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Committee on Social Affairs, Health and Sustainable Development

Minutes

of the public hearing on “Abusive practices on depriving children from their family environment” held in Paris on 19 September

In the framework of the motion for a Resolution on “Abusive practices on depriving children from their family environment” (Doc. 15639) by **Mr Titus Corlăţean** (Romania, SOC), the Committee **held** a public hearing with the participation of:

- ✓ **Mr Titus Corlăţean (Romania, SOC), member of the Parliamentary Assembly of the Council of Europe**
- ✓ **Mr Mads Andenas, former United Nations Special Rapporteur and Professor of Law, University of Oslo**
- ✓ **Ms Mia Dambach, Executive Director, Child Identity Protection, Geneva**

Ms Sayek Böke, Chairperson of the Committee, opened the hearing, and introduced the guest speakers.

Mr Corlăţean underlined the importance of the topic as the consequences were irreversible for the parties involved – both for children and for their biological parents. It required more attention from the Parliamentary Assembly as the forum for debate on human rights. The social services in member States should be more accountable and more professional.

The European Court of Human Rights had delivered important judgments on the issue of children separated from their parents. It had found important violations of Article 8 on the right to respect for family life, Article 9 on the right to freedom of thought, conscience and religion, Article 10 on the right to freedom of expression, Article 14 on prohibition of discrimination, and Article 2 of Protocol no. 1 to the ECHR (European Convention on Human Rights) on the right to education. The judgments *Strand Lobben and Others v. Norway*, *Pedersen v. Norway*, *Barnea and Caldarau v. Italy* and *Cupial v. Poland*, merited special attention. The Grand Chamber (GC) had established important general principles where the best interests of the child would prevail. The GC held that family ties could only be severed in very exceptional circumstances and every effort should be made to preserve personal relations and to “rebuild” the family, if and when appropriate. Adoption should only be authorised in exceptional circumstances and could only be justified if it was motivated by an overriding requirement pertaining to the best interests of the child.

The focus on the best interests of the child had resulted in quite large margins of appreciation by States. The aim was nevertheless to ensure full respect of all rights recognised by the UN Convention on the Rights of the Child and the ECHR. It was thus important to have clear and careful monitoring to avoid questionable practices experienced by families in some countries and which created immeasurable damage to societies. As part of his personal work, in key positions as a member of government and as a senator, Mr Corlăţean had been involved in supporting Romanian families that had been subject to what he described as a cruel process of separation which did not respect the rights of the parents. He had also had the chance to exchange with social services and officials.

Mr Corlăţean pointed to a study published in the European Journal of Comparative Law and Governance in 2019: “The Hidden Proceedings – An Analysis of Accountability of Child Protection Adoption Proceedings in Eight European Jurisdictions” which found that there was only limited accountability for one of the most intrusive interventions by a State into the private lives of individuals. There was not only a lack of information about the system and the proceedings, but also an alarming lack of transparency.

¹ The minutes were approved and declassified by the Committee on Social Affairs, Health and Sustainable Development at its meeting on 6 December 2023.

The Committee on the Rights of the Child held in General Comment no. 14 that separation was an exceptional last resort and that States had the obligation to provide adequate and effective support to the family to care for the child prior to a separation decision and also to ascertain that no alternatives could be found, to ensure the child's best interests. Before a decision was to be taken to separate a child from its parent, the State had positive obligations such as 1) advising parents on actions they should take to improve their financial situation and parenting skills, 2) separating children from their parents only as a temporary measure and facilitating the return of children to their parents once a cooperative attitude had been adopted and their situation had improved, 3) genuinely balance the interests of both the child and its biological family. A PACE report that focused on these important aspects would pave the way to better support for families and their children facing challenging circumstances.

The Chairperson thanked Mr Corlăţean for his opening remarks and gave the floor to the first expert, Mr Mads Andenas.

Mr Andenas gave an overview of the relevant case-law of the European Court of Human Rights. The first cases had been about child protection authorities neglecting their duties. One of the first cases was *Z and Others v. the United Kingdom* (2001), where the Court had found a violation of Article 3 due to severe neglect and mistreatment as the child protection authorities had failed in their duty to protect the children. The Court had found that there were no remaining Article 8 issues as they had been consumed by Article 3.

