protection, Article 17, setting out the right of children to appropriate social, legal and economic protection, and Article 15, recognising the right of persons with disabilities to independence, social integration and participation in the community.

13. The *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* establishes a specialised body, the CPT, which is entitled to visit any place of detention at any time, interview detained persons in private, communicate with staff working in places of detention and have access to relevant documentation. It aims to strengthen the protection of persons deprived of their liberty, including children from torture and other inhuman or degrading treatment or punishment. Failure to implement the Committee's key recommendations may be considered as a breach of the State's legal obligation to co-operate. On the basis of its findings and recommendations made in the context of country visits, the CPT has also developed "standards" in various fields of work, including children deprived of their liberty. These "standards", as well as the Committee's findings and recommendations, have been taken into account by other Council of Europe bodies, including the European Court of Human Rights.

The European Court of Human Rights

14. The European Court of Human Rights (ECtHR) has been instrumental in implementing the rights of children deprived of their liberty under the European Convention on Human Rights (ECHR), and has highlighted the need for particular protections in the case of children. Articles 3, 5 and 8 have particular significance for children deprived of their liberty in various contexts.

15. The ECtHR, through its case-law, has developed a number of principles which have general application to all children deprived of their liberty. These principles emphasise that the best interests of children must be central to decisions affecting them, the importance of the principle of detention as a last resort and the need to consider less coercive alternatives, and the requirements of necessity and proportionality.⁴

16. Article 5 is arguably the provision that is most directly relevant to the situation of children deprived of their liberty. It aims to safeguard the individual's right to liberty, and stipulates that deprivation of liberty can only happen in certain, limited circumstances. In light of this, the ECtHR has emphasised that any deprivation of liberty must meet basic standards of **lawfulness**. Any deprivation of liberty must have a clear and accessible legal basis, and must be based on a formal decision taken by the relevant authorities.⁵ Article 5(1) of the ECHR sets out six circumstances in which individuals may be deprived of their liberty.

⁴ Baroni, E., *Children Deprived of Liberty in the Court's case law: brief prepared by the Library and research division* (Research and Library Division, European Court of Human Rights) (private correspondence)

⁵ *Del Rio Prada v. Spain* [GC], no. 42750/09, § 125 ECHR 2013; *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 91 and 105, ECHR 2016; *Grabowski v. Poland*, no. 57722/12, 30 June 2015

17. It is worth noting that Article 5(1)(d) contains a specific provision which allows the detention of children for the purpose of **educational supervision** or his lawful detention for the purpose of bringing him before the competent legal authority. This ground is specific to children, and does not apply to adults.

18. Throughout its jurisprudence in this area, the ECtHR has consistently emphasised the need for the detention of children to be **a measure of last resort**, in a variety of contexts ranging from the criminal justice system to detention for the purposes of educational provision and for migration related reasons.⁶ The jurisprudence of the court has also therefore highlighted the importance of ensuring that adequate alternatives are considered before an order of detention is imposed on a child.⁷

19. The Court has also consistently highlighted the importance of **procedural rights** for children deprived of their liberty. Violations have been found of children's rights under the Convention due to inadequate procedures for challenging the lawfulness of detention,⁸ ineffective procedures to seek remedy for violations of children's rights in detention,⁹ and an inability to access legal advice while in detention.¹⁰ It is equally important that information is provided in a manner that takes into account the individual's age and level of education, and assistance provided if required to assist comprehension.¹¹

20. Finally, the Court has emphasised the relevance of the principle that the **best interests** of children should be taken into account consistently throughout its jurisprudence in this area.¹² States also have a positive obligation under the Convention to take appropriate measures to protect detained persons, especially vulnerable persons.¹³

The development of Council of Europe policy and guidelines
Council of Europe Strategy for the Rights of the Child 2016-2021

21. The *Council of Europe Strategy for the Rights of the Child 2016-2021*¹⁴ is the current strategy for the promotion of children's rights in Europe, identifying five key priority areas. These priority areas have relevance to all children, including those deprived of their liberty, and the focus on child-friendly justice, equal opportunities, and a life free from violence have particular significance for these children.

⁶ *D.L. v. Bulgaria*, no. 7472/14, 19 May 2016; *R.M. and Other v. France*, no. 33201/11, 12 July 2016; *A.B. and Others v. France*, no. 11593/12, 12 July 2016; *R.K. and Others v. France*, no. 68264/14, 12 July 2016;

⁷ *Popov v. France*, nos. 39472/07 and 39474/07, §§ 140-141, 19 January 2012; *R.M. and Other v. France*, no. 33201/11, 12 July 2016

⁸ *Aytimur v. Turkey*, no. 20259/06, 20 May 2010; *Erhan Dinç v. Turkey*, no. 28551/06, 20 May 2010

⁹ *Adam v. Slovakia*, no. 68066/12, 26 July 2016; *Zherdev v. Ukraine*, no. 34015/07, 27 April 2017; *Rahimi v. Greece*, no. 8687/08, 5 April 2011

¹⁰ *Salduz v. Turkey* [GC], no. 36391/02, ECHR 2008; *Soykan v. Turkey*, no. 47368/99, 21 April 2009;

¹¹ *Vakhitov and Others v. Russia*, nos. 18232/11 and 2 others, § 60, 31 January 2017

¹² *D.L. v. Bulgaria*, no. 7472/14, 19 May 2016; *Popov v. France*, nos. 39472/07 and 39474/07, §§ 140-141, 19 January 2012; *R.M. and Other v. France*, no. 33201/11, 12 July 2016

¹³ *Storck v. Germany*, no. 61603/00, § 102 ECHR 2005-V; *Stanev v. Bulgaria* [GC], no. 36760/06, § 120, ECHR 2012; *Nencheva and Others v. Bulgaria*, no. 48609/06, 18 June 2013

¹⁴ Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016)

22. This strategy highlights key approaches taken by the Council of Europe in its work on the rights of detained children. The promotion of child-friendly justice within member States remains a priority area for the Council of Europe.¹⁵ It is worth noting that in the development of its recommendations, and therefore in the development of its approach to the promotion of children's rights in this area, the Committee of Ministers has sought children's views on children's rights and issues.¹⁶

23. The work in this area has also been focused on providing support to member States through activities and projects implemented by the Council of Europe,¹⁷ and through providing platforms for peer-to-peer support in developing and implementing policies to promote greater respect for children's rights.¹⁸ This is also achieved through co-operation with international and non-governmental organisations.¹⁹ The Council of Europe Penal Statistics (SPACE I) collects data annually on children deprived of their liberty in penal institutions.²⁰ Data collection is therefore also an important aspect of the Council of Europe's work in this area. The monitoring mechanisms of the Council of Europe, including the European Committee of Social Rights, the CPT, the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Lanzarote Committee, amongst others, have played an important role in broadening the knowledge base available on the rights of children in Europe, including children who have been detained for instance in the context of the current migration crisis.²¹

The Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly justice

24. The Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly justice (the Child-Friendly Justice Guidelines) aim to ensure that whenever children come into contact with the justice system – through family matters, criminal justice, or through immigration issues – they will be treated in a manner that acknowledges their specific needs as children.

25. These standards highlight that the **best interests** of the child should be a primary consideration in all matters affecting them. In assessing the best interests of children, the views and opinions of children should be given due weight, consideration should be given to the need to protect all other rights of the child, and a comprehensive approach involving all relevant authorities should be taken to take account of the full range of the child's interests.

26. A particularly important principle is that any form of deprivation of liberty should be used only as **a last resort** and for **the shortest appropriate period of time**. Where deprivation of liberty is considered, children should be detained separately from adults as a rule.

¹⁵ *ibid*, para.53

¹⁶ *ibid*, para.10; see further Kilkelly, U., *Listening to Children about Justice: Report of the Council of Europe Consultation with Children on Child-Friendly Justice* (Strasbourg: Council of Europe, October 2010)

¹⁷ *ibid*, para.10

¹⁸ *ibid*, para.43

¹⁹ See further <https://www.coe.int/en/web/children/co-operation>

²⁰ See further <https://www.coe.int/en/web/prison/space>

²¹ Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016), para.10

27. The importance of **promoting the child's re-integration** into society should be taken into account in all circumstances where children are deprived of their liberty. In line with this, the guidelines highlight the importance of contact with the outside world, access to education, medical care and leisure, and access to programmes to prepare children to return to their communities. Child-friendly justice approaches have been mainstreamed throughout the Council of Europe's work in this area.

Challenges for the promotion of the rights of detained children

28. Significant challenges to achieving full implementation of the children's rights standards, however, remain. The Council of Europe Strategy for the Rights of the Child 2016-2021 recognises that justice systems for children across Europe are still not sufficiently adapted for children's needs. In particular, it has highlighted that the principle of detention only as a last resort and for the shortest possible period of time is not being fully implemented.²²

29. It has been recognised that poverty, inequality and exclusion continue to present significant challenges to the full realisation of children's rights. The potential for exclusion and discrimination against particularly vulnerable groups, including children deprived of their liberty and the children of imprisoned parents.²³

30. Violence against children deprived of their liberty also continues to present a challenge, and remains problematic in places where children are detained both for care and justice reasons.²⁴ The conditions in which children are detained and the treatment of children in these settings also represent an on-going challenge.²⁵ The Council of Europe has committed to addressing violence against children as a priority area.²⁶ This involves work to promote the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) and the adoption of Committee of Ministers Recommendation on integrated national strategies for the protection of children from violence.²⁷

31. Particular challenges remain in the administrative detention of children, particularly for reasons relating to migration.²⁸ The particular challenges faced by children in migration contexts include limited access to justice and other social services, and the continuing use of detention rather than child welfare and protection systems.²⁹

32. In order to address these challenges, the Council of Europe has consistently emphasised the need for adequate monitoring of places where children are deprived of

²² *ibid*, para.17

²³ *ibid*, paras.12-13

²⁴ *ibid*, para.17

²⁵ Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021: 1st Implementation Report* (Strasbourg: Council of Europe, October 2017) at p.24

²⁶ Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016)

²⁷ Committee of Ministers of the Council of Europe, Recommendation on integrated national strategies for the protection of children from violence (CM/Rec(2009)10)

²⁸ Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016), para.17

²⁹ *ibid*, para.22

their liberty. Monitoring bodies such as the CPT and others play an extremely important role in ensuring that children's rights are protected and safeguarded when they are deprived of their liberty.³⁰

33. The work of the Council of Europe in this area also includes the training of legal professionals and others involved in promoting child friendly justice.³¹ HELP, an online platform to facilitate training of professionals,³² provides training on a range of issues including Child-Friendly Justice and Alternative Measures to Detention.

