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Children without parental care: urgent need for action

Report[1]
Social, Health and Family Affairs Committee
Rapporteur: Mr Pieter OMTZIGT, Netherlands

Summary

The Parliamentary Assembly notes with satisfaction that much progress has been made in Council of Europe member states over past decades with regard to children's rights and well-being. However, in a globalised context and notably in the current times of economic crisis, an increasing number of children are facing "new risks", such as becoming victims of child trafficking or being left behind by migrant parents.

Whenever the separation of children from their original family cannot be prevented, alternative care arrangements should always be in the best interests of the child, ideally in settings which are the closest possible to a family environment, such as foster care. Further efforts in this respect should be made through the implementation of committed programmes in favour of the "deinstitutionalisation" of childcare arrangements. These should follow a comprehensive approach, including preventing children being separated from their original family, transferring children from residential care to more personalised care arrangements and developing family-type care arrangements within existing institutional systems.

1. Reference to committee: Doc. 11571, Reference 3443 of 29 May 2008.

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A. Draft resolution[2]

1. At a time when the world is celebrating the 20th anniversary of the United Nations Convention on the Rights of the Child, adopted in November 1989, the Parliamentary Assembly invites member states to renew the attention paid to the rights of children without parental care and urges them to better co-ordinate and strengthen relevant policies at European and national level and to follow the "best interests of the child" as the main guiding principle.

2. The original family is under normal circumstances the best place for a child. Public policies undertaken with a view to the well-being of children should therefore, above all, aim at maintaining the child within its original family context. Only if circumstances do not allow for this stability, should alternative care arrangements be made along the lines set out below.

3. With regard to the plight of children without parental care, the Assembly notably welcomes the recent adoption, in November 2009, of the United Nations Guidelines for the Alternative Care of Children, which emphasise the necessity of ensuring that children have a stable home. The guidelines also restrict the use of residential care to cases where it is necessary and appropriate for the individual child, whilst recommending that alternative care for young children be provided in family-based settings.

4. At Council of Europe level, the Parliamentary Assembly welcomes the strong commitment of member states to children's rights, notably through the programme "Building a Europe for and with children", its Strategy 2009-2011, as well as through current specific activities on child-friendly social services, health-care and justice systems. It also welcomes the pragmatic approach followed in certain country-specific joint programmes with the European Commission and considers that they should be pursued and multiplied wherever appropriate.

5. Despite far-reaching efforts made with a view to improving the situation of children without parental care at national, European and international level, the Assembly considers that there should be a renewed sense of urgency for the matter in various contexts, and that notably two challenges need to be addressed: first, the increasing number of children facing 'new risks' in a globalised world and in a situation of economic crisis, such as child trafficking, children left behind by migrating parents or street children, and second, the lack of committed action for the continuation and reinforcement of the de-institutionalisation process of child-care arrangements.

6. The Assembly therefore calls on member states to:

6.1. follow and support a comprehensive, co-operative and innovative approach at national and European level, based on a thorough analysis of all possible situations of abandoned children in a globalised context;

6.2. promote alternative child-care arrangements of high quality in a differentiated manner and notably those which are as close as possible to a family environment and therefore considered as most favourable for a child's personal development, such as foster care;

6.3. address the issue of children without parental care at all possible levels of intervention by:

6.3.1. implementing new international standards, such as the recent United Nations Guidelines for the Alternative Care of Children, through the development of national action plans;

6.3.2. continuing to implement existing European standards, notably the Committee of Ministers' Recommendation Rec(2005)5 on the rights of children living in residential institutions, through relevant national action;

6.3.3. preparing the definition of national policies in favour of children without parental care by ensuring a systematic collection of data at national level;

6.3.4. efficiently implementing adequate and innovative policies at national level by drawing upon 'best practice' experience of other countries and by regularly monitoring and reporting on progress made;

6.3.5. actively contributing to the development of new standards at European level, where required.

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2. Draft resolution adopted unanimously by the committee on 27 April 2010.