The current pressing problems were about Article 8 violations on taking children into care, taking away parental rights and subsequent adoptions. Mr Andenas was working on this issue as an academic, but in order to understand cases, he had also appeared as counsel in the cases of *Abdi Ibrahim v. Norway* (2021) and *A.S. v. Norway* (2019). The first case concerned additional Protocol No. 1 article 2 on the right to education and the right to have the child educated in the parent's religious tradition. In the latter case, Mr Andenas assisted the complainant with the Committee of Ministers review process. In both cases Norway had failed in the decision-making processes, in weighing conflicting interests (the balancing exercise between the interests of the child, its biological family and other considerations) and in providing sufficient reasons for the decisions. With regard to the contact regime, the Court had found that the Norwegian authorities had failed to ensure enough contact between the child and its biological parents. Lastly, the Court had found that the authorities had failed in their duty to work towards reunification of the child and its parents.

On 12 September 2023, the Strasbourg Court had delivered 9 judgments where Norway was found to have violated Article 8 of the Convention. The Court had set out the "Guiding principles in respect of children taken into public care", stating that authorities had significant discretion when deciding on taking a child into care, but that there should be a stricter scrutiny if any further measures were taken, such as restricting contact rights. Adoption could only be justified in exceptional circumstances and the overriding requirement of the child's best interests.

The decisions by the European Court of Human Rights had not been sufficiently followed up in domestic proceedings. In the case of *Strand Lobben v. Norway*, which was the first important case that Norway lost, the mother had not succeeded in her pursuit of being reunited with her son following the Grand Chamber's judgment. The Norwegian courts found that despite having won the case in Strasbourg, it was in the best interests of the child to stay with the foster parents who became adoptive parents and with whom the child had by then lived for 14 years already.

Nevertheless, the many judgments coming from Strasbourg had led to some changes in child-care practice in Norway. With regard to the contact regime, national courts had ordered more frequent contact between the child and its biological parents based on the case-law of the European Court of Human Rights. The authorities' duty to work towards the reunification of the child and its parents was closely linked to the contact regime. If there had been very little contact, there was often found to be no meaningful connection, and thus adoption by foster parents after some years would be the next step. The decision-making processes had, however, been improved in that authorities would now give better reasons for decisions taken and the courts would also hear cases which before they would find reasons not to hear.

There was a disproportionate number of foreign parents losing custody over their children. Lawyers played an important role in explaining the judgments, and continued external reviews at European level were needed. For instance, the Parliamentary Assembly should examine whether or not Norway had been successful in implementing the many judgments from the European Court of Human Rights and point out potential flaws.

The Chairperson thanked Mr Andenas for his contribution and gave the floor to the second expert, Ms Mia Dambach.

Ms Dambach noted that state power to remove children and place them in alternative care was highly intrusive in the private lives of children and families. It was thus critical that this power should be properly used according to international standards, notably Article 9 of the Convention on the Rights of the Child. Such coercive decisions could only be justified in specific contexts, such as abuse or neglect of the child by its parents, and should respect international standards. The State's protective powers and responsibilities had to be balanced with the right to privacy and family life, ensuring that States did not have unfettered powers. General Comment no. 14 and the UN Guidelines for alternative care of children from 2009 provided good guidance in this regard.

There were three main ways to avoid such abusive practices. One way was good practices which included support to families in their caregiving role: all families should have access to basic and targeted services, especially families with foreign backgrounds, to ensure that children's identities were preserved. In Spain, the law specified that before a child was removed from parental care, States had an obligation to first provide support to parents. In Estonia, the Child Protection Act stated that every child should be able to access care and assistance from the State without discrimination. In Ireland, the authorities had worked with Roma families to ensure that they were considered "habitually resident" so that they could be eligible for carer allowances.

A second way of avoiding abusive practices was to improve the decision-making process. Decisions should be made by judicial authorities and administrative bodies that are well-equipped. Both be properly trained on child protection issues, should use child-friendly tools to explain their rights to children, and siblings should stay together. In Belgium, the civil code specifically stated that siblings had a right not to be separated when placed in alternative care.