³⁰ *ibid*, p.19

³¹ Children's Rights Division, Council of Europe, *Implementation of the Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, September 2017) at p.15

³² See <http://help.elearning.ext.coe.int>

Chapter 2

Children Deprived of their Liberty in the Administration of Justice

34. The purpose of this chapter is to highlight the work of the Council of Europe specifically in relation to children in conflict with the law and the administration of justice. Children may be deprived of their liberty in a number of contexts when they come into contact with the criminal justice system, and can occur at the pre-trial stage, through detention in police custody, and detention of children following conviction and sentence.

Standards and Guidelines relevant to the detention of children in the Administration of Justice

35. The Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly justice (the Child-Friendly Justice Guidelines) have particular relevance to young people in conflict with the law. These set out key guidelines to ensure that justice processes can be adapted adequately to the needs and capacities of children. These standards emphasise that detention should only be used as a last resort, and for the shortest appropriate period of time,³³ the need for children to be detained separately from adults,³⁴ and that sanctions for children in conflict with the law should be proportionate, constructive and individualized responses.³⁵ The European Committee on Social Rights has recommended that prison sentences should only be imposed in exceptional cases on young people. The detention of children must also meet basic standards of lawfulness, and be based on a valid court order.³⁶

36. Further guidance is available from the Recommendation of the Committee of Ministers on the European Rules for juvenile offenders subject to sanctions or measures,³⁷ adopted in 2008. It recommends that community sanctions should be preferred to detention, and highlights the importance of ensuring that a wide range of alternatives to detention are available.³⁸ It further emphasises the need for sanctions to be based on the best interests of the child, proportionate to the offence, and to take into account the child's age and characteristics.³⁹ Work on promoting alternatives to imprisonment for young people in conflict with the law is being undertaken by the Criminal Law Cooperation Unit and is currently ongoing.⁴⁰

37. Alternatives to detention are also recommended as the key measure in Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile

³³ Part A, Guideline 19 of the Child-friendly Justice Guidelines

³⁴ Part A, Guideline 20 of the Child-friendly Justice Guidelines; Article 17 of the European Social Charter

³⁵ Part E, Guideline 82 of the Child-friendly Justice Guidelines

³⁶ *Grabowski v. Poland*, no. 57722/12, 30 June 2015

³⁷ Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures

³⁸ Rule 23 of the European Rules for juvenile offenders subject to sanctions or measures

³⁹ Rule 5 of the European Rules for juvenile offenders subject to sanctions or measures

⁴⁰ Children's Rights Division, Council of Europe, *Implementation of the Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, September 2017) at p.15

justice.⁴¹ It highlights the need for alternatives to prosecution and to detention, and sets limits on the use of police custody (not longer than 48 hours) and provides that pre-trial detention should only be used where this is unavoidable.

38. Where children are deprived of their liberty, Part III of the European Rules for juvenile offenders subject to sanctions or measures set out a range of standards on the conditions and treatment of children deprived of their liberty. The monitoring activities of the Council of Europe bodies, mainly the CPT, are particularly important to ensure that standards are met and that children are adequately cared for and protected in these settings. The monitoring of places where children are deprived of their liberty was also supported by the Council of Europe through the *Children Behind Bars* project,⁴² which produced a practical guide aimed at providing a child-specific approach and methodology guidelines for those responsible for carrying out monitoring activities.⁴³

Pre-trial detention and detention in police custody

Police custody

39. In the context of detention by the police, the Child-Friendly Justice Guidelines highlight the obligation of police to respect the rights and dignity of all children, and to take their age, maturity and any special needs into account.⁴⁴ The guidelines set out the procedural rights children are entitled to in this situation, and police are required to ensure that children are not detained with adults, and that conditions are safe and appropriate to the needs of the children detained.⁴⁵

40. Equally, Part F of the European Rules on juvenile offenders subject to sanctions or measures emphasizes the particular vulnerability of children in police detention, and limits the restrictions placed on their liberty at this stage only to those which are justified by the purpose of their detention.⁴⁶ It is important that pre-trial detention is always used as a last resort, and to ensure that alternatives are both available and accessible.⁴⁷

41. Similarly, limits should be placed on the use of detention on remand. Where young people have been subjected to lengthy periods of detention on remand, the ECtHR has found that violations have occurred of Article 5.⁴⁸ The Court has also made it clear that the pre-trial detention of children in adult facilities will amount to a breach of their rights under the Convention.⁴⁹ When children are detained on remand,

⁴¹ Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice ((Adopted by the Committee of Ministers on 24 September 2003 at the 853rd meeting of the Ministers' Deputies)

⁴² See further childrensrightrightsbehindbars.eu

⁴³ Defence for Children International (Belgium), *Practical Guide: Monitoring Places where Children are Deprived of Liberty* (Defence for Children, 2016)

⁴⁴ Part C, Guideline 27 of the Child-Friendly Justice Guidelines

⁴⁵ Part C, Guidelines 31&32 of the Child-Friendly Justice Guidelines

⁴⁶ Rule 111 of the European Rules for juvenile offenders subject to sanctions or measures

⁴⁷ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to the Netherlands from 20 to 22 May 2014* (Strasbourg: Council of Europe, October 2014) at para 158

⁴⁸ *Bouamar v. Belgium*, 29 February 1988, Series A no. 129; *Selçuk v. Turkey*, no. 21768/02, 10 January 2006; *Kuptsov and Kuptsova v. Russia*, no. 6110/03, 3 March 2011

⁴⁹ *Güveç v. Turkey*, no. 70337/01, ECHR 2009; *Nart v. Turkey*, no. 20817/04, 6 May 2008; *Zherdev v. Ukraine*, no. 34015/07, 27 April 2017

they should enjoy the same rights and protections as children detained as a result of a conviction.

42. It is also important that children's procedural rights while in police custody or remand are respected. Violations of children's rights under Article 5 have been found where inadequate explanations were given to children of their procedural rights while in police custody,⁵⁰ or where they have been denied access to a lawyer prior to questioning by the police.⁵¹

43. The pre-trial detention of children, particularly in police custody, has been highlighted as a continuing matter of concern in some countries, including the Netherlands.⁵² Issues for the realization of children's rights can also arise where children spend lengthy periods of time detained in police custody; lengthy periods of detention have been highlighted as an issue of concern by the Commissioner for Human Rights on a number of occasions.⁵³

44. The issue of violence suffered by children in police custody, and in particular the deliberate ill-treatment of children by police officers, has been highlighted as a matter of concern by the CPT and others.⁵⁴ The ECtHR has held that the ill-treatment of detained children by police may amount to a violation of their rights to protection from torture and inhuman or degrading treatment or punishment under Article 3.⁵⁵ Violations of children's rights under Article 3 of the ECHR have been found where the conditions of a child's detention in police custody did not meet standards.⁵⁶

45. Where initiatives such as the publication of instructions for police on how to deal appropriately with the detention of children in police custody has been commented on favourably.⁵⁷ Safeguards such as the requirement for police to ensure that a parent or other adult person is notified of their detention, refraining from questioning children until they have had the opportunity to seek legal advice, and the provision of information sheets setting out the rights of detained children have been recommended.⁵⁸ These requirements have also been emphasised in Recommendation Rec(2003)20, discussed above, which also provides for supervision of the detention of

⁵⁰ *Smolik v. Ukraine*, no. 11778/05, 19 January 2012

⁵¹ *Salduz v. Turkey* [GC], no. 36391/02, ECHR 2008; *Soykan v. Turkey*, no. 47368/99, 21 April 2009

⁵² Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to the Netherlands from 20 to 22 May 2014* (Strasbourg: Council of Europe, October 2014) at para.150

⁵³ Muiznieks, *ibid*, at para.152; Commissioner for Human Rights, *Children and Juvenile Justice: Proposals for Improvements* (Strasbourg: Council of Europe, June 2009) at p.12-13; CPT, *Juveniles deprived of their liberty under criminal legislation: extract from the 24th General Report of the CPT, published in 2015* (Strasbourg: Council of Europe, 2015) at para.99

⁵⁴ CPT, *ibid* at para.97

⁵⁵ *Üzer v. Turkey*, no. 9203/03, 21 September 2010; *Alkes v. Turkey*, no. 3044/04, 16 February 2010; *Ciğerhun Öner v. Turkey* (no. 2), no. 2858/07, 23 November 2010; *Bouyid v. Belgium* [GC], no. 23380/09, ECHR 2015