7. As regards the two main challenges identified, namely the 'new risks' children are facing and the process of further de-institutionalisation of child-care arrangements, especially when it comes to the implementation of common standards through national policies, the Assembly calls on member states to:

7.1. give appropriate attention to recently increasing phenomena, such as child trafficking, children left behind by migrating parents or street children, by undertaking specific national studies regarding the issues identified as priorities by each member state;

7.2. facilitate co-ordinated European action and follow-up regarding various situations threatening children by actively participating in relevant exchange mechanisms at European and international level (Council of Europe, United Nations bodies, European Union bodies, NGOs), also with a view to identifying the need for joint action involving several member states, or by participating in joint programmes of these bodies dedicated to the situations of individual countries;

7.3. as an integral part of national actions plans for the implementation of the United Nations Guidelines for the Alternative Care of Children, follow systematic and innovative approaches of de-institutionalisation based on a broad understanding of this concept, by:

7.3.1. taking into consideration the different dimensions of the concept in national de-institutionalisation processes

7.3.1.1. as part of prevention strategies;

7.3.1.2. as a way of re-structuring residential care systems;

7.3.1.3. as a way of removing children from residential care into more favourable child-care arrangements;

7.3.2. drawing on recent and very substantial work regarding the design and management of national processes of de-institutionalisation, notably the approach suggested in the Good Practice Guide on "De-institutionalising and Transforming Children's Services" published by the European Commission Daphne Programme in February 2010;

7.3.3. undertaking national studies on the progress made on de-institutionalisation of child-care arrangements in recent years, ensuring a continuous follow-up of future policies and their impacts and actively contributing to any exchange of information and future standard-setting activity to be undertaken at Council of Europe level;

7.3.4. developing effective national strategies preventing children from being separated from their biological families by strengthening the families' capacity to care for, protect and empower their children, by providing relevant training to professionals in social services and by strengthening the participation of children and families in decisions concerning them;

7.3.5. developing national policies with a view to restructuring residential care systems towards increasingly small-scale, family-type units found to be more beneficial for a child's development in comparison to large-scale institutions;

7.3.6. promoting national policies with a view to strengthening alternative care arrangements such as foster care, which are considered more favourable to a child's development.

8. The Assembly further invites the national parliaments to:

8.1. raise awareness, in their respective countries, for the various threats concerning children without parental care and the main political challenges identified above, and stimulate governmental action in this field;

8.2. promote in particular, at national level, the proposals to undertake specific national studies concerning certain categories of children at risk, and to develop national action plans for the implementation of the United Nations Guidelines for the Alternative Care of Children with a view to launching systematic processes of de-institutionalisation at national level.

B. Draft recommendation[3]

1. Referring to its Resolution … on children without parental care: urgent need for action, the Parliamentary Assembly draws attention to the fact that, despite numerous efforts undertaken with a view to improving the situation of children deprived of parental care at national, European and international level, there should be a new sense of urgency for their situation in the current context of globalisation and the economic crisis. This should also be done with regard to national policies which are not sufficiently oriented towards an approach promoting the de-institutionalisation of childcare, notwithstanding that certain measures may have been found to be in the "best interests of the child" as enshrined as a guiding principle in the United Nations Convention on the Rights of the Child.

2. The Assembly therefore calls on the Committee of Ministers to:

2.1. 1 complete and consolidate Council of Europe activities undertaken under the current programme "Building a Europe for and with children" and its Strategy 2009-2011 by:

2.1.1. focusing on the issue of de-institutionalisation of child care according to a broad understanding of the concept, including the development of prevention strategies, the restructuring of residential care and the transfer of children to arrangements which are more favourable to their personal development;

2.1.2. mandating the competent intergovernmental bodies to prepare a European practice report presenting the progress made as regards the de-institutionalisation of child care in Council of Europe member states and to promote, amongst member states, the preparation of national studies which could develop synergies with such a European reporting process;

2.1.3. mandating the same intergovernmental bodies to prepare a draft recommendation of the Committee of Ministers on the de-institutionalisation of alternative childcare, taking into consideration the United Nations Guidelines for the Alternative Care of Children, adopted in November 2009, and the Good Practice Guide on "De-institutionalising and Transforming Children's Services" recently published by the European Commission, as well as the Committee of Ministers Recommendation CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities;

2.1.4. promoting, in the meantime, the implementation of existing international instruments, notably the recent United Nations Guidelines for the Alternative Care of Children, also by calling upon member states involved in relevant intergovernmental activities to prepare national action plans;

2.1.5. continuing to deploy and strengthen specific child-related activities which can contribute to consolidating the situation of children without parental care, such as those concerning child-friendly social services, health-care and justice systems;

