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## The alternatives to immigration detention of children

### Report<sup>1</sup>

Committee on Migration, Refugees and Displaced Persons

Rapporteur: Ms Tinatin Bokuchava, Georgia, Group of the European People's Party

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<sup>1</sup> Reference to Committee: Doc. 13050, Reference 3923 of 21 January 2013.

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## A. Draft resolution<sup>2</sup>

1. The Assembly is very concerned that the immigration detention of children is a growing phenomenon in the Council of Europe member states. Despite improvements in legislation and practice in some European countries, tens of thousands of migrant children still end up in detention each year. The practice is contrary to the best interests of the child and a clear and unequivocal child rights violation.

2. Migrant children are frequently detained in Council of Europe states simply because they do not have the right immigration documents. They have committed no crime. Yet they may be subjected to criminal penalties, prison-like conditions, be separated from the support and protection of their families, and be denied a number of fundamental rights, such as access to health, education and play.

3. The Assembly recalls its position expressed in Resolution 1810 (2011), stating that unaccompanied children should never be detained. The detention of children on the basis of their or their parent's immigration status is contrary to the best interests of the child and constitutes a child rights violation as defined in the UN Convention on the Rights of the Child.

4. The Assembly is particularly concerned that detention, even for very short periods of time and in relatively human conditions, has severe negative short and long-term effects on children's physical and mental health. Children in immigration detention are particularly vulnerable to the negative effects of detention and can be severely traumatised. Also, there is a high risk of detained children being subjected to different forms of violence and/or being deprived the right of access to education and healthcare.

5. In addition to deprivation of liberty, children in immigration detention are frequently deprived of other fundamental rights, such as the right to family unity, the right of access to education and the right to adequate healthcare.

6. The Assembly welcomes the promotion by some European countries of alternative solutions to the detention of migrant children. Such alternatives to detention, when implemented properly, are more effective, cheaper, better protect the rights and dignity of children, and promote better health and wellbeing outcomes for migrant children.

7. The Assembly notes with satisfaction that a number of Council of Europe member states including Belgium, Denmark, Hungary Italy, Ireland, the Netherlands, France and the United Kingdom have taken steps toward ending the immigration detention of children. In such states, migrant children are either not detained or there is a provision for the release of migrant children from detention in law, policy or practice.

8. However, although the legislation of most of the Council of Europe member states provides for the introduction of alternatives to detention, the majority of these countries are not applying them in practice.

9. The Parliamentary Assembly considers that it is urgent to put an end to the detention of migrant children and that this requires concerted efforts from the relevant state authorities. In consequence, it calls its member states to:

9.1. acknowledge that it is never in the best interests of a child to be detained on the basis of their or their parent's immigration status;

9.2. introduce the prohibition of the detention of children for immigration reasons in the legislation, if it has not been done so far and ensure its full implementation in practice;

9.3. refrain from the administrative detention of unaccompanied and separated children;

9.4. ensure that children are treated as children first and foremost, including that persons who claim to be children are treated as such until proven otherwise;

9.5. develop child-friendly age-assessment procedures for migrant children;

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<sup>2</sup> Draft resolution adopted unanimously by the Committee on 9 September 2014.

9.6. continue their efforts to bring aliens legislation in compliance with best international standards, while taking into account the best interests of a child as enshrined in Article 3 of the UN Convention on the Rights of the Child and promoting various forms of internationally recognised alternatives to detention;

9.7. adopt alternatives to detention that fulfil the best interests of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved;

9.8. provide necessary resources in order to develop alternatives to the detention of migrant children;

9.9. seek to develop and implement non-custodial, community-based alternatives to detention programs for children and their families using the "Child-sensitive Community Assessment and Placement (CCAP) Model";

9.10. raise the awareness of all public officials, including police, migration prosecutors and judges on international human rights standards, with a certain focus on the rights of a child and alternatives to detention;

9.11. share best practices on alternatives to the detention of migrant children across the member states;