⁵⁶ *Kuptsov and Kuptsova v. Russia*, no. 6110/03, 3 March 2011; *Zherdev v. Ukraine*, no. 34015/07, 27 April 2017

⁵⁷ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to the Netherlands from 20 to 22 May 2014* (Strasbourg: Council of Europe, October 2014) at para.151

⁵⁸ CPT, *Juveniles deprived of their liberty under criminal legislation: extract from the 24th General Report of the CPT, published in 2015* (Strasbourg: Council of Europe, 2015) at para.98

children in police custody by a competent authority. The establishment of a system of registration and monitoring of children detained in police custody has also been recommended as a means of ensuring children's rights are protected in pre-trial detention.⁵⁹

Detention as a last resort and alternatives to detention

46. Council of Europe guidelines and bodies have consistently emphasised the need to ensure that the detention of children is used only as a last resort.⁶⁰ Countries that have enshrined the principle that detention should only be used as a last resort in legislation have been highlighted by Council of Europe bodies.⁶¹ It has been recommended that detention of children should only be justified on the basis that they pose "a continuing and serious threat to public safety".⁶² The Council of Europe has also noted its concerns about practices of imprisoning children accused of breaching anti-social behaviour orders.⁶³

47. In order to ensure that detention is only used as a last resort in practice, it has important that a range of community-based measures are available in member States, and further that they are accessible as a realistic option for decision-makers in practice.⁶⁴

Conditions of detention

48. The European rules for juvenile offenders subject to sanctions or measures⁶⁵ set out detailed rules on the treatment of detained children. These rules are applicable to welfare institutions in which children are detained, as well as penal institutions. These extensive rules provide that deprivation of liberty should not aggravate the suffering inherent to detention,⁶⁶ that young people should be provided with a range of meaningful activities⁶⁷, and recognises the particular vulnerabilities of detained young people.⁶⁸ A basic requirement is that children should be separated from adults in detention,⁶⁹ and in countries where this separation is not fully guaranteed, the Council of Europe have noted it as a matter of concern.⁷⁰ Places where children are

⁵⁹ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to the Netherlands from 20 to 22 May 2014* (Strasbourg: Council of Europe, October 2014) at para.160

⁶⁰ Commissioner for Human Rights, *Positions on Children's Rights* (Strasbourg: Council of Europe, May 2010) at p.6

⁶¹ Commissioner for Human Rights, *Children and Juvenile Justice: Proposals for Improvements* (Strasbourg: Council of Europe, June 2009) at p.12

⁶² Commissioner for Human Rights, *Positions on Children's Rights* (Strasbourg: Council of Europe, May 2010) at p.6

⁶³ See further <https://www.coe.int/en/web/commissioner/-/-the-united-kingdom-juvenile-justice-system-should-focus-more-on-rehabilitation-?desktop=true>

⁶⁴ Commissioner for Human Rights, *Children and Juvenile Justice: Proposals for Improvements* (Strasbourg: Council of Europe, June 2009) at p.12-13

⁶⁵ Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures (adopted by the Committee of Ministers on 5 November 2008 at the 1040th meeting of the Ministers' Deputies)

⁶⁶ Rule 49 of the European Rules for juvenile offenders subject to sanctions or measures

⁶⁷ Rule 50 of the European Rules for juvenile offenders subject to sanctions or measures

⁶⁸ Rule 52 of the European Rules for juvenile offenders subject to sanctions or measures

⁶⁹ Commissioner for Human Rights, *Children and Juvenile Justice: Proposals for Improvements* (Strasbourg: Council of Europe, June 2009) at p.14

⁷⁰ See further <https://www.coe.int/en/web/commissioner/-/-the-united-kingdom-juvenile-justice-system-should-focus-more-on-rehabilitation-?desktop=true>

detained should be specifically tailored for children and provide a non-prison-like environment.⁷¹ The European Prison Rules also emphasise the importance of this requirement.⁷²

49. Aside from these general principles, the European Rules for juvenile offenders subject to sanctions and measures provide detailed guidance on placement and admission of young people, physical conditions, hygiene, nutrition, health, regime activities and preparation for release. Rules for the maintenance of order, including strict rules on searches, the use of force and physical restraint, separation and discipline and punishment are provided. Activities provided for children in detention should promote the physical and mental health of children and develop attitudes and skills that will help to prevent re-offending.⁷³

50. It is important that young people who are detained should be provided with full-time education.⁷⁴ Each child should have an individual plan that deals comprehensively with a range of issues, including education.⁷⁵ Contact between detained young people and their families should be encouraged and facilitated.⁷⁶ Where arrangements to allow young people to use internet services to stay in contact with their families have been provided, this has been commented upon favourably.⁷⁷

51. The protection of children from violence while they are detained is critical, and authorities have an obligation to actively protect their physical and mental well-being.⁷⁸ It has been emphasised that physical chastisement is never acceptable as a form of discipline or punishment.⁷⁹ Isolation of young people should also only be applied as a measure of last resort.⁸⁰ The CPT has also observed an increasing trend at the international level to promote the abolition of solitary confinement as a disciplinary sanction for children, and fully endorses this approach. Particular reference is made in this regard to Rule 54 (2) of the United Nations Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules, 2015).⁸¹

⁷¹ CPT, *Juveniles deprived of their liberty under criminal legislation: extract from the 24th General Report of the CPT, published in 2015* (Strasbourg: Council of Europe, 2015) at para.101

⁷² Rule 11 and Rule 35.4 of the European Prison Rules; see Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)

⁷³ Commissioner for Human Rights, *Children and Juvenile Justice: Proposals for Improvements* (Strasbourg: Council of Europe, June 2009) at p.14

⁷⁴ Commissioner for Human Rights, *Positions on Children's Rights* (Strasbourg: Council of Europe, May 2010) at p.6; see also Rule 35.1 and 35.2 of the European Prison Rules

⁷⁵ Commissioner for Human Rights, *Children and Juvenile Justice: Proposals for Improvements* (Strasbourg: Council of Europe, June 2009) at p.15

⁷⁶ Commissioner for Human Rights, *Positions on Children's Rights* (Strasbourg: Council of Europe, May 2010) at p.6; CPT, *Juveniles deprived of their liberty under criminal legislation: extract from the 24th General Report of the CPT, published in 2015* (Strasbourg: Council of Europe, 2015) at para.122-123

⁷⁷ CPT, *ibid*, at para.124

⁷⁸ Commissioner for Human Rights, *Children and Juvenile Justice: Proposals for Improvements* (Strasbourg: Council of Europe, June 2009) at p.14

⁷⁹ CPT, *Juveniles deprived of their liberty under criminal legislation: extract from the 24th General Report of the CPT, published in 2015* (Strasbourg: Council of Europe, 2015) at para.126

⁸⁰ *ibid*, at para.128

⁸¹ For more details in this respect, see for instance the CPT's reports on the 2015 visit to France at para. 95, on the 2015 visit to Germany at para. 70, and on the 2016 visit to Latvia at para. 96, all published in 2017 (Strasbourg: Council of Europe, 2017)

52. Children must also be protected from other forms of ill-treatment while in detention. A failure to provide children with emergency medical care has been found by the ECtHR to violate Article 3 of the Convention,⁸² and it has also been highlighted that children should be protected both from other detainees⁸³ and from the risk of self-harm or suicide.⁸⁴

⁸² *Oyğur v. Turkey*, no. 6649/10, §56, 5 March 2013

⁸³ *A.Ş. v. Turkey*, no. 58271/10, 13 September 2016

⁸⁴ *Çoşelav v. Turkey*, no. 1413/07, 9 October 2012

Chapter 3

Children living in places of detention with their parents

53. It has been estimated that approximately 2 million children in Europe have a parent who is imprisoned.⁸⁵ In some cases children – particularly infant children – may be permitted to live in prison for a period of time with their mother. The purpose of this chapter will be to outline legal standards, principles and actions taken to support member states in upholding the rights of children who are living in places of detention with their parents.

Legal standards and guidelines on children living in places of detention with their parents

54. It has been recognised that while it is not desirable to have children living in adult places of detention, which may be unsuitable to their needs, there is also a need to consider the possible negative impact on children of separating them from their imprisoned parent. Where possible, the CPT has recommended that alternatives to detention should be imposed in respect of pregnant girls and young mothers to avoid the situations where children are living in detention.⁸⁶

55. In 2018, the Committee of Ministers of the Council of Europe adopted a recommendation concerning children with imprisoned parents,⁸⁷ which aims to ensure that children can maintain meaningful contact with their imprisoned parents. It also addresses the situation of “infants in prison”. The explanatory memorandum explains that this term generally refers to very young children living in prison with their parent.⁸⁸

The best interests of the child

56. The Recommendation clearly states that infants may stay in prison with a parent “only when it is in the best interests of the infant concerned and in accordance with national law”. The Council of Europe recommends that only infants should live in closed prisons with their parents.⁸⁹ This is echoed by the CPT, highlighting that the welfare and best interests of the child should be the governing criteria in deciding whether children should remain with their imprisoned parents.⁹⁰ It has also highlighted that the immediate removal of newborn infants from their mother should be considered inhuman and degrading treatment, and a mother and baby should be allowed to remain together for at least a certain period of time.⁹¹

⁸⁵ *Explanatory memorandum to Recommendation CM/Rec(2018)5 concerning children with imprisoned parents* (CM(2018)27-add2); Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021: 1st Implementation Report* (Strasbourg: Council of Europe, October 2017) at p.25

⁸⁶ CPT, *Factsheet on Women in Prison* (Strasbourg: Council of Europe, January 2018) at p.5