2.1.6. launching a pan-European campaign to stop sexual violence against children as a measure contributing to the prevention of children being separated from their parents;

2.1.7. multiplying pragmatic approaches aimed at supporting the implementation of European and international standards at national level, such as those pursued in recent years by the Joint Council of Europe/European Union programme "Enforcing the rights of the child and re-integrating children at risk into society, Russia 2007-2008";

2.2. with regard to any future Council of Europe reporting or standard-setting activities, continue to closely co-operate with other European and international organisations undertaking substantial work regarding various groups of children without parental care or adequate alternative child-care arrangements, such as the United Nations and its agencies (notably Unicef), the European Commission, as well as European networks such as Eurochild, SOS KDI or Save the Children.

3. Draft recommendation adopted unanimously by the committee on 27 April 2010.

C. Explanatory memorandum by Mr Omtzigt, rapporteur

1. Introduction

1. The present report[4] is motivated by the rapporteur's concern about the persistently large number of children without parental care, the new problems they are facing in a globalised context, the lack of appropriate alternative care and the limited efforts being made to reduce the numbers of children placed in large institutions in favour of other care arrangements. At a time when the world is celebrating the 20th anniversary of the United Nations Convention on the Rights of the Child (UNCRC),[5] the main objective is to renew the attention paid to the rights of children without parental care and to urge member states to better co-ordinate and strengthen relevant policies at European and national level. There is urgent need for action, given the fact that the well-being of many children is not yet ensured, despite the major achievements of the past decades and the positive approach that can be observed across Europe. As already affirmed by the UNCRC, in its Article 3, all political, legal or administrative actions concerning children should continue to focus on the best interests of the child as a primary consideration.

2. Even though priority should clearly be given to future action, the rapporteur wishes to build on previous texts of the Parliamentary Assembly, namely Recommendation 1601 (2003) on improving the lot of abandoned children in institutions, Recommendation 1698 (2005) on the rights of children in institutions: follow-up to Recommendation 1601 (2003) of the Parliamentary Assembly, Resolution 1587 (2007) on the situation of children living in post-conflict zones in the Balkans, and Recommendation 1864 (2009) on promoting the participation by children in decisions affecting them. He further welcomes recent activities undertaken in the intergovernmental field leading up to Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions, as well as the follow-up work undertaken, such as the report on the implementation of this recommendation, edited as recently as 2009. Other documents to note are the European Convention on the Adoption of Children (Revised) (opened for signature in 2008, but not yet entered into force) (CETS No. 202) and the most recent Recommendation of the Committee of Ministers CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities.

3. Despite the efforts made at European level, the lack of quantitative and qualitative data on children without parental care in Europe is very often one of the main constraints to effective intervention and evidence-based policymaking, as well as to monitoring the implementation and effectiveness of policies in favour of these vulnerable children. Data is not collected in a consistent way across Europe and various definitions are used when it comes to designating orphans or alternative care.[6] On these grounds and for the purpose of this report, national experts from a number of countries were ready to share their knowledge and experience with regard to the situation of children without parental care and existing alternative care arrangements in their country in order to provide practical examples for the arguments raised.[7] Of course, more intensive research will be required at national level when it comes to the future implementation of co-ordinated European policies.

4. The rapporteur believes that the Council of Europe should pursue its efforts to improve the plight of children without parental care. Whilst aware of the complexity and multitude of problematic situations that children can find themselves in, he would notably like to draw attention to two main issues: the "new risks" encountered by many children in a globalised world and the need for further deinstitutionalisation of childcare in Europe. The Assembly should contribute to raising a renewed sense of urgency for these issues amongst member states with a view to reinforcing action at the national level and co-ordinating approaches at international and European level.

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4. The rapporteur wishes to thank the experts of the World Initiative for Orphans Foundation (WIO) from the Netherlands for their contribution. WIO, founded in 2004, strives to guard the fundamental needs of children without parental care worldwide by engaging in advocacy, education, problem analysis, and the development of solutions based on sound research that can be applied by state authorities and NGOs.

5. Adopted by the United Nations General Assembly on 20 November 1989.

6. Eurochild: *Children in alternative care, national surveys*, second edition, January 2010.

7. National experts, notably from specialised ministries from Austria, Bulgaria, the Czech Republic, Germany, Lithuania, Serbia and Sweden, actively contributed to the survey and responded to the questionnaire specially designed for this purpose.