9.12. encourage collaboration between governments of the member states, the Council of Europe, UN organisations, intergovernmental organisations, and civil society organisations to end child immigration detention and implement non-custodial, community-based alternatives to detention for children and families;

## **B. Draft recommendation<sup>3</sup>**

1. The Parliamentary Assembly refers to its Resolution... (2014) on alternatives to the immigration detention of children.
2. The Assembly stresses that States which engage in the immigration detention of children contravene the principle of the best interests of the child and commit a child rights violation. They deprive children of their fundamental right to liberty and put children at risk of severe and life-long physical, mental and developmental harms. They may also violate other fundamental child rights such as rights to family, health, play and education. The Assembly considers that in order to stop this inhuman practice, the Council of Europe has an important role to play in promoting the alternatives to the immigration detention of children.
3. Therefore, the Assembly calls on the Committee of Ministers to:
  - 3.1 launch a study to collect qualitative and quantitative data on child immigration detention 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 procedure for migrant children.

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<sup>3</sup> Draft recommendation adopted unanimously by the Committee on 9 September 2014.

## C. Explanatory memorandum by Ms Tinatin Bokuchava, Rapporteur

### 1. Introduction

1. All around the world, every day, millions of children are detained simply because they do not have the right immigration documents. Immigration detention of children is also a growing phenomenon in Council of Europe states. The use of immigration detention has been growing over the past 20 years as governments strive to control migrant entry and settlement.

2. Children leave their homeland due to a variety of reasons. Some children leave with their families, but some also flee alone, due to armed conflict at home, because their human rights are being violated or simply in search of a better life. Accompanied or unaccompanied, all children traveling without official documents, whether seeking asylum, as refugees or irregular migrants - are at risk of being detained.

3. Despite some improvements in legislation and practice in a number of European countries, hundreds of immigrant children still end up in detention. Accurate detention statistics are difficult to obtain, particularly as they relate to the detention of children; however the rising trend is confirmed by United Nations' (UN) bodies, as well as non-governmental organizations, such as the International Detention Coalition (IDC), one of the leading organizations in the field.<sup>4</sup>

4. The UN Committee on the rights of the Child has called on states to "expeditiously and completely cease the detention of children on the basis of their immigration status"<sup>5</sup> as detention constitutes a violation of the rights of a child. The Committee has also urged states to "adopt alternatives to detention that fulfil the best interests of the child"<sup>6</sup>. Despite these unequivocal calls, the immigration detention of children continues to be a real and serious concern among Council of Europe states.

5. In the present report, I argue that children are first and foremost children and should never be detained for immigration purposes. The detention of children is a denial of their fundamental right to liberty. In addition to arguing against children's detention from a human rights perspective, I offer an insight into the cost benefits of alternatives to detention and outlines some of these alternative models to promote and facilitate their use throughout the Council of Europe member states.

#### 1.1. Available statistics

6. As indicated in the PICUM (Platform for International Cooperation on Undocumented Migrants) submission to the United Nations Committee for the protection of the rights of all migrant workers and their families, the data on undocumented migrant children remains particularly limited. For dependent migrant children, this is partly due to the fact that children's movements are often not recorded separately from that of their parents<sup>7</sup>. The Population Division of the United Nations Department of Economic and Social Affairs reports that globally, 16% of migrants are under the age of 20<sup>8</sup>. In Europe, Eurostat figures show that 41,455 of migrants apprehended in Europe in 2011 were children. This figure included 16,250 children below the age of 14 and 25,205 between the ages of 14 and 17<sup>9</sup>.

7. The Council of Europe Parliamentary Assembly has also highlighted the difficulty of obtaining child detention statistics. In 2011 Mr Pedro Agramunt, the Rapporteur of the Committee on Migration, Refugees and Population in his report stated to be "at a loss to estimate the number of undocumented migrant children in Europe".<sup>10</sup> However, some national level estimates on undocumented children in

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<sup>4</sup> IDC is a global network, of over 300 civil society organizations and individuals in more than 70 countries that advocate for research and provide direct services to refugees, asylum-seekers and migrants affected by immigration detention to limit unnecessary immigration detention. The IDC also runs a campaign to end children's detention worldwide, joined by UNHCR, UNICEF and others. Please see: <http://endchilddetention.org/>.