⁸⁷ Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents (Adopted by the Committee of Ministers on 4 April 2018 at the 1312th meeting of the Ministers' Deputies)

⁸⁸ *Explanatory memorandum to Recommendation CM/Rec(2018)5 concerning children with imprisoned parents* (CM(2018)27-add2) at p.7

⁸⁹ *ibid*, at p.13

⁹⁰ CPT, *Factsheet on Women in Prison* (Strasbourg: Council of Europe, January 2018) at p.5; see also Rule 36.1 of the European Prison Rules

⁹¹ CPT, *ibid*, at p.5

Conditions of detention and treatment of children

57. It also emphasizes that infants in prison should not be treated as prisoners, and should enjoy the same rights and (as far as possible), the same freedoms as other children.⁹² The CPT has recommended that the equivalent of a nursery or kindergarten should also be provided, along with specialized staff.⁹³ Recommendation (2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents state that infants should have access to services as similar to those in the community as far as possible, that they should be able to access the outside world and attend nursery schools, and to ensure contact with family members living outside the prison, unless it is not in the child's best interests.⁹⁴ The ECtHR has found violations of Article 3 of the Convention in respect of both a mother and her newborn child due to the physical conditions of detention and due to the inadequate medical care provided to the child.⁹⁵

58. The conditions for infants in prison with their parents are also addressed by the recommendation. The need for mothers to be provided with health care, support and information to ensure the child's right to the highest attainable standard of health is recognised.⁹⁶ Breastfeeding mothers should be provided with supplementary food.⁹⁷ In addition, the rules state that a child-friendly approach to the arrangements and facilities for the care of infants in prison must be taken, ensuring that the best interests and safety of young people are protected, and that their welfare and healthy development is promoted to the greatest extent possible.⁹⁸

Separation from an imprisoned parent and transition to the community

59. The decisions made around separating the infant from his or her imprisoned parent must be made on an individual basis and in the best interests of the child involved.⁹⁹ The need for sensitivity in arranging this transition, and the need for ongoing contact to be facilitated with the child's imprisoned parent are also emphasised in the rules.¹⁰⁰ The importance of through-care to help children and parents to adjust to their new situation has also been acknowledged by the Committee of Ministers of the Council of Europe.¹⁰¹

60. Finally, it is notable that work is being carried out on this issue in a number of member States. Collaboration between Irish legal academics and NGOs in Ireland led to the development of Principles for Action with for the children of imprisoned parents.¹⁰² It has also been noted that some good examples of halfway houses for

⁹² Rule 36 of the Recommendation concerning children with imprisoned parents; see also Rule 36 of the European Prison Rules

⁹³ CPT, *Factsheet on Women in Prison* (Strasbourg: Council of Europe, January 2018) at p.6

⁹⁴ Rule 37 of the Recommendation concerning children with imprisoned parents; see also CPT, *ibid*, at p.6; see also Rule 36 of the European Prison Rules

⁹⁵ *Korneykova and Korneykov v. Ukraine* no. 56660/12, 24 March 2016

⁹⁶ Rule 34 of the Recommendation concerning children with imprisoned parents

⁹⁷ CPT, *Factsheet on Women in Prison* (Strasbourg: Council of Europe, January 2018) at p.5

⁹⁸ Rule 37 of the Recommendation concerning children with imprisoned parents

⁹⁹ Rule 38 of the Recommendation concerning children with imprisoned parents

¹⁰⁰ Rules 39 & 40 Recommendation concerning children with imprisoned parents; see further CPT, *Factsheet on Women in Prison* (Strasbourg: Council of Europe, January 2018) at p.6

¹⁰¹ *Explanatory memorandum to Recommendation CM/Rec(2018)5 concerning children with imprisoned parents* (CM(2018)27-add2) at p.15

¹⁰² Parkes, A. & Donson, F., *Principles of Action for Children with a Parent in Prison* (2017) available at iprt.ie

mothers with children exist in member States such as Denmark and Germany.¹⁰³ Other countries, such as Croatia and Greece, have mother and baby units where children can stay in the prison and go to a community nursery.¹⁰⁴

¹⁰³ *Explanatory memorandum to Recommendation CM/Rec(2018)5 concerning children with imprisoned parents* (CM(2018)27-add2) at p.14

¹⁰⁴ *ibid.*, at p.15

Chapter 4

Children Deprived of their Liberty in Migration Contexts

61. It has been estimated that in recent years, around 30% of asylum seekers arriving in Europe were children, many of whom were fleeing conflict.¹⁰⁵ Significant work has been done by Council of Europe bodies on this issue, and the Parliamentary Assembly and the Office of the Special Representative on Migration and Refugees have been particularly important here. The purpose of this chapter will be to highlight the applicable legal standards and principles relating to children detained in the context of migration. In addition, the work of the Council of Europe in undertaking studies and writing reports that highlight the situation of children detained in the context of migration will be discussed.

Ending immigration detention of children

62. The principle that detention should only be used as a last resort and for the shortest appropriate time period applies to the migration context as to other situations. The Child-Friendly Justice Guidelines emphasise that attention should be given in particular to unaccompanied children, and that the deprivation of liberty of these children should never be motivated or based solely on the absence of residence status.¹⁰⁶ The Commissioner for Human Rights has persistently advocated for a comprehensive ban on child immigration detention, stressing that it is never in the child's best interests.

Legal standards and guidelines

63. A number of initiatives have been undertaken by Council of Europe bodies to address the rights of children in migration contexts, and particularly to end the practice of detaining children in these situations.¹⁰⁷ Resolutions and recommendations passed by the Parliamentary Assembly of the Council of Europe consistently recognise the undesirability of depriving children of their liberty in the context of migration. These include:

- Recommendation 1703 (2005) on protection and assistance for separated children seeking asylum¹⁰⁸ recognises the primacy of the best interests principle and recommended detention of separated children only as a last resort
- Recommendation 1596 (2003) on the situation of young migrants in Europe¹⁰⁹ recommends that member States should refrain from detaining minors solely on immigration grounds and should provide for adequate alternative accommodation

¹⁰⁵ Special Representative of the Secretary General on migration and refugees, *Thematic Report on migrant and refugee children* (SG/Inf(2017)13) (Council of Europe, March 2017)

¹⁰⁶ Part A, Guideline 22 of the Child-Friendly Justice Guidelines

¹⁰⁷ Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016), para.32; Committee on Migration, Refugees and Displaced Persons, *The alternatives to immigration detention of children* (Parliamentary Assembly, Council of Europe, Doc. 13597, 15th September 2014)

¹⁰⁸ Parliamentary Assembly, Recommendation 1703 (2005) on protection and assistance for separated children seeking asylum

¹⁰⁹ Parliamentary Assembly, Recommendation 1596 (2003) on the situation of young migrants in Europe

- Recommendation 1985 (2011) on undocumented migrant children in an irregular situation: a real cause for concern¹¹⁰ recommends that states should refrain from detaining undocumented migrant children and that unaccompanied children should never be detained
- Resolution 1810 (2011) “Unaccompanied children in Europe: issues of arrival, stay and return”¹¹¹ states that unaccompanied children should never be detained
- Resolution 1707 (2010) on detention of asylum seekers and irregular migrants in Europe¹¹² unequivocally states that “unaccompanied minors should never be detained”.
- Resolution 2020 (2014) “The alternatives to immigration detention of children”¹¹³ urges States to recognise that it is never in the best interests of a child to be detained based on migration status, and to introduce legislation prohibiting the practice
- Recommendation 2056 (2014) “The alternatives to immigration detention of children”¹¹⁴ highlights the benefits of alternatives to detention along with examples of good practice and areas of concern
- Resolution 2195 (2017) “Child friendly age assessment for unaccompanied migrant children”¹¹⁵ aims to create safeguards for children in the context of immigration
- Resolution 2136 (2016) “Harmonising the protection of unaccompanied minors in Europe”¹¹⁶ aims to improve the protection of unaccompanied minors through regional co-operation and prohibits deprivation of liberty of this group of children

64. The Committee of Ministers has also noted the relevance of the Child-friendly justice Guidelines and the Council of Europe Strategy for the Rights of the Child to children detained in the context of migration.¹¹⁷ The CPT recommended in the context of a study on immigration detention that “every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child.”¹¹⁸ Similarly, the Group of Experts on Action against Trafficking in Human Beings (GRETA) has stressed that, in line with Article 12.7 of the CoE Convention on Action against Trafficking in Human Beings, the accommodation of presumed child victims of trafficking has to be appropriate in terms of their specific needs. GRETA has noted

¹¹⁰ Parliamentary Assembly, Recommendation 1985 (2011) on undocumented migrant children in an irregular situation: a real cause for concern

¹¹¹ Parliamentary Assembly Resolution 1810 (2011) “Unaccompanied children in Europe: issues of arrival, stay and return”

¹¹² Parliamentary Assembly, Resolution 1707 (2010) on detention of asylum seekers and irregular migrants in Europe

¹¹³ Parliamentary Assembly, Resolution 2020 (2014) “The alternatives to immigration detention of children”

¹¹⁴ Parliamentary Assembly, Resolution 2056 (2014) “The alternatives to immigration detention of children” 3 October 2014, Doc. 13597

¹¹⁵ Parliamentary Assembly, Resolution 2117 (2017) “Child friendly age assessment for unaccompanied migrant children” 24 November 2017

¹¹⁶ Parliamentary Assembly, Resolution 2136 (2016) “Harmonising the protection of unaccompanied minors in Europe