Despite making every effort to support families, in some cases keeping them together would no longer be in the best interests of the child and he or she would need to be placed in alternative care. When this happened, it was important to ensure a continuity of the child's identity. According to Article 20 (3) of the CRC, States should ensure the continuity of a child's upbringing and its ethnic, religious, cultural and linguistic background. On this last point, member States had not done well. The contact-regime had to some degree been improved in most countries, but with regard to reintegration and ensuring continuity in the child's identity, authorities had, regrettably, not done so well. There were, however, some good practices such as in Belgium, where the law required that the alternative care had to respect the child's political, philosophical, ideological and religious beliefs and sexual orientation. In Germany, the authorities had to consider the social and cultural needs and characteristics of young people and families. In the Netherlands, during the massive influx of migrants in 2016, Nidos agency recruited foster families for unaccompanied and separated migrant children, by identifying nationals from the countries of origin of children, such as Afghanistan and Syria, so that the children could have a continuity in terms of language, culture and religion; this meant that the reintegration of children returning to their countries of origin would be much smoother.

Unfortunately, reintegration had been largely missing in Council of Europe member States. One promising practice is from Cambodia where they reintegrated 30% of children from residential care back to their families in cooperation with UNICEF.

Lastly as abusive practices did occur, it was important to ensure awareness so that children and their families would be able to complain to the right instances. In Switzerland, there was a hotline that people could call. There was also the option of contacting the ombudsperson in a country. In conclusion, there should be some cross-country research on abusive practices, and more should be done to prevent and respond to abusive practices within child protection authorities. The focus here could be on preserving the child's right to identity as a protective factor against abusive practices.²

The Chairperson then opened the floor for debate.

Mr Corlăţean brought up the case of a couple where the birth of their child had been difficult for medical reasons. During the first two weeks, the baby had not developed well, would cry and could not sleep etc. The nurse had signalled this to the doctors who then signalled it to the police. The parents were charged with baby-shaking syndrome. In the end, a criminal investigation had shown that the parents had done nothing wrong, yet the parents had spent two months in jail. Mr Corlăţean criticised the legal procedures in some member States which he claimed built cases against parents instead of the other way around.

Mr O'Reilly thanked the experts for their remarks. Although he agreed with the opening premise of the child's best placement being with its biological parents, he was sceptical about some of the remarks made by Mr Corlăţean. Most children were removed from their parents for very serious reasons. Although arbitrary removals could happen, this was not a common practice in recent times. He agreed with the experts about the need for

² Link to the written submission of Child Identity Protection with promising practices:
<https://www.child-identity.org/images/files/CHIP-BriefingNotes-AbusivePractices.pdf>

continuity in religious and cultural identity and that siblings should be kept together. Ukrainian children that were forcibly transferred to Russia was a more systemic problem. In Afghanistan, the lives of many girls were irrevocably changed.

Mr Schennach was not sure about allegations of systemic abuse by child protection authorities. Earlier in his career, he had been a care worker in Austria, and had only separated a child from his family one time, when a child showed up at his door with a neck wound. It was not always the case that administrative boards took decisions, and in any case, those decisions were only temporary until a judge made a final decision. It was horrifying when police showed up at schools to deport unaccompanied and separated migrant children from Council of Europe member States. The Austrian courts had found this to be illegal.

Ms Khomenko thanked Mr O'Reilly for bringing up the situation of Ukrainian children and asked the Assembly to give special attention to this issue. There had been over 9000 registered cases and up to 400 children had been returned to their families. There was no mechanism to bring the children back and little was known of the whereabouts of these children. She invited her colleagues to a side-event dedicated to this issue co-organised with the Latvian Presidency and which would take place during the October part-session.

Ms Tanguy brought her colleagues' attention to an incident in France where police had found a 7-year-old boy frozen to death in the bathtub of his family home. It was later discovered that the father had abused his two daughters as well. This had shown that the best interest of the child was not always to stay with its biological parents, and a proper assessment had to be made in every case.

Mr Moutquin informed his colleagues that in Belgium, children could no longer be placed in immigration detention centres. There was always a middle ground in keeping families together, between having no contact at all and having some contact. For example, educators and social workers could accompany the child to visit its parents in order to maintain some family ties. It was hard to think about adoption, about the difficulties of separating parents or siblings, the difficulties of raising children in single-parent families and ensuring that the adoption would not lead to mental difficulties afterwards. In Belgium and France, it was often pointed out that children whose parents were imprisoned were unable to have contact. In Belgium some associations therefore accompanied children to prisons so that they could spend time with one or both of their parents.