<sup>5</sup> The Committee on the Rights of the Child, Report of the 2012 day of the general discussion on the rights of all children in the context of international migration, Para. 78.

<sup>6</sup> Ibid, Para. 79.

<sup>7</sup> PICUM submission to the United Nations Committee for the protection of the rights of all Migrant Workers and their Families, 22 April 2013.

<sup>8</sup> United Nations Department of Economic and Social Affairs, Population Division, International Migration 2009, available at: [www.un.org/esa/population/publications/2009Migration\\_Chart/ittmig\\_wallchart09.pdf](http://www.un.org/esa/population/publications/2009Migration_Chart/ittmig_wallchart09.pdf).

<sup>9</sup> Eurostat (2011) Enforcement of Immigration Legislation Statistics, extracted on 7 July 2011.

<sup>10</sup> Council of Europe, "Undocumented migrant children in an irregular situation: a real cause for concern", Council of Europe Committee on Migration, Refugees and Population, Doc. 12718, 16 September 2011, para. 9, available at: <http://assembly.coe.int/main.asp?link=/Documents/WorkingDocs/Doc11/EDOc12718.htm>.

Europe do exist, showing the large magnitude of the phenomenon. The Clandestino project estimated that there were between 44,000 and 144,000 UK-born undocumented children out of a total of 417,000 - 863,000 undocumented migrants. Following the data collated by Clandestino, the COMPAS research project at the University of Oxford put forth an estimate of 120,000 undocumented children in the UK in 2011, of which over 85,000 were thought to be UK-born<sup>11</sup>. According to a study conducted by the Swiss Monitoring Office for Asylum and Foreigners' Law, children make up at least 10% of undocumented migrants in Switzerland<sup>12</sup>.

### *1.2. Negative impact of detention on children*

8. Detention has severe negative short and long-term effects on children's physical and mental health and is always contrary to the best interests of the child, as defined in the UN Convention on the Rights of the Child. While detention is a traumatic experience in general, children are particularly vulnerable to the negative effects of detention and can be severely traumatised. Research indicates that even short periods of detention negatively impact children's cognitive and emotional development; at times such dire consequences can cause lifelong trauma and developmental challenges for children. Also, there is a high risk of detained children being subjected to different forms of violence and/or being deprived the right of access to education and healthcare.

### *1.3. International and European legal protection of migrants against detention*

9. In Resolution 63/184, the United Nations General Assembly (UN GA), called upon states "to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention". It called for alternatives to detention to be implemented and for periods of detention to be reviewed. The UN GA also welcomed practices among states aimed at reducing the detention of irregular migrants<sup>13</sup>. In 2010, the Assembly adopted a Resolution on the protection of migrants and repeated its calls to reduce the detention of unauthorized migrants<sup>14</sup>. In October 2013, the Assembly held the second High Level Dialogue on International Migration and Development, where the Secretary General stated: "We need to create more channels for safe and orderly migration and to seek alternatives to the administrative detention of migrants"<sup>15</sup>.

10. The UN Human Rights Council (HRC) held a special panel discussion devoted to the human rights of migrants in detention due to "human rights concerns related to the recourse to detention of migrants and the duration and conditions of their detention"<sup>16</sup>. The Council further recognised the problem of immigration detention in the resolution on the human rights of migrants. This resolution calls upon states to "put an end to arbitrary arrest and detention and ... to adopt, where applicable, alternative measures to detention"<sup>17</sup>.

11. In September 2009, the UN High Commissioner for Human Rights remarked that the plight of "migrants, and particularly migrants in an irregular situation, is one of today's most critical human rights challenges". More recently, the High Commissioner called on states to "explore effective alternatives to immigration detention, particularly for children and other vulnerable groups of migrants"<sup>18</sup>.