¹¹⁷ Committee of Ministers, *Reply to Recommendation 2056 (2014) by the Committee of Ministers* (2014)

¹¹⁸ CPT, *19th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (Strasbourg: Council of Europe) at para.97

that the principle of the best interests of the child should be fully respected at all times and any detention of children used only as a measure of last resort and for the shortest appropriate period of time.¹¹⁹

PACE Campaign to End Immigration Detention of Children

65. The Parliamentary Assembly of the Council of Europe joined the Global Campaign to End Immigration Detention of Children in 2015.¹²⁰ The campaign seeks to raise awareness of the deprivation of liberty of children in immigration contexts and to promote the adoption of alternatives to detention by Council of Europe member states. Activities undertaken by the campaign include awareness raising about immigration detention of children, training for parliamentarians and ombudspersons to effectively monitor places of immigration detention and various roundtables and studies to map the current state of immigration detention and age assessment in member states.¹²¹ The Parliamentary Assembly continues its support of the Campaign to End Immigration Detention of Children in the most recent Council of Europe Strategy for the Rights of the Child and through Resolution 2195 (2017).¹²²

66. The European Court of Human Rights has also discussed the need to limit the use of detention for children in immigration contexts, highlighting that the child's extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of illegal immigrant.¹²³ Any decision to detain a child has to be proportionate to the aim of enforcing a removal decision, and must take into account the child's best interests, including the need to keep the family together as far as possible, and the need to adequately consider alternatives to detention.¹²⁴

67. The Council of Europe has also recognised countries that have taken steps towards ending the immigration detention of children, including Belgium, Denmark, France, Hungary, Ireland, Italy, the Netherlands and the United Kingdom.¹²⁵

Alternatives to detention

68. The Council of Europe has repeatedly stressed the need to provide adequate alternatives to detention for children in migration contexts, particularly through Parliamentary Assembly Resolution 2020 (2014).¹²⁶ It has been noted that the

¹¹⁹ Group of Experts on Action Against Trafficking in Human Beings, 6th General Report on GRETA's Activities (Council of Europe, March 2017); Group of Experts on Action Against Trafficking in Human Beings, Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway (Council of Europe, June 2017)

¹²⁰ See further <http://website-pace.net/web/apce/children-in-detention>

¹²¹ See further http://website-pace.net/en_GB/web/apce/eidc-at-a-glance

¹²² Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016), para.32

¹²³ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, ECHR 2006-XI, § 55; *R.M. and Other v. France*, no. 33201/11, 12 July 2016; *A.B. and Others v. France*, no. 11593/12, 12 July 2016; *R.K. and Others v. France*, no. 68264/14, 12 July 2016; *R.C. and V.C. v. France*, no. 76491/14, 12 July 2016

¹²⁴ *Popov v. France*, nos. 39472/07 and 39474/07, § 914, 19 January 2012; *R.M. and Other v. France*, no. 33201/11, 12 July 2016).

¹²⁵ Parliamentary Assembly, Resolution 2020 (2014) "The alternatives to immigration detention of children" at para.7

¹²⁶ Parliamentary Assembly, Resolution 2020 (2014) "The alternatives to immigration detention of children"; Parliamentary Assembly, Council of Europe, *A study of immigration detention practices and the use of alternatives to immigration detention of children* (2017) at p.7

requirement to consider these alternatives is a positive obligation of member States.¹²⁷ The promotion of knowledge about children’s rights and particularly about alternatives to detention is a central aspect of the work undertaken in this area. This includes facilitation of the exchange of experiences, knowledge and good practices between member states in 2016-2017.¹²⁸

69. An International Conference hosted by the Czech Chairmanship of the Committee of Ministers of the Council of Europe on “Immigration detention of children: Coming to a Close?” was held in Prague, on 25-26 September 2017, and aimed both to raise awareness of children’s rights and to promote exchange of good practices on alternatives.¹²⁹ The report published at the conclusion of this conference made a number of suggestions for member States in this area. It suggested that the lack of alternatives to detention needs to be urgently addressed, and that a range of alternatives, anchored in national legislation, should be developed. They also suggested that government should set out a clear roadmap to end the practice of detaining children in migration contexts, and emphasised the need for child-friendly procedures to be adopted.¹³⁰

70. Raising awareness of the availability of alternatives has also been carried out by the Steering Committee for Human Rights, who published a report in 2017 detailing a non-exhaustive but indicative list of different types of alternatives to detention in the migration context, explaining both the benefits and drawbacks of each type.¹³¹ The Steering Committee is also in the process of preparing a handbook on alternatives to immigration detention with focus on children.¹³² The Study of immigration detention practices and the use of alternatives to immigration detention of children has been prepared in the framework of the PACE Campaign to End Immigration Detention of Children and was published in 2017.¹³³

71. The Commissioner for Human Rights has also emphasised the need for clear alternatives in law and policy, for the exchange of good practices and improvements

¹²⁷ Steering Committee for Human Rights (CDDH), *Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration* (Council of Europe, Document CDDH(2017)R88add2) (26/01/2018) at p.4; see also *R.M. and Others v. France* (no. 33201/11, 12 July 2016); *A.B. and Others v. France* (no. 11593/12, 12 July 2016); *A.M. and Others v. France* (no. 24587/12, 12 July 2016); *R.K. and Others v. France* (no. 68264/14, 12 July 2016) and *R.C. and V.C. v. France* (no. 76491/14, 12 July 2016)

¹²⁸ Children’s Rights Division, Council of Europe, *Implementation of the Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, September 2017) at p.6

¹²⁹ Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021: 1st Implementation Report* (Strasbourg: Council of Europe, October 2017) at p.25

¹³⁰ Office of the Czech Government Agent, *Immigration Detention of Children: Coming to a Close? Prague 25-26 September 2017: Conference Report* (Chairmanship of the Czech Republic and the Council of Europe, 2017) at pp.42-43

¹³¹ Steering Committee for Human Rights (CDDH), *Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration* (Council of Europe, Document CDDH(2017)R88add2) (26/01/2018)

¹³² See further <https://rm.coe.int/steering-committee-for-human-rights-cddh-drafting-group-on-migration-a/16807ab316>

¹³³ Parliamentary Assembly, Council of Europe, *A study of immigration detention practices and the use of alternatives to immigration detention of children* (2017); Children’s Rights Division, Council of Europe, *Implementation of the Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, September 2017) at p.6

of data gathering.¹³⁴ However, it has been noted that while many countries legislate for alternatives to detention in migration contexts, implementation remains a challenge.

72. A number of elements have been identified as “essential elements” in developing alternatives to detention. This includes the provision of clear information of rights and duties; ensuring access to legal assistance; building trust in the migration and asylum procedures; upholding individualised case management services; and safeguarding the dignity and rights of the persons involved.¹³⁵ The need to develop child-friendly age-assessment processes has also been highlighted.¹³⁶ In light of this, the Council of Europe are developing standards and procedures for child-friendly age assessment procedures.¹³⁷

Conditions in detention

73. Article 17 of the European Social Charter guarantees the right of children, including unaccompanied minors to social and medical assistance.¹³⁸ Given that the practice of detaining children in the migration context continues in many countries, it has been emphasised that where this occurs, children should not be separated from their parents against their will.¹³⁹ The European Social Charter requires States to take necessary and appropriate steps to provide children with the care and assistance they need to protect them from negligence, violence or exploitation.¹⁴⁰ This obligation extends to children who are in their territory unlawfully.¹⁴¹ Children must be treated on an individual basis, and the principle of the best interests of the child should apply fully to migrant children.¹⁴²

74. The ECtHR has consistently found that due to the extreme vulnerability of children in migration, the threshold for harm is lower and so detention can amount to inhuman and degrading treatment. For example, violations have been found of children’s rights under Article 3 due to the conditions in which an unaccompanied five-year-old child was held within an adult facility,¹⁴³ and in circumstances where

¹³⁴ See further <https://www.coe.int/en/web/commissioner/-/high-time-for-states-to-invest-in-alternatives-to-migrant-detention?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fthematic-work%2Fmigration>

¹³⁵ Steering Committee for Human Rights (CDDH), *Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration* (Council of Europe, Document CDDH(2017)R88add2) (26/01/2018) at p.4

¹³⁶ Parliamentary Assembly, Resolution 2020 (2014) “The alternatives to immigration detention of children”

¹³⁷ Wenke, D., *Age assessment: Council of Europe member states’ policies, procedures and practices respectful of children’s rights in the context of migration* (Strasbourg: Children’s Rights Division, Council of Europe, September 2017)

¹³⁸ International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36)

¹³⁹ Parliamentary Assembly, Council of Europe, *A study of immigration detention practices and the use of alternatives to immigration detention of children* (2017) at p.12

¹⁴⁰ *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82

¹⁴¹ *Defence for Children International (DCI) v. the Netherlands*, Complaint No 47/2008, decision on the merits of 20 October 2009)

¹⁴² Parliamentary Assembly, Council of Europe, *A study of immigration detention practices and the use of alternatives to immigration detention of children* (2017) at p.13

¹⁴³ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, ECHR

conditions amounted to inhuman and degrading treatment.¹⁴⁴ Similar violations have been found regarding accompanied children.¹⁴⁵ Violations have also been found of unaccompanied children's rights under the European Social Charter in situations where there were shortcomings in provision for unaccompanied children, delays in appointing an ad hoc guardian, and the detention of unaccompanied children in waiting areas and hotels.¹⁴⁶

75. Detained children should also have full access to procedural safeguards, including the right to be informed in a language they understand of the legal and factual grounds for their detention, their right to consult a lawyer and the remedies available to them.¹⁴⁷ This information must be presented in a way that the child can fully comprehend and understand; it has also been highlighted that this will often require the appointment of a competent guardian, a legal representative and translation assistance.¹⁴⁸

76. There is also a continuing commitment to monitoring the situation of migrant children in detention, notably the CPT.¹⁴⁹ The ECRI, the ECSR and the ECRML have also, among others, looked into the matter in the context of their own monitoring procedures.¹⁵⁰ In order to improve monitoring of places where children are deprived of their liberty, training has been developed for those responsible for visiting and monitoring places of detention as a result of migration.¹⁵¹ In the framework of the PACE Campaign to End Immigration Detention of Children, the Council of Europe has developed a Guide for Parliamentarians: Visiting places where children are deprived of their liberty as a result of immigration procedures.¹⁵² This guide provides detailed guidance to those involved in monitoring places where children are deprived of their liberty on immigration grounds, and two further training courses took place on this issue in Strasbourg in April and November 2017.