Mr Andenas noted that questions had been raised about reliable and effective legal regimes, where clear criteria should be used, the conflicting interests should be weighed and balanced around the best interest of the child and ensuring access to effective remedies in terms of judicial review. Taking children into care was a very difficult issue. Unfortunately, there were cases where children were subjected to neglect and violence. The legal challenge was to undertake an adequate weighing and balancing exercise with good reasoning. The courts said there was wide discretion. The Norwegian authorities had failed in the reasoning and contact regime. It was too little to have contact only once or twice per year, because by then ties and with them the possibility for reunification would be severely damaged. In the Norwegian context, for many years the government would take away Sami children, but in recent years it had been mostly foreigners who were subject to the same prejudice and unable to preserve their identity. Minority groups like Roma travellers were subject to systemic discrimination. The law left too much discretion to the authorities. No countries were good at treating foreigners, as there were inherent bias and cultural misunderstandings. Often foreigners and minorities did not have a voice in the political context. Many legal cases against Norway and other countries were justified.

Ms Dambach agreed with Mr Andenas that the criteria should be the same for all countries, based on international standards: all Council of Europe member States had accepted the CRC. Unfortunately, abusive administrative and legal practices subsisted, and the Committee on the Rights of the Child made systemic comments and reviews on this issue, such as the 2021 General Comment. However, it was also an opportunity to encourage States to work towards better alignment and improvements. Alternative care for children should always be temporary and be used only when it was in the best interests of the child. To keep family ties alive, means such as letters, supervised visits and online meetings could be used in a secure environment.

Mr Corlăţean thanked the experts for their comments. He reminded colleagues that there was a clear distinction between cases that were well-founded and with obvious reasons for the State to intervene, and when this was not the case. There were two sides to this coin. There were some bad practice examples from child protection authorities, in particular in Norway, and no system was perfect. The purpose of the hearing was to shed light on this. It was important to react before the situation got out of hand so that separation could be prevented. Parents in difficult socioeconomic situations needed support from the State, not coercion.

The Chairperson then thanked all the participants and closed the hearing.

List of presence / Liste de présence

(The names of members who took part in the meeting are in bold / Les noms des membres ayant pris part à la réunion sont en caractères gras)

Members / Membres	Country / Pays	Alternates / Remplaçant(e)s
Ms Jorida Tabaku	Albania / <i>Albanie</i>	Zz...
Ms Bernadeta Coma	Andorra / <i>Andorre</i>	Ms Susanna Vela
Mr Armen Gevorgyan	Armenia / <i>Arménie</i>	Ms Hripsime Grigoryan
Mr Franz Leonhard Essl	Austria / <i>Autriche</i>	Ms Agnes Sirkka Prammer
Mr Stefan Schennach	Austria / <i>Autriche</i>	Ms Doris Bures
Ms Nigar Arpadarai	Azerbaijan / <i>Azerbaïdjan</i>	Ms Parvin Karimzada
Ms Sevinj Fataliyeva	Azerbaijan / <i>Azerbaïdjan</i>	Ms Konul Nurullayeva
Mr Bob De Brabandere	Belgium / <i>Belgique</i>	Ms Els Van Hoof
M. Simon Moutquin	Belgium / <i>Belgique</i>	Mme Latifa Gahouchi
Ms Darijana Filipović	Bosnia and Herzegovina / <i>Bosnie-Herzégovine</i>	Mr Šemsudin Dedić
Ms Ekaterina Zaharieva	Bulgaria / <i>Bulgarie</i>	Zz...
Ms Denitsa Sacheva	Bulgaria / <i>Bulgarie</i>	Mr Vasil Pandov
Ms Zdravka Bušić	Croatia / <i>Croatie</i>	Ms Ivana Kekin
Ms Christiana Erotokritou	Cyprus / <i>Chypre</i>	Mr Constantinos Efstathiou
Mr Aleš Juchelka	Czech Republic / <i>République tchèque</i>	Mr Ondřej Šimetka
Ms Michaela Šebelová	Czech Republic / <i>République tchèque</i>	Mr Jiří Strýček
Ms Camilla Fabricius	Denmark / <i>Danemark</i>	Ms Karin Liltorp
Ms Hanah Lahe	Estonia / <i>Estonie</i>	Zz...
Ms Minna Reijonen	Finland / <i>Finlande</i>	Ms Tarja Filatov
M. Alain Milon	France	M. Christian Klinger
Mme Isabelle Santiago	France	Mme Liliana Tanguy
Mme Anne Stambach-Terrenoir	France	Mme Mireille Clapot
M. Philippe Vigier	France	Mme Nathalie Serre
Ms Eka Sepashvili	Georgia / <i>Géorgie</i>	Mr Levan Ioseliani
Ms Heike Engelhardt	Germany / <i>Allemagne</i>	Ms Franziska Kersten

