

CDDH comments on Parliamentary Assembly Recommendations 2056(2014) – “The alternatives to immigration detention of children”

CDDH: 82nd meeting – 19/21 November 2014 CDDH(2014)R82

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2056 (2014) on “The alternatives to immigration detention of children”, a topic of great concern, especially against the background of a continued practice of immigration detention of children in Council of Europe member states¹. The CDDH notes that the immigration detention of children, notably unaccompanied minors, continues to be subject of considerable debate, and research findings are increasingly revealing the long-term negative impact of detention on children, however short the duration². As a result, there is now an increasing momentum to seriously restrict, if not prohibit altogether, this practice at the European level, as was already pointed out in texts adopted since 2005³. In this context, the CDDH recalls that all member states of the Council of Europe have ratified the United Nations Convention on the Rights of the Child, creating a framework of special safeguards to adequately protect and assist all children in an indiscriminate manner, regardless of various factors, such as nationality, race, ethnicity, social origin, language, and immigration status⁴.

2. The CDDH takes note of the Assembly’s call to launch a study first to collect qualitative and quantitative data on child immigration detention practices and use of non-custodial, community-based alternatives thereto, and second, to promote the sharing of these practices across Europe. Regarding the first part of the study, the CDDH wishes to point out that as part of the EU Agenda for the Rights of the Child, the Fundamental Human Rights Agency of the European Union (FRA) has initiated various data collection and comparative analysis research projects relating to children, such as the Mapping project on child protection systems in the EU, and the Children and justice project, which focuses on child participation in justice proceedings in conformity with the Committee of Ministers Guidelines on child-friendly justice. Due to its

¹ [PACE Resolution 2020 \(2014\)](#), “The alternatives to immigration detention of children”, para. 1.

² PACE report, “The alternatives to immigration detention of children”, [Doc. 13597](#), 15.09.14, pp. 6-8. See also, International Detention Coalition, [“There are alternatives: A handbook for preventing unnecessary immigration detention”](#), 2011, p. 009.

³ See in this context, Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR), [Twenty guidelines on forced return](#), 925 Meeting, 4 May 2005, Guideline 11, p. 36. [PACE Resolution 1810 \(2011\)](#), on “Unaccompanied children in Europe: issues of arrival, stay and return”, para. 5.9, and [PACE Recommendation 1985 \(2011\)](#), on “Undocumented migrant children in an irregular situation: a real cause for concern” para. 9.4.5. Also, addressing immigration detention of children is explicitly addressed as a key priority in the EU Agenda, and proposals for amending EU asylum law to prohibit the detention of children, notably unaccompanied minors, are ongoing (see [EU Agenda for the Rights of the Child](#), p. 9).

⁴ [UN Convention on Rights of the Child](#), Art. 2.

capacity and experience with conducting studies of this nature in the field of children's rights, and to avoid duplication of efforts, the CDDH considers the FRA to be the appropriate forum at the present time to adequately build on previous research findings and to carry out the initial data collection proposed by the Assembly. In a second step, and building on the FRA's possible work in this area, the CDDH expresses its willingness to study the feasibility of collecting further data for other Council of Europe member states, notably as regards the use of alternatives to immigration detention of children. Concerning the second part of the study, the CDDH expresses its willingness to contribute to various activities that may assist in effectively promoting the sharing of best practices across Council of Europe member States.

3. Regarding the Assembly's call to the Committee of Ministers to set up child-friendly age-assessment guidelines, the CDDH acknowledges the importance of this issue and notes that currently there is a lack of consensus about the applicable procedures in order to accurately assess the age of an individual⁵. The CDDH recalls that there is, at present, no reliable method to determine, without some margin of error, the age of an individual⁶. Given the significant consequences of age-assessment on the individual(s), the CDDH expresses its willingness to study more closely whether there is a need to formulate guidelines in this area, should the Committee of Ministers so decide. However, as a preliminary step, and given the Parliamentary Assembly's in-depth work in the area of migrant children, the CDDH would suggest for the Assembly to provide additional information on current practices of age-assessment in Council of Europe member states, and to elaborate, where possible, on best practices. In this context, the CDDH draws attention to the study of the European Asylum Support Office (EASO), on Age Assessment practice in Europe as regards EU member states. The CDDH is confident that the additional information provided by the Assembly would serve as a solid basis in order to examine the feasibility of elaborating guidelines⁷.

⁵ [PACE Resolution 1996 \(2014\)](#), "Migrant children: what rights at 18?", para. 3.

⁶ PACE report, "Undocumented migrant children in an irregular situation: a real cause for concern", [Doc. 12718](#), 16.09.11, para. 94. See also European Asylum Support Office (EASO), report on [Age Assessment practice in Europe](#), p. 8.

⁷ The CDDH could ask DH-BIO to identify an expert who would be in charge of providing a scientific opinion on age-assessment techniques.

Recommendation 2056(2014)

Final version

The alternatives to the immigration detention of children

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2020 \(2014\)](#) on the alternatives to the immigration detention of children.
2. The Assembly stresses that States which practise the immigration detention of children contravene the principle of the best interests of the child and violate children's rights. They deprive children of their fundamental right to liberty and put them at risk of severe and lifelong physical, mental and developmental harm. They may also violate other fundamental child rights, such as the rights to family, health, education and play. The Assembly considers that in order to stop this inhuman practice, the Council of Europe has an important role to play in promoting alternatives to the immigration detention of children.
3. The Assembly therefore calls on the Committee of Ministers to:
 - 3.1. launch a study to collect qualitative and quantitative data on the immigration detention of children and the use of non-custodial, community-based alternatives to detention for children and families, and promote the sharing of these practices across Europe;
 - 3.2. set up guidelines for conducting child-friendly age-assessment procedures for migrant children.