12. The Parliamentary Assembly of the Council of Europe (PACE) has condemned the detention of child migrants, in particular – of unaccompanied minors. Resolution 1707 (2010) unequivocally states: "unaccompanied minors should never be detained"<sup>19</sup>. The European Court of Human Rights (ECHR)<sup>20</sup> has also delivered judgments on the inadmissibility of the detention of children in a number of cases and has argued for alternative care arrangements respecting the best interest of the child. The

<sup>11</sup> N. Sigona and V. Hughes, "No way out, no way in. Irregular migrant children and families in the UK." University of Oxford, COMPAS, May 2012, pp. 6-8.

<sup>12</sup> PICUM submission to the United Nations Committee for the protection of the rights of all Migrant Workers and their Families, 22 April 2013.

<sup>13</sup> UN General Assembly 2009, para. 13.

<sup>14</sup> UN General Assembly 2010, para. 4.

<sup>15</sup> <http://www.un.org/News/Press/docs/2013/sgsm15367.doc.htm>.

<sup>16</sup> UN human Rights Council 2009, 17.

<sup>17</sup> Human Rights Council 2010, A/HRC/RES/15/16, para.8.

<sup>18</sup> UN High Commissioner for Human Rights 2012.

<sup>19</sup> Detention of Asylum Seekers and Irregular Migrants in Europe (2010), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17813&lang=en>.

<sup>20</sup> Houssein v. Greece (2013), Rahimi v. Greece (2013), Popov v. France (2012), Kanagaratnam v. Belgium (2011), Mushadzhieva and others v. Belgium (2010), Mubilanzila and Kanigi Mitunga v. Belgium (2006).

European Committee for the Prevention of Torture (CPT) considers that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child<sup>21</sup>.

#### *1.4. Reasons why children are falling through the gaps*

13. While in most Council of Europe member states alternative care arrangements exist, particularly for unaccompanied migrant children, member states still resort to detention in too many instances. Children are detained for health and security screening, and for identification and status determination purposes. Some children are incarcerated in facilities exclusively for minors, but others are detained with unrelated adults. In some member states, children end up in detention facilities, which are totally unsuitable for catering to their needs.

14. At times, states detain children inadvertently, due to difficulties associated with age determination. All too often however, age assessment procedures are used for the benefit of the state seeking to justify detention. Despite the existing standard that persons who claim to be juveniles should be treated as such until proven otherwise, unless the claim is manifestly unfounded, a number of states still detain such persons in institutions for adults. Age determination procedure, which should be applied as a measure of last resort, is often delayed for undue reasons.

15. There is also a big risk that the age assessment procedure might negatively affect the dignity of a person subjected to it, unless the assessment procedure is conducted by interdisciplinary (i.e. not solely medical) methods with respect to the individual's dignity, and based on the informed consent of said individual. The methods and the persons conducting the assessment must act in a manner suitable to the person's age, gender and culture.

## **2. Alternatives to detention: policy, legislation and practice**

16. States use a wide range of reasons to justify the detention of irregular migrants. At the same time they have an obligation to establish presumption in favour of liberty and develop alternatives to detention, while applying non-custodial and least restrictive measures.

### *2.1. Policy*

17. Despite the growth in policies of containment and control, government interests in alternatives to detention have recently increased as well. Alternatives to detention are seen as a way to achieve effective migration management, while protecting the rights and dignity of migrants. More governments are taking steps to explore and implement alternatives ranging from scoping studies and small-scale pilot projects to systemic policy developments and systemic change<sup>22</sup>.

### *2.2. Legislation*

18. Efforts to reduce child detention in Europe were reflected in the introduction of the alternatives to detention in the legislation of the Council of Europe states and adoption of new policies.

19. A number of Council of Europe member states made changes to their legislation in 2012. More specifically, Croatia introduced several alternatives to detention in its national legislation, namely the duty to surrender documents, and to deposit the sureties, designated residence and regular reporting<sup>23</sup>. At the end of 2011, Cyprus amended its legislation as well and created the possibility to apply alternatives, without however defining the type of alternatives available<sup>24</sup>. Slovakia's new Law on Residence of Foreigners enforced in January 2012 introduced alternative measures as well; under the new law, detention with designated residence and possibility of financial sureties can be applied<sup>25</sup>.