Mr Andrej Hunko	Germany / <i>Allemagne</i>	Ms Catarina Dos Santos-Wintz
Mr Christian Petry	Germany / <i>Allemagne</i>	Ms Martina Stamm-Fibich
Mr Harald Weyel	Germany / <i>Allemagne</i>	Ms Katrin Staffler
Ms Nina Kasimati	Greece / <i>Grèce</i>	Ms Foteini Pipili
Ms Theodora Tzakri	Greece / <i>Grèce</i>	Mr Kriton-Ilias Arsenis
Ms Mónika Bartos	Hungary / <i>Hongrie</i>	Mme Katalin Csöbör
Ms Boglárka Illés	Hungary / <i>Hongrie</i>	Ms Zita Gurmai
Mr Bjarni Jónsson	Iceland / <i>Islande</i>	Ms Jódís Skúladóttir
Mr Joseph O'Reilly	Ireland / <i>Irlande</i>	Ms Reada Cronin
Ms Elena Bonetti	Italy / <i>Italie</i>	Mr Roberto Rosso
Ms Aurora Floridia	Italy / <i>Italie</i>	Mr Giuseppe De Cristofaro
Mr Alessandro Giglio Vigna	Italy / <i>Italie</i>	Mr Graziano Pizzimenti
Mr Stefano Maullu	Italy / <i>Italie</i>	Mr Francesco Zaffini
M. Andris Bērziņš	Latvia / <i>Lettonie</i>	Mr Edmunds Cepurītis
Ms Franziska Hoop	Liechtenstein	Mr Peter Frick
Mr Kęstutis Masiulis	Lithuania / <i>Lituanie</i>	Ms Rasa Budbergytė
M. Max Hengel	Luxembourg	M. Paul Galles
Ms Romilda Zarb	Malta / <i>Malte</i>	Mr Joseph Beppe Fenech Adami
Mr Ion Groza	Republic of Moldova / <i>République de Moldova</i>	Ms Reghina Ȃpostolova
Mme Christine Pasquier-Ciulla	Monaco	Mme Béatrice Fresko-Rolfo
Mr Miloš Konatar	Montenegro / <i>Monténégro</i>	Zz...
Ms Reina De Bruijn-Wezeman	Netherlands / <i>Pays-Bas</i>	Mr Bob Van Pareren
Ms Ria Oomen-Ruijten	Netherlands / <i>Pays-Bas</i>	Zz...
Ms Artina Qazimi	North Macedonia / <i>Macédoine du Nord</i>	Mr Vlado Misajlovski
Ms Lisa Marie Ness Klungland	Norway / <i>Norvège</i>	Ms Linda Hofstad Helleland
Ms Danuta Jazłowiecka	Poland / <i>Pologne</i>	Mr Tomasz Latos
Mr Bolesław Piecha	Poland / <i>Pologne</i>	Ms Marta Kubiak
Mr Andrzej Szejna	Poland / <i>Pologne</i>	Ms Mirosława Nykiel
Mr Nuno Carvalho	Portugal	Ms Mónica Quintela
Mr Pedro Cegonho	Portugal	Ms Jamila Madeira

