

Prevention of family separation and Children's right to protection in all forms
of alternative care settings:

Guidance from the UNCRC

Council of Europe, Regional Discussion as a contribution to the UN CRC
Day of General Discussion

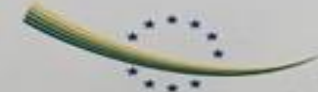
The Council of Europe Rec 5(2005) On the Rights of Children Living in Residential Institution

The Accompanying Report, inter alia
based on survey submitted to the
Member States

- First officially introduced
on the DGD in 2005:
- Children without parental
care



**Rights of children
at risk and in care**



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Guidance of the Committee; COBs and the legal foundation

- The Convention
 - Art 5 on parental responsibilities;
 - Art 9 on parental separation
 - Art 18 on support to parents
 - Art 20 on alternative care
 - Art 3.3 on quality standards
- The cross-cutting and overarching rights embodied in the CRC:
 - non-discrimination; the best-interest; the right to life, survival and development and the rights to be heard.
- The preamble:
 - the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding

The UN Guidelines for Alternative Care (2009)

- ✓ Designed to provide further guidance regarding the definition of the relationship **between parental care** and the **child's family environment**, goals for **alternative care**, and the criteria for decisions of **alternative care** placements
- ✓ The Guidelines target both **policy and practice** with specific regard to the protection and wellbeing of children deprived of parental care or who are at risk of being so
- ✓ It is a **standard reference in the COBs** that the attention of the State party is drawn to the UN Guidelines for Alternative Care (General Assembly resolution 64/142)

Themes in the Concluding Observations

- ✓ Measures taken to prevent alternative care
 - ✓ Promoting parental care
 - ✓ Preventing family separation
 - ✓ Promoting family reintegration
- ✓ The conditions under which placement is justified (Art 20)
 - ✓ If the child is deprived or his/her family or
 - ✓ Placement is in the “best interest” of the child
- ✓ The state should “ensure” such placement on the basis of national law

Alternative care Art. 20

- ✓ In **family environment**, e.g. foster care, adoption or
- ✓ “If **necessary** in **suitable institutions** for the care of children”
- ✓ “Institutions”
 - ✓ From small “family type” to more complex institutions
- ✓ “**suitable**”
 - ✓ “institutions ... should conform to the standards established by the competent authorities..” **Art 3.3 of the CRC**
 - ✓ Meets the needs of the individual child at a given moment of time
- ✓ “**if necessary**”
 - ✓ Necessity based on child-focused grounds
 - ✓ Not because “nothing else is available”

COBs main guidance

Examination of COBs' of 18 European states for the past 5 years

- ✓ **De-institutionalisation** - urgently **phase out** institutionalisation of children
- ✓ Lack of strategy and **action plan for de-institutionalisation** of children
- ✓ Lack of **gatekeeping**, “best interest assessment” - arbitrary family separation
- ✓ **Number** of children in residential care on the rise
- ✓ High number of **children under 3 years** in institution
- ✓ **Disability** alone never a justification for removing a child from a family care
Poverty/Economic disadvantage alone is a justification for placement in alternative care
- ✓ **Discrimination**: Roma children, indigenous, unaccompanied minors/asylum seekers

Quality of care

Conforming with the standards established by the competent authorities;
Art 3.3.

- ✓ Lack of national **minimal quality standards** in alternative care, including accreditation
- ✓ Lack of **monitoring** alternative care, independent and unannounced checks of all types of institutions and foster homes
- ✓ **Inadequate living conditions:** poor facilities, overcrowding; ill- and degrading treatment; the use of constraints, coercion, allegation of solitary confinement, misdiagnosis, incorrect medical treatment and lack of psycho-social services
- ✓ Providing accessible **channels for reporting**, investigating and remedying the violence, abuse, ill-treatment and use of constraints in alternative care
- ✓ Lack of **professionalism**, and the need for training of staff
- ✓ Lack of **individual pathway plans** to ensure reintegration, e.g. housing, education, vocational training, social services to facilitate social reintegration to the greatest extent possible

Strengthening the foster care system, including by capacity building

- ✓ Emphasising **legislation, regulation and coordination** of foster care and the need to strengthening the foster care system
- ✓ Expand on the traditional care provided by the **extended family**
- ✓ Need for support to foster carers, **capacity building, pre-training, in care services etc.**
- ✓ Ensure the **accessibility** (geographical distribution) of foster care
- ✓ **Redirecting funds** towards foster care

Promoting family reintegration

- ✓ Regular **review of placements** and measures to ensure children do only stay for the **minimum length of time** in out of home placement
- ✓ Regular assessment and maintain direct and regular **contact between the child and his/her family** with the aim of reintegration
- ✓ **Siblings** should **not be separated** in alternative care
- ✓ **Post care support** with the aim of reintegration with the child's family as far as possible

Promoting parental care

- ✓ Measures **promoting positive parenting** and other non-violent upbringing
- ✓ Increase the provision of timely and sufficient professional assistance and **counselling to parents** and other caregivers at risk of neglecting or ill-treating their children
- ✓ Measures to **enhance fathers participation** in upbringing and entitlement of parental leave
- ✓ Identifying children at risk and **early intervention**
- ✓ Lack of sufficient and **regular training of professions**, capacity building for those working with families

Preventing family separation

- Introduce **comprehensive programs to prevent** family separation
- Adequate human, technical and financial resources are allocated to relevant **social and child protection services**
- Strengthen the system of **family benefits, child allowances and housing** to support parents and children in general, with additional support for families at risk
- Strategies aimed at children and families at risk due to **poverty, single mothers and women in crisis situations, families with numerous children and/or unemployed parents**
- Lack of family based **services for children with disabilities**

Other issues

✓ Anti-discrimination measures

- ✓ Provide anti-discrimination training regarding Roma children
- ✓ Prioritise the hiring of Roma professionals in children's home
- ✓ Enhance cultural sensitivity towards all children in residential care

✓ Children of incarcerated parents

- ✓ Insufficient support
- ✓ State party seek **alternative measures to detention for pregnant women** and mothers with small children
- ✓ The best interests of the child be considered carefully and independently at the time of sentencing

✓ Lack of data

- ✓ **National registry** of children in care; **Children with disability** in institutions; **Ethnic origin** of children in care

✓ Research

- ✓ Analyse **root causes** of alternative care
- ✓ **Break down of placement**, lack of sustainability of care
- ✓ **Disparity rate of placement** in different regions within the state

Evolution of Institutional Care

- ✓ The specialization paradigm
- ✓ The normalization paradigm
- ✓ The paradigm of children's rights (towards the end of residential care?)
 - ✓ Foster care, placement in families
 - ✓ Small scale high quality residential care only:
 - ✓ To meet complex needs according to “best interest determination”
 - ✓ To meet the wishes of the child