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<sup>21</sup> 19th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Para. 97.

<sup>22</sup> Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales, Journal on Migration and Human Security, Volume 1, Number 3(2013), Robin Sampson and Grant Mitchell.

<sup>23</sup> Croatia, Aliens act, 1 January 2012, Art.136 (3).

<sup>24</sup> Cyprus, Aliens and Migration Law, 2011, Art.18 (1).

<sup>25</sup> Slovakia Law No.404/2011 on Residence of Foreigners.

### 2.3. Practice

20. Malta is the only remaining EU member state allowing application of alternatives only when the release is considered<sup>26</sup>. Non-application of the alternatives in practice remains a serious matter of concern as many states resort more often to detention rather than to the different alternatives available.

21. European and non-European countries have developed different practices that allow irregular migrant children to remain in the community with certain freedom of movement. This period lasts until their migration status is resolved or their removal takes place. Alternatives to detention, which reduce the application of custodial measures, include a wide set of alternatives such as the duty to report regularly to the police, residence restrictions and counselling, duty to surrender documents, deposit sureties/bail, and electronic monitoring.

22. Some states have opted for different models developed by leading organisations in the field such as IDC, more specifically the Community Assessment and Placement Model (CAP). This model is built on a few principles, which have to be followed by the implementing authorities:

- Presume detention is not necessary
- Screen and assess the individual case
- Assess the community setting
- Apply conditions in the community if necessary
- Detain only as a last resort in exceptional cases

23. A few states like Argentina, Venezuela, New Zealand, Hungary, Hong Kong, Philippines, United Kingdom, Spain, Sweden, USA, Australia, and Canada have started to apply some of those principles in practice and therefore are bringing down the rates of migration detention.

24. Despite significant changes in legislation and attempts to change practice, the detention of migrant children still remains a matter of serious concern in the majority of the Council of Europe member states. While a few states approach detention as a measure of last resort and in most cases opt for alternatives, others still resort to detention as a routine practice. As a result, children end up behind bars in different institutions including police facilities and special holding centres, which do not cater at all to their needs and violate their fundamental rights.

### 3. Why Alternatives?

25. The research commissioned by the International Detention Coalition (IDC) identified a number of benefits that governments receive when resorting to alternatives and avoiding detention:

- Maintain high rates of compliance
- Cost less than detention
- Reduce wrongful detention and litigation
- Reduce overcrowding
- Protect and Fulfil human rights
- Improve client health and welfare
- Increase voluntary return and departure

#### 3.1. Detention is not an effective deterrent

26. There is no doubt that dealing with irregular migration is an everyday issue of governance. The evidence available and statements made by governments once again prove that a policy of detention is not effective in deterring asylum seekers, refugees and irregular migrants. Despite increasingly tough detention policies being introduced over the past 20 years, the number of irregular arrivals has not reduced<sup>27</sup>.

27. Several studies have been undertaken to establish which factors most impact the choice of the destination of asylum seekers and irregular migrants. According to numerous researches done in this

<sup>26</sup> Fundamental Rights Agency (FRA) annual report 2012, Para. 1.3.3.

<sup>27</sup> Edwards, A. (forthcoming 2011). *Back to basics: The right to liberty and security of person and 'alternatives to detention' of asylum-seekers, stateless persons, and other migrants*. UNHCR Legal and Protection Policy Research Series. Geneva: UNHCR.

field, the principal aim of asylum seekers and refugees is to reach a place of safety<sup>28</sup>. Asylum seekers have very limited understanding of the migration policies of destination countries before arrival and are often reliant on people smugglers to choose their destination. Rather than being influenced primarily by immigration policies such as detention, most refugees choose destinations where they will be reunited with family or friends; where they believe they will be in a safe, tolerant and democratic society.