Mr Andi-Lucian Cristea	Romania / <i>Roumanie</i>	M. Ion Prioteasa
Ms Alina-Ştefania Gorghiu	Romania / <i>Roumanie</i>	Mr Cristian-Augustin Niculescu-Țăgârlaş
Ms Diana Stoica	Romania / <i>Roumanie</i>	Ms Daniela Oteşanu
Ms Marica Montemaggi	San Marino / <i>Saint-Marin</i>	Mr Marco Nicolini
Ms Tatjana Pašić	Serbia / <i>Serbie</i>	Ms Jelena Milošević
Ms Dunja Simonović Bratić	Serbia / <i>Serbie</i>	Mr Uglješa Marković
Mme Anna Záborská	Slovak Republic / <i>République Slovaque</i>	Mr Juraj Šeliga
Mr Dean Premik	Slovenia / <i>Slovénie</i>	Ms Iva Dimic
Ms María Fernández	Spain / <i>Espagne</i>	Mr José Latorre
Mr Antón Gómez-Reino	Spain / <i>Espagne</i>	Ms Belén Hoyo
Ms Carmen Leyte	Spain / <i>Espagne</i>	Mr Salvador Vidal
Mr Mattias Jonsson	Sweden / <i>Suède</i>	Ms Yasmine Bladelius
Ms Beatrice Timgren	Sweden / <i>Suède</i>	Ms Borianna Åberg
Ms Sibel Arslan	Switzerland / <i>Suisse</i>	M. Pierre-Alain Fridez
M. Jean-Pierre Grin	Switzerland / <i>Suisse</i>	Mme Ada Marra
Ms Emine Nur Günay	Türkiye	Mr Mehmet Mehdi Eker
Mr Halil Özşavli	Türkiye	Ms Sena Nur Çelik
Mr Hişyar Özsoy	Türkiye	Ms Feleknaş Uca
Ms Selin Sayek Böke	Türkiye	M. Haluk Koç
Mr Artem Dubnov	Ukraine	Ms Lesia Zburanna
Ms Olena Khomenko	Ukraine	Ms Larysa Bilozir
Ms Yuliia Ovchynnykova	Ukraine	Mr Andrii Lopushanskyi
Mr Geraint Davies	United Kingdom / <i>Royaume-Uni</i>	Ms Kate Osamor
Ms Sally-Ann Hart	United Kingdom / <i>Royaume-Uni</i>	Mr Richard Bacon
Baroness Doreen E. Massey	United Kingdom / <i>Royaume-Uni</i>	Ms Ruth Jones
Mr David Morris	United Kingdom / <i>Royaume-Uni</i>	Ms Sheryll Murray

Other Parliamentarians present / Autres parlementaires présent.e.s

Mr / M. Titus Corlăţean, Romania / *Roumanie*

Mr / M. Yıldırım Tuğrul Türkeş, Türkiye

Partners for Democracy / Partenaires pour la Démocratie

Mr / M. Allal Amraoui, Morocco / Maroc

Mr / M. Hassan Arif, Morocco / Maroc

Secretariat of Delegation or of Political Group / Secrétariat de Délégation ou de Groupe politique

Ms / Mme Sonja Langenhaeck, Belgium / Belgique

Ms / Mme Carmen Ionescu, Romania / Roumanie

Ms / Mme Handan Karakaş Demir, Türkiye

Mr / M. Kenan Arpacioğlu, Türkiye

Ms / Mme Francesca Arbogast, SOC group

Experts / Expert-e-s

Mr / M. Mads Andenas, former United Nations Special Rapporteur and Professor of Law, University of Oslo / ancien Rapporteur spécial des Nations Unies et professeur de droit, Université d'Oslo

Ms / Mme Mia Dambach, Executive Director / Directrice exécutive, Child Identity Protection, Geneva / Genève

Council of Europe staff / Secrétariat du Conseil de l'Europe

Secretariat of the Parliamentary Assembly / Secrétariat de l'Assemblée Parlementaire

Committee on Social Affairs, Health and Sustainable Development /
Commission des questions sociales, de la santé et du développement durable

Ms / Mme Aiste Ramanauskaite Secretary to the Committee / *Secrétaire de la commission*
Ms / Mme Jannick Devaux Secretary to the Committee / *Secrétaire de la commission*
Ms / Mme Anita Gholami Co-Secretary/ *Co-Secrétaire*
Mr / M. Guillaume Parent..... Co-Secretary/ *Co-Secrétaire*
Ms / Mme Prisca Barthel..... Europe Prize section / *Section Prix de l'Europe*