Challenges

¹⁴⁴ *Mahmundi and Others v. Greece*, no. 14902/10, 31 July 2012; *S.F. and Others v. Bulgaria*, no. 8138/16, 7 December 2017; *Rahimi v. Greece*, no. 8687/08, 5 April 2011; *Mohamad v. Greece*, no. 70586/11, 11 December 2014; *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, 22 November 2016

¹⁴⁵ *Popov v France* (no. 39472/07) and (39474/07) ECHR, 19 January 2012

¹⁴⁶ *EUROCEF v. France*, Complaint No 114/2015

¹⁴⁷ In line with the Child-Friendly justice Guidelines; See also Parliamentary Assembly, Council of Europe, *A study of immigration detention practices and the use of alternatives to immigration detention of children* (2017) at p.17

¹⁴⁸ *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012; *Vakhitov and Others v. Russia*, nos. 18232/11 and 2 others, § 60, 31 January 2017; *Rahimi v. Greece*, no. 8687/08, 5 April 2011

¹⁴⁹ CPT, *Factsheet on Immigration detention* (Strasbourg: Council of Europe, March 2017); see also, for instance, the CPT's report on the 2016 visits to Greece (Strasbourg: Council of Europe, September 2017), pp. 20-28

¹⁵⁰ Children's Rights Division, Council of Europe, *Implementation of the Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, September 2017) at p.6; Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016), p.12; Parliamentary Assembly, Council of Europe, *A study of immigration detention practices and the use of alternatives to immigration detention of children* (2017) at p.14

¹⁵¹ Children's Rights Division, Council of Europe, *Implementation of the Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, September 2017) at p.6

¹⁵² Council of Europe, *Guide for Parliamentarians: Visiting places where children are deprived of their liberty as a result of immigration procedures* (Strasbourg, Council of Europe, October 2017)

77. A number of significant challenges remain for Europe in addressing the situation of children in migration contexts, and the deprivation of liberty of these children. Key issues arise around identification and age assessment of children, registration of children and guardianship, provision of adequate reception conditions, alternatives to detention, prevention of violence, family reunification and access to information and access to justice.¹⁵³ A thematic report on migrant and refugee children was published in March 2017,¹⁵⁴ setting out results from fact-finding missions to a number of CoE countries. They highlighted a number of issues, including the “protracted” nature of emergency responses,¹⁵⁵ and a range of other issues.

78. A number of actions have been adopted by the Council of Europe to help to address these on-going challenges. The Council of Europe Action Plan Protecting Refugee and Migrant Children in Europe 2017-2019¹⁵⁶ was published by the Committee of Ministers in May 2017, and is based on three pillars: ensuring access to rights and child-friendly procedures; providing effective protection, and enhancing the integration of children who would remain in Europe. The Action Plan includes measures to avoid resorting to the deprivation of liberty on the sole ground of migration. Actions set out in this plan include a conference to bring government authorities and relevant stakeholders together, the development of a guide for monitoring places where migrant children are detained,¹⁵⁷ the development of guidance on alternatives to immigration detention, and the development of a training module on alternatives to detention.¹⁵⁸

79. Further efforts on standard-setting in this area are continuing. The third phase of the PACE Campaign to End Immigration Detention of Children will further focus on awareness raising and promotion of positive and protective alternative practices to detention of migrant children. In collaboration with Children’s Rights Division, supporting the work of the CAHENF, it will also focus on improving access to rights for children in migration, in particular during age assessment procedures. CAHENF have also established a group of experts to assist in the development of guidelines on children’s rights and safeguards in the context of migration. Two texts are being developed to provide guidance to member states on guardianship and age assessment in the context of migration, and are expected to be finalised by 2019.¹⁵⁹

80. A Committee of experts on administrative detention of migrants (CJ-DAM), acting under the authority of the European Committee on Legal Co-operation (CDCJ),

¹⁵³ Special Representative of the Secretary General on migration and refugees, *Thematic Report on migrant and refugee children* (SG/Inf(2017)13) (Council of Europe, March 2017)

¹⁵⁴ *ibid*; see further Children’s Rights Division, Council of Europe, *Implementation of the Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, September 2017) at p.5

¹⁵⁵ Special Representative of the Secretary General on migration and refugees, *ibid*, at p.3

¹⁵⁶ Council of Europe, *Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe* (adopted at the 127th Session of the Committee of Ministers, 19th May 2017)

¹⁵⁷ See Council of Europe, *Guide for Parliamentarians: Visiting places where children are deprived of their liberty as a result of immigration procedures* (Strasbourg, Council of Europe, October 2017) at <https://rm.coe.int/visiting-places-where-children-are-deprived-of-their-liberty-as-a-resu/168075ce6d>, available in English, French and Arabic

¹⁵⁸ See para.2.4 of the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe

¹⁵⁹ See further <https://rm.coe.int/cahenf-safeguards-description-en/1680725334>

has been instructed to codify existing international standards relating to the conditions in which migrants are to be held in closed administrative centres and, as appropriate, in other places of non-penal detention in the form of a recommendation of the Committee of Ministers. This process is on-going.¹⁶⁰ As part of this process, a compilation of legal instruments relating to the administrative detention of migrants, refugees and asylum-seekers has been prepared by the CDCJ Secretariat.¹⁶¹ It has also been approved that a handbook on effective alternatives to detention of migrants and asylum seekers be developed.¹⁶²

¹⁶⁰ See further <https://www.coe.int/en/web/cdcj/activities/administrative-detention-migrants>

¹⁶¹ See further <https://www.coe.int/en/web/cdcj/activities/administrative-detention-migrants>

¹⁶² Steering Committee for Human Rights (CDDH), *Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration* (Council of Europe, Document CDDH(2017)R88add2) (26/01/2018) at p.5

Chapter 5

Children Deprived of their Liberty in Institutions

81. Outside of the criminal justice and migration contexts, children may also be subject to deprivation or restrictions on their liberty for a variety of reasons. This chapter will address the detention of children in any institutional setting which does not take place in the context of the administration of justice, migration or armed conflict and national security. This will particularly highlight issues relating to the alternative care of children in secure settings for educational purposes and to address complex needs of children, the use of institutions to provide alternative care to children separated from their families, and the detention of children in institutions focused on providing treatment for children with mental health difficulties or disabilities.

Detention for the purpose of educational supervision

82. Article 5(1)(d) of the European Convention on Human Rights provides that children may be deprived of their liberty for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority. This has been described as performing a “protective child welfare purpose” in situations where children may need to be detained outside of the criminal justice system.¹⁶³

83. There are two circumstances where deprivation of liberty is permitted under subparagraph (d).¹⁶⁴ Firstly, children may be detained for the purpose of their educational supervision.¹⁶⁵ This allows for the detention of a child in his or her own interests in the absence of a criminal offence being committed.¹⁶⁶ This educational supervision can encompass the exercise of many parental rights for the benefit and protection of the child, and is not necessary to be equated solely with classroom teaching;¹⁶⁷ schooling is nonetheless also an important aspect of this educational supervision.¹⁶⁸ However, while a child may be detained under this provision in his or her own interests, it does not permit detention based on either “behaviour correction” or the need to prevent the child from committing a further offence.¹⁶⁹ Placement must also be proportionate to the aim of educational supervision, and must be seen as a last resort.¹⁷⁰ Equally, it has been clearly established that where a State has deprived a child of his or her liberty on these grounds, they have a positive obligation to put

¹⁶³ Baroni, E., *Children Deprived of Liberty in the Court’s case law: brief prepared by the Library and research division* (Research and Library Division, European Court of Human Rights)

¹⁶⁴ *ibid.*,

¹⁶⁵ [Bouamar v. Belgium](#), 29 February 1988, § 50, Series A no. 129; [D.G. v. Ireland](#), no. 39474/98, § 76, ECHR 2002-III; [Blokhin v. Russia](#) [GC], no. 47152/06, §§ 166-67, ECHR 2016; [D.L. v. Bulgaria](#), no. 7472/14, § 74, 19 May 2016

¹⁶⁶ [D.L. v. Bulgaria](#), no. 7472/14, § 74, 19 May 2016

¹⁶⁷ [P. and S. v. Poland](#), no. 57375/08, § 147, 30 October 2012; *Koniarska v. the United Kingdom* (dec.), cited above; [A. and Others v. Bulgaria](#), no. 51776/08, § 69, 29 November 2011; [Ichin and Others v. Ukraine](#), nos. 28189/04 and 28192/04, § 39, 21 December 2010; [D.G. v. Ireland](#), no. 39474/98, § 80, ECHR 2002-III