### 3.2. Cost reduction

28. In my opinion, it is incontestable that with effective laws and policies, clear systems and good implementation; managing asylum seekers, refugees and irregular migrants can be achieved in the community in most instances. By learning to screen and assess the case of each person subject to or at risk of detention and introduce appropriate supports and conditions in the community as needed, authorities can learn to manage people in the community in the majority of cases without the financial and human cost that detention incurs.

29. The costs of detention and the number of migrants who might be eligible to be detained are just too great. Research commissioned by the IDC shows that cost-effective and reliable alternatives to detention are currently used in a variety of settings and have been found to benefit a range of stakeholders affected by this area of policy<sup>29</sup>.

30. A few countries managed to significantly cut their migrant related costs through changes in their policy and practice. Significantly reducing the number of detentions and the introduction of individual case management tools and community placement enabled the USA, Canada and Australia to reduce their expenditures by 60-90 %, compared to their spending on detained migrants.

### 3.3. High rates of compliance

31. It is evident that the benefits gained through the application of alternatives to detention are not only limited to cost savings. According to available data, the compliance rates are high as well and only a very small percentage of migrants and asylum seekers violate the conditions. A recent study collating evidence from 13 programs found compliance rates ranged between 80% and 99.9%. For instance, Hong Kong achieves a 97% compliance rate with asylum seekers or torture claimants in the community, and in Belgium, a pilot programme working with families facing removal had an 82% compliance rate. IDC researches found asylum seekers and irregular migrants rarely abscond while awaiting the outcome of a status determination or other lawful process. They are better able to comply with liberty or release conditions, or a negative final decision if they: can meet their basic needs in the community; if they have been through a fair and efficient determination process; if they have been kept informed through the process, including receiving legal advice and have also been advised on all options to remain in the country legally and, if needed, supported to consider sustainable avenues of departure<sup>30</sup>.

### 3.4. Better health and welfare conditions

32. The third benefit is the promotion of health and wellbeing of migrants, both children and adults. There are several reasons to believe that alternatives to detention promote better health and wellbeing outcomes when compared with immigration detention. It is obvious that all people awaiting an immigration outcome can experience stress and anxiety associated with uncertainty about their future<sup>31</sup>, but the state of the health, both mental and physical of people who are detained is much poorer than compared to people who have never been in detention<sup>32</sup>.

### 3.5. Combined benefits from alternatives

33. It is obvious that if the states want to manage migration successfully, minimise risks and significantly cut costs and save on resources, they need to opt for alternatives and stop detaining migrants. In my opinion, when avoiding detention, the chance of migrants absconding is rather low, and

<sup>28</sup> Robinson, V., & Segrott, J. (2002). *Understanding the decision making of asylum seekers*. London: Home Office. Retrieved 16.06.2010 at <http://rds.homeoffice.gov.uk/rds/pdfs2/hors243.pdf>.

<sup>29</sup> There are Alternatives, A handbook for preventing unnecessary immigration detention, International Detention Coalition 2011, page 009.

<sup>30</sup> Ibid, page 002.

<sup>31</sup> Laban, C., Komproe, I., Gernaat, H., & de Jong, J. (2008). The impact of a long asylum procedure on quality of life, disability and physical health in Iraqi asylum seekers in the Netherlands.

<sup>32</sup> There are Alternatives, A handbook for preventing unnecessary immigration detention, International Detention Coalition 2011, page 052.

the chances of keeping them in proper health and ensuring their well-being are much higher. In addition, the government manages to better adhere to its international and local human rights commitments, avoid public criticism and provide example of good practice to other states.

34. Despite numerous studies and recommendations produced by international organisations, human rights groups and special rapporteurs, there is still huge room for action to achieve the goal and bring detention rates of children down. It is evident that much more has to be done in order to persuade governments about the benefits of alternatives and negative effects originating from any type of detention. Much more resources are required to promote reforms and to train public servants involved in the process in the best practices to manage the migration related problems. Training should affect migration services, the police, judiciary and prosecution authorities, as well as social services dealing with the issue.

#### 4. Policy and Practice of the Council of Europe member states

##### 4.1. Positive Practice

35. Some Council of Europe member states have stopped the detention of children, including unaccompanied minors. They are either not detained or there is a legal provision or practice in place for their release into an alternative (Belgium, Italy, Ireland, Hungary, Denmark, the Netherlands, the United Kingdom and France)<sup>33</sup>.

36. Austria, Germany, Denmark, the Netherlands, Slovenia and the United Kingdom have also opted for a presumption against detention in law, policy or practice. Presumption against detention gains effect when established in law. This presumption is strengthened when alternatives to detention are also established in legal acts. The effectiveness of such laws is dependent on their proper implementation. Those laws might also include mechanisms to monitor the use of alternatives and ensure that unnecessary restrictions are avoided<sup>34</sup>.

37. Several states are taking decisive steps to avoid detention and establish special shelters or launch special, targeted projects to enforce alternatives. Those states are setting proper standards and promoting best practice in the region. These approaches are certainly not uniform and each model has its strengths and weaknesses, though all of them have a few common elements:

- Detention is not practiced
- Costs are significantly reduced
- Migrants are in better health and their wellbeing is ensured
- Rates of compliance are still high

38. Hungary prohibited the detention of migrant children<sup>35</sup> and with the assistance of local non-governmental organisations, established a shelter for unaccompanied children. The Netherlands is piloting four alternatives to detention. One of the programs works with migrants who are obliged to leave the country<sup>36</sup>. In Sweden, asylum seekers are registered upon arrival and after being issued an ID card and having spent about a week in transit they are moved into a reception program. The authorities accommodate the ones who do not have their own funds to cover accommodation costs. As a rule, they are placed in a private apartment rented for them by the government. These migrant children are receiving the same medical care as Swedish children. Migrants are assigned a caseworker; they can receive free legal aid and participate in special courses of the Swedish language. They receive a daily allowance as well and in some circumstances, they are even allowed to work<sup>37</sup>. Belgium has developed policies not to detain children. The project works directly with migrant families and accommodates them in designated apartment buildings. In Spain, migrants who enter the refugee determination process can be housed in an open reception centre only in the case where they cannot afford private accommodation. The government manages some open centres and several of these are under the control of non-governmental organizations. The capacity of these centres is rather limited; therefore the priority is given to vulnerable individuals including families with children. Residents are assigned a social

<sup>33</sup> *Ibid*, page 024.

<sup>34</sup> *Ibid*, Page 022.

<sup>35</sup> Section 56 of Act II of 2007 on the Admissions and Rights of Residence of Third-Country Nationals.

<sup>36</sup> Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales, Journal on Migration and Human Security, Volume 1, Number 3(2013), Robin Sampson and Grant Mitchell.

<sup>37</sup> *Ibid*, page 035.

worker that assists them with their case and access to education, healthcare and other social systems of the country<sup>38</sup>.

#### 4.2. Issues of concern

39. Regrettably, the introduction of alternatives to detention in national laws is not itself a prerequisite for the application of the alternatives in practice. As I mentioned above, most of the Council of Europe states do not produce proper statistics on alternatives to detention, which makes it rather difficult to assess the levels of their application.

40. Available statistics from nine Council of Europe member states indicate that some states make regular use of alternatives (Austria, Czech Republic and Romania), while this does not appear to be the case in Bulgaria, Lithuania, Latvia, Slovakia, Croatia and Slovenia<sup>39</sup>. In those countries authorities resort to detention of migrants in the majority of cases.

41. Italian law does not prohibit the detention of children accompanied by parents in detention centres for migrants but the detention of unaccompanied children in those centres is prohibited.<sup>40</sup> In Poland, children are detained with their parent(s), usually in separate family units within the detention centres<sup>41</sup>. The Aliens' Law of Lithuania provides that the alien under the age of 18 may be detained only in extreme case, taking into consideration the alien's best interests<sup>42</sup>. The Aliens' Law provides a list of alternatives which can be applied when the alien's identity has been established and he/she constitutes no threat to national security and public policy, and provides assistance to the court in determining his/her status in Lithuania<sup>43</sup>.