¹⁶⁸ [Blokhin v. Russia](#) [GC], no. 47152/06, ECHR 2016, § 170

¹⁶⁹ [Blokhin v. Russia](#) [GC], no. 47152/06, ECHR 2016

¹⁷⁰ [D.L. v. Bulgaria](#), no. 7472/14, § 77, 19 May 2016

appropriate institutional facilities that meet both the security and educational needs of the child to meet the requirements of Article 5.¹⁷¹

84. The second part of Article 5(1)(d) allows a young person to be deprived of their liberty in order to bring them before a competent legal authority.¹⁷² This provision was intended to cover the detention of a child prior to civil or administrative proceedings.¹⁷³

85. Where this type of detention takes place, steps must be taken to ensure that it is only used as a last resort.¹⁷⁴ The ECtHR has held that where children have been detained arbitrarily, or on in the absence of a judicial decision, the rights of children under Article 5 of the Convention have been violated.¹⁷⁵ The ECtHR has further held that young people who are detained in penal institutions due to a lack of appropriate secure educational facilities without being charged or convicted must have access to appropriate educational facilities if the detention is to be lawful.¹⁷⁶ The establishment of secure institutions separate from penal institutions for young people has been recommended in countries such as the Netherlands for young people with severe behavioural problems.¹⁷⁷ The nature of the regime should comply with the aim of the placement, i.e., the provision of education.¹⁷⁸ Children who are detained for therapeutic reasons must have their detention regularly reviewed.¹⁷⁹ It has further recommended that status offences should be dropped from penal codes, as a form of age discrimination.¹⁸⁰ The situation of children placed in such institutions has also been monitored by the CPT on a few occasions.¹⁸¹

86. The Council of Europe has committed to providing guidance on the care of children in all forms of alternative care to professionals working in this field, in line with the UN Guidelines on the Rights of Children in Alternative Care.¹⁸² It is worth noting that a number of guidelines have been developed in relation to children in care, including:

¹⁷¹ *A. and Others v. Bulgaria*, cited above, § 69; *D.G.*, no. 39474/98, § 79, ECHR 2002-III

¹⁷² *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 100, ECHR 2006-XI

¹⁷³ Baroni, E., *Children Deprived of Liberty in the Court's case law: brief prepared by the Library and research division* (Research and Library Division, European Court of Human Rights)

¹⁷⁴ Commissioner for Human Rights, *Children and Juvenile Justice: Proposals for Improvements* (Strasbourg: Council of Europe, June 2009) at p.14

¹⁷⁵ *A. and Others v. Bulgaria*, no. 51776/08, 29 November 2011; *Ichin and Others v. Ukraine*, nos. 28189/04 and 28192/04, 21 December 2010

¹⁷⁶ *D.G. v. Ireland*, no. 39474/98, ECHR 2002-III

¹⁷⁷ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to the Netherlands from 20 to 22 May 2014* (Strasbourg: Council of Europe, October 2014) at para.145

¹⁷⁸ *D.L. v. Bulgaria*, no. 7472/14, 19 May 2016

¹⁷⁹ Commissioner for Human Rights, *Children and Juvenile Justice: Proposals for Improvements* (Strasbourg: Council of Europe, June 2009) at p.14

¹⁸⁰ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria from 9 to 11 February 2015* (Strasbourg: Council of Europe, October 2015) at para.61

¹⁸¹ See, for instance, CPT's reports on the 2010 visit to the Czech Republic (Strasbourg: Council of Europe, 2014) and on the 2014 visit to "the former Yugoslav Republic of Macedonia" (Strasbourg: Council of Europe, 2016)

¹⁸² Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016), para.31

- The Council of Europe Recommendation CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities¹⁸³ promotes the deinstitutionalisation of children with disabilities and the development of community-based services
- The Council of Europe Recommendation Rec(2005)5 on the rights of children living in residential institutions¹⁸⁴ states that residential placements should be the exception rather than the rule, and sets out specific rights for children living in these institutions
- The Council of Europe Recommendation CM/Rec (2011)12 on children's rights and social services friendly to children and families emphasises the need for children's rights to be upheld in the provision of social services.

87. In addition, the Council of Europe has developed guidance for both children living in alternative care¹⁸⁵ and for professionals working with this group of children¹⁸⁶ to raise awareness of the rights of young people in alternative care arrangements.

Detention in the context of care arrangements

88. The translation and promotion of Council of Europe Standards and publications on children in alternative care is currently on-going.¹⁸⁷ There is a clear preference for the use of smaller, family-type arrangements where possible, with institutionalisation used only as a last resort.¹⁸⁸ The need for the development of community-based services for all children has been highlighted.¹⁸⁹

89. The Council of Europe has recommended the de-institutionalisation of children who are separated, orphaned or abandoned and who are living in institutions as a result.¹⁹⁰ However, this has presented a challenge for some states, with numbers of children in residential care failing to decrease sufficiently.¹⁹¹ It has been recommended that the institutionalisation of children in residential institutions should be the exception, and that strategies should be devised to speed up the process of de-

¹⁸³ Recommendation CM/Rec(2010)2 of the Committee of Ministers to member states on deinstitutionalisation and community living of children with disabilities (Adopted by the Committee of Ministers on 3 February 2010 at the 1076th meeting of the Ministers' Deputies)

¹⁸⁴ Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions (Adopted by the Committee of Ministers on 16 March 2005 at the 919th meeting of the Ministers' Deputies)

¹⁸⁵ Council of Europe, *Children and Young People in Care: Discover your rights!* (Council of Europe, 2009)

¹⁸⁶ Council of Europe, *Securing Children's Rights: A Guide for Professionals working in Alternative Care* (Council of Europe, 2013)

¹⁸⁷ Children's Rights Division, Council of Europe, *Implementation of the Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, September 2017) at p.5

¹⁸⁸ Commissioner for Human Rights, *Positions on Children's Rights* (Strasbourg: Council of Europe, May 2010) at p.7

¹⁸⁹ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Latvia from 5 to 9 September 2016* (Strasbourg: Council of Europe, October 2016) at para.85

¹⁹⁰ Commissioner for Human Rights, *Positions on Children's Rights* (Strasbourg: Council of Europe, May 2010) at p.7; see further <https://www.coe.int/en/web/commissioner/-/albania-should-step-up-protection-of-children-and-inclusion-of-persons-with-disabilities>;

¹⁹¹ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Lithuania from 5 to 9 December 2016* (Strasbourg: Council of Europe, October 2016) at para.59

institutionalisation.¹⁹² The reports of the Commissioner for Human Rights have also highlighted the positive results which have been achieved in countries such as Bulgaria through the co-operative efforts of government and NGOs, and the launch of a National Strategy aimed at promoting de-institutionalisation.¹⁹³

90. The Commissioner on Human Rights has observed that poor conditions persist in some care institutions,¹⁹⁴ and has raised concerns about the frequency with which children under the age of 2 years old have been placed in child care institutions in some countries.¹⁹⁵ Poverty and the ethnic origin have also been identified as grounds used for placing children in institutions.¹⁹⁶

Detention on the grounds of disability

91. Article 15 of the European Social Charter provides for the right of persons with disabilities to independence, social integration and participation in the community.

92. This right is guaranteed “irrespective of age”, and requires States to promote full social integration and participation in the life of the community.

93. The Council of Europe’s guidance in this area emphasises the need to work towards deinstitutionalisation. Recommendation CM/Rec(2010)2 of the Committee of Ministers to Member States on Deinstitutionalisation and Community Living of Children with Disabilities¹⁹⁷ aims to promote the deinstitutionalisation of children with disabilities, emphasising the need for the best interests of children to take priority, to support families to care for their children at home, and supporting the development of community-based services and the development of alternatives to institutional forms of care. The Recommendation of the Committee of Ministers on ensuring full inclusion of children and young persons with disabilities into society¹⁹⁸ also supports the deinstitutionalisation of children with disabilities and promotes full inclusion and participation of children with disabilities in society.

94. As in the case of the children deprived of their liberty in the context of state care arrangements, the Commissioner for Human Rights and the CPT have emphasised the need to work towards the deinstitutionalisation of persons with

¹⁹² Muiznieks, *ibid*, at para.103

¹⁹³ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria from 9 to 11 February 2015* (Strasbourg: Council of Europe, October 2015) at para.13

¹⁹⁴ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Lithuania from 5 to 9 December 2016* (Strasbourg: Council of Europe, October 2016) at para.58

¹⁹⁵ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Latvia from 5 to 9 September 2016* (Strasbourg: Council of Europe, October 2016) at para.59

¹⁹⁶ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria from 9 to 11 February 2015* (Strasbourg: Council of Europe, October 2015) at para.18

¹⁹⁷ Recommendation CM/Rec(2010)2 of the Committee of Ministers to Member States on Deinstitutionalisation and Community Living of Children with Disabilities

¹⁹⁸ Recommendation CM/Rec(2013)2 of the Committee of Ministers of the Council of Europe ensuring full inclusion of children and young persons with disabilities into society

disabilities.¹⁹⁹ This is particularly emphasised in light of observations that children with disabilities have sometimes been left out of de-institutionalisation strategies.²⁰⁰ It has also been recommended that this process needs to be planned carefully to ensure that no person with a disability is left without the necessary supports.²⁰¹