42. The British government pledged to end the detention of children for immigration purposes by May 2011. However, a Freedom of Information request by the Children's Society revealed that in the four-month period between May and August 2011, almost 700 children were detained in the UK. The Children's Society also found that the UK Home Office is not sufficiently monitoring these cases, as they are not collecting information on the length of the detention of these children or why they were detained in the first place<sup>44</sup>.

43. Furthermore, the government proposed an alternative to detention: "pre-deportation accommodation", which also remains highly contested. Families who refuse to depart from the UK may be held in "pre-departure accommodation" for up to 72 hours, or in "exceptional circumstances", up to a week. The government has assured that the centre, a converted special needs school near Gatwick, will be family-friendly and only used as a last resort as advised by an Independent Family Returns Panel, which will take into account the welfare of children. However, families will not be free to come and go, and the centre will have 24-hour security and a 2.3 meter high perimeter fence. Thus, the "pre-departure accommodation" retains many of the defining features of detention centres, and PICUM and many civil society organizations are concerned that it will still have significant negative effects on children.<sup>45</sup>

44. Greece continues to receive a large number of migrants each year but the system of reception is poorly organised. Even though detention should be applied only as a measure of last resort; all migrants, including accompanied and unaccompanied children captured by the Greek police force are still routinely detained for up to a few months<sup>46</sup>.

45. It is evident that in numerous Council of Europe member states, the law provides possibilities to apply alternatives but due to a few reasons, detention is still practiced and in some states, is applied more often than alternatives. A change of attitude and allocation of resources and trained personnel is required to achieve positive results. States should develop effective systems of alternatives, start producing proper nationwide statistics, and train their officials in the application of alternatives to

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<sup>38</sup> There are Alternatives, A handbook for preventing unnecessary immigration detention, International Detention Coalition 2011, page 034.

<sup>39</sup> Fundamental Rights Agency (FRA) annual report 2012, page 60, Table 1.6.

<sup>40</sup> PICUM submission to the OHCHR Special Rapporteur on Migrants, Thematic report on detention, 26 January, 2012, p.4

<sup>41</sup> Act of 13 June 2003 on Granting Protection to Aliens.

<sup>42</sup> The Aliens' Law, Article 114, para.3.

<sup>43</sup> *Ibid*, Article 115, para.1.

<sup>44</sup> PICUM submission to the OHCHR Special Rapporteur on Migrants, Thematic report on detention, 26 January, 2012

<sup>45</sup> *Ibid*.

<sup>46</sup> *Ibid*.

detention. Officials in charge of the process should be encouraged to apply alternatives and avoid the detention of children.

## **5. Concluding remarks and recommendations**

46. There is compelling evidence that immigration detention of children has a detrimental impact on the mental and physical health of those detained. The detention of children violates their rights, and deprives them of access to general education and proper healthcare. The impact of detention on children is similar to its effect on adults. However, because of the child's particular vulnerabilities, detention may cause additional problems for children's developmental and physical health. The detention environment itself impacts on children's development and psychosocial health. The prison-like environment, the lack of freedom and the constant surveillance and control is confusing and intimidating<sup>47</sup>.

47. As it transpires, the situation varies from country to country and no uniform approach has been developed so far. While a few states are taking measures to avoid the unnecessary detention of children and opt for alternatives, the majority of states still resort to detention while applying different policies and using specialised institutions.

48. The laws of most of the Council of Europe member states prohibit the detention of children and provide the possibility of applying alternatives. Nevertheless, the majority of these states are not applying the alternatives in practice or alternatives are used only rarely. In some states, deficient legislation is supplemented with wrong policies and practice. In my opinion, the situation requires concerted efforts from the state authorities to put an end to the detention of migrant children and based on the practices described in this report, start developing effective models for the application of alternatives to detention.

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<sup>47</sup> Impacts of Detention on Children, Chapter 5, page 48.