95. As in other forms of deprivation of liberty, the conditions in which children are detained in institutions must be adequate to their age, circumstances and needs. In all actions concerning children with disabilities, the best interests of the child should prevail.²⁰² The ECtHR has found violations of Articles 2 and 3 of the Convention in circumstances where children were denied food, medical care and basic necessities.²⁰³ The Commissioner for Human Rights has also expressed concern over practices where children placed in institutions for individuals with disabilities did not in fact have any disability,²⁰⁴ and also in relation to inadequate living conditions and allegations of serious ill-treatment of persons detained in institutions.²⁰⁵ Deficiencies in educational provision,²⁰⁶ and in recording details of medicalization of institutionalised children has also been recorded, and the Commissioner for Human Rights has emphasised the need to ensure that children with disabilities benefit from the highest attainable standard of healthcare.²⁰⁷ Further, the CPT has observed that children with disabilities were held together with unrelated adults and recommended that they be held as a rule separately.²⁰⁸

96. The European Rules on juvenile offenders subject to sanctions and measures also have relevance here. It provides that young people in conflict with the law in mental health institutions should receive the same treatment as other young people in

¹⁹⁹ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Latvia from 5 to 9 September 2016* (Strasbourg: Council of Europe, October 2016) at para.66

²⁰⁰ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Romania from 31 March to 4 April 2014* (Strasbourg: Council of Europe, October 2014) at para.114

²⁰¹ See <https://www.coe.int/en/web/commissioner/-/albania-should-step-up-protection-of-children-and-inclusion-of-persons-with-disabilities>; see also CPT's report on the 2012 visit to Croatia (Strasbourg: Council of Europe, 2014) at para. 114

²⁰² Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic from 12 to 15 November 2013* (Strasbourg: Council of Europe, October 2013) at para.99

²⁰³ *Nencheva and Others v. Bulgaria*, no. 48609/06, 18 June 2013; *Blokhin v. Russia* [GC], no. 47152/06, ECHR 2016

²⁰⁴ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Lithuania from 5 to 9 December 2016* (Strasbourg: Council of Europe, October 2016) at para.61

²⁰⁵ <https://rm.coe.int/letter-from-nils-muiznieks-council-of-europe-commissioner-for-human-ri/1680711350>; see also at para.26

²⁰⁶ Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria from 9 to 11 February 2015* (Strasbourg: Council of Europe, October 2015 at para.32; Muiznieks, N., *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Romania from 31 March to 4 April 2014* (Strasbourg: Council of Europe, October 2014) at para 118

²⁰⁷ <https://rm.coe.int/letter-from-nils-muiznieks-council-of-europe-commissioner-for-human-ri/1680711350>

²⁰⁸ See, for instance, CPT's reports on the 2011 visit to the Republic of Moldova (Strasbourg: Council of Europe, 2012) at para. 147 and on the 2012 visit to Croatia (Strasbourg: Council of Europe, 2012) at para. 114

these institutions, and should benefit from the same regime activities.²⁰⁹ It also limits the treatment for mental health problems administered in these institutions to those which are justified on medical grounds only.²¹⁰

²⁰⁹ Rule 117 of the European Rules for juvenile offenders subject to sanctions or measures

²¹⁰ Rule 118 of the European Rules for juvenile offenders subject to sanctions or measures

Chapter 6

Children Deprived of their Liberty in the Context of Armed Conflict and on National Security Grounds

97. It has been recognised that the radicalisation of children and young people leading to terrorism by extremist groups is a real source of concern in Europe. The Council of Europe's Strategy for the Rights of the Child 2016-2021 has highlighted that this challenge requires investments in education programmes promoting tolerance and intercultural dialogue.²¹¹

Prevention of radicalisation and recruitment of children in the context of terrorism

98. Within the Council of Europe, the Committee on Counter-Terrorism (CDCT) plays a leading role in activities to combat terrorism. There are a number of instruments which address counter-terrorism. The key instrument is the Warsaw Convention on the Prevention of Terrorism 2005,²¹² and its Additional Protocol 2015.²¹³ These documents provide that certain activities should be established as criminal offences, including recruitment and training activities. In July 2018, the Council of Europe also adopted a new counter-terrorism strategy.²¹⁴ The strategy prioritises increasing the understanding of the gender and child dimensions of terrorism, and emphasises the need to preventing radicalisation and terrorist public provocation and recruitment. The Strategy highlights that there is a need to include knowledge of how to prevent radicalisation in schools, youth, sports and community centres.

99. The need both to prevent the radicalisation and recruitment of children and young people, and to find strategies to if necessary, prosecute and, in all cases, provide for the re-integration of young people who have gone abroad to join extremist groups and subsequently returned, has also been recognised elsewhere by the Council of Europe.²¹⁵ While not specifically focused on the deprivation of liberty of children in the context of national security, these actions may have an impact on the rates of children deprived of their liberty on national security grounds and in the context of armed conflict.

100. Alongside the recognition of the need to prevent radicalisation of young people within the Strategy for the Rights of the Child 2016-2021, a number of actions have been undertaken by Council of Europe bodies aimed at preventing the radicalisation of children. Prior to the adoption of the Strategy, one of the sessions of the High Level Conference to Launch the Council of Europe Strategy on the Rights of the Child (Sofia, 5-6 April 2016) was devoted to "Radicalisation of children: finding

²¹¹ Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016), para.20

²¹² Council of Europe, *Convention on the Prevention of Terrorism* (CETS No.196)

²¹³ Council of Europe, *Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism* (CETS No.217)

²¹⁴ Council of Europe, *Council of Europe Counter-Terrorism Strategy 2018-2022* (CM(2008)86)

²¹⁵ Council of Europe, *Council of Europe Strategy for the Rights of the Child 2016-2021* (Strasbourg: Council of Europe, March 2016), para.20

the rights-based approach".²¹⁶ An international conference focused on "Protecting children from violence: next steps for effective strategies" convened as part of the implementation of the Strategy also included a specific session devoted to policies and strategies to safeguard children from radicalisation leading to violent extremism and terrorism.²¹⁷

101. Particular focus has been placed by the Parliamentary Assembly of the Council of Europe on the need to prevent radicalisation leading to terrorism of children through addressing root causes.²¹⁸ PACE has set out a road-map aimed at prevention, and has called on member States to provide all children and young people with equal opportunities, to educate children and young people on democratic citizenship and European values, to implement specific measures to prevent bullying in schools, and to develop the teaching of the history of religious issues.²¹⁹

102. In order to give effect to this roadmap, in 2016, Resolution 2103 "Preventing the radicalisation of children and young people by fighting the root causes" was adopted by the Parliamentary Assembly. While not specifically addressing the deprivation of liberty of children on national security grounds, it aims to promote actions that will prevent children from becoming involved in radicalisation, which may have a knock-on effect on the rates of deprivation of liberty of children on these grounds in Europe.

103. A further effort to prevent radicalisation leading to terrorism of children and youth has been through the development of a manual published by the European Youth Information and Counselling Agency in co-operation with the Council of Europe and *Bureau International Jeunesse* (Belgium) in 2017.²²⁰ The manual contains information on the reasons behind violent extremism, as well as containing a toolbox of activities that may have a positive impact on children and young people.

104. Awareness-raising has also been a key strategy of the Council of Europe in combatting radicalisation linked to terrorism. The Declaration of the Committee of Ministers of the Council of Europe "United around our principles against violent extremism and radicalisation leading to terrorism"²²¹ reaffirmed the Council of Europe's commitment to fighting terrorism and preventing radicalisation; this explicitly supported the Council of Europe youth campaign to combat hate speech online. This declaration also recognised the importance of various stakeholders who

²¹⁶ Secretary General of the Council of Europe, *Fight against violent extremism and radicalisation leading to terrorism – Implementing the Action Plan: Final Report of the Secretary General* (SG/Inf(2018)7) (Strasbourg, Council of Europe, April 2018) at p.13

²¹⁷ Secretary General of the Council of Europe, *Fight against violent extremism and radicalisation leading to terrorism – Implementing the Action Plan: Final Report of the Secretary General* (SG/Inf(2018)7) (Strasbourg, Council of Europe, April 2018) at p.14

²¹⁸ See further https://www.coe.int/ru/web/edc/news/-/asset_publisher/XiZQJJ9LgWCl/content/a-road-map-for-preventing-the-radicalisation-of-children

²¹⁹ See further https://www.coe.int/ru/web/edc/news/-/asset_publisher/XiZQJJ9LgWCl/content/a-road-map-for-preventing-the-radicalisation-of-children

²²⁰ European Youth Information and Counselling Agency, *Liaisons: a toolkit for preventing violent extremism through youth information* (Luxembourg: European Youth Information and Counselling Agency and the Council of Europe, 2017)

²²¹ Declaration of the Committee of Ministers of the Council of Europe "United around our principles against violent extremism and radicalisation leading to terrorism" (adopted at the 125th Session of the Committee of Ministers, Brussels, 19 May 2015)

can help to prevent radicalisation on the ground, including representatives of youth movements. As part of these efforts, the Parliamentary Assembly of the Council of Europe launched the #NoHateNoFear campaign in 2015, which was aimed at combating hate speech online conducive to terrorism and violent extremism.²²²

²²² See further <http://website-pace.net/web/apce/no-hate-no-fear>

Appendix of abbreviations

CAHENF	Ad hoc Committee for the Rights of the Child
CDCJ	European Committee on Legal Co-operation
CDCT	Committee on Counter-Terrorism
CDDH	Steering Committee on Human Rights
CDDH-MIG	Drafting Group on Migration and Human Rights
CDPC	European Committee on Crime Problems
CJ-DAM	Committee of Experts on Administrative Detention of Migrants
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
GRETA	Group of Experts on Action Against Trafficking in Human Beings
PC-CP	Council for Penological Co-operation