2. Children's right to a family environment

5. The family plays the role of the primary caregiver for all children. It provides the immediate environment conducive to the growth and development of the child. Ideally, it provides maximum opportunities for the fulfilment of the emotional, physical and developmental needs of the child.[8] Again the UNCRC of 1989 states that "the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community" and further that "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".[9]

6. The biological family is ideally the best place for a child. But there are circumstances that deprive children of the possibility of growing up within their own families. Hence the above-cited United Nations convention includes various "alternative care arrangements", notably foster care, adoption and institutional or residential care. These can be options whenever an existing family is unable to provide an appropriate environment for a child, for example in case of the death of one or both parents, if a child is being exposed to abuse and violence within the family or if the biological parents, for various health or economic reasons, are not in a position to live up to their responsibilities. For such cases, the UNCRC considers that separation from its parents may be necessary in the best interests of the child.

7. The United Nations convention recognises that children are entitled to grow up in a family environment and should therefore be placed in institutions only as a last resort. The United Nations Guidelines for the Alternative Care of Children, as adopted by the United Nations General Assembly in November 2009, are more precise, stating that "decisions regarding children in alternative care … should have due regard for the importance of ensuring children a stable home and of meeting their basic need for safe and continuous attachment to their caregivers, with permanency generally being a key goal". It further says that the "use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned, and in his/her best interests" and that "alternative care for young children, especially those under the age of 3 years, should be provided in family-based settings".[10]

8. The world community has agreed in a number of declarations that the family is the fundamental group unit in society. The United Nations convention and the European Convention on Human Rights emphasise the importance of protecting the family circle as the social unit that nurtures most children to adulthood. At the level of European standards, the European Social Charter (revised) explicitly refers to the protection of children and represents the main legal text establishing social, legal and economic rights for all children. It protects the rights of children as family members: "The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development".

3. Situation of children without parental care and risks they encounter

9. Children may be without parental care for a variety of reasons and not just as a result of their parents' death. The main root causes leading to children being deprived of family care are poverty, discrimination, HIV/ Aids, violence and wars or emergency situations. To identify the causes leading to the specific situation of children, they must be considered in their broader context, as a range of socio-political, cultural and economic factors impacting on children and their families' lives.[11] The main groups of children without parental care are presented here, according to the categories widely used by European researchers and organisations. This overview will be used as a basis to identify some of the appropriate policy responses.

3.1. Orphans and abandoned children

10. Orphans are, by definition, the first group of children exposed to the risk of finding themselves without parental care. At international and European level, various definitions are in use to identify orphans. In the common use, an orphan does not have any surviving parent to care for him or her. However, the United Nations Children's Fund (UNICEF), the Joint United Nations Programme on HIV and AIDS (UNAIDS), and other organisations label any child that has lost one parent as an orphan. Using this definition, a maternal

8. World Health Organization: *Towards a better tomorrow*.
9. United Nations Convention on the Rights of the Child, 1989.
10. United Nations Guidelines for the Alternative Care of Children, adopted by the United Nations General Assembly on 20 November 2009.
11. "Children without parental care or at risk of losing it", SOS KDI recommendations – background paper, 7 February 2008.

orphan is a child whose mother has died, a paternal orphan is a child whose father has died, and a double orphan has lost both parents. The variety of definitions is also reflected in national legislation as replies to the survey undertaken have shown.

11. The concept of "social orphans" is notably known in some of the eastern European countries, for children whose parents are deprived of their parental rights for socio-economic reasons (currently concerning over 300 000 children in Russia and more than 50 000 in Ukraine, for example). Another group of children not easily classified into any of the categories are the children who are voluntarily abandoned by their parents as they are unable to face their responsibilities for various reasons. This is very often the case with disabled children, who were placed in large institutions well into the 1990s, especially in eastern European countries (Bulgaria and Romania, for example). Fortunately, numerous measures to improve their situation have been taken since and some of the countries have undergone a true programmatic change, thanks also to the support and intervention of international and European organisations.

3.2. Street children

12. According to Recommendation 253 (2008) of the Congress of Local and Regional Authorities of the Council of Europe, the term "street children" refers to any children who live and/or work on the street. This group includes homeless children and unaccompanied foreign minors. It also includes those who, while normally living with their parents or in a social welfare institution, are nevertheless in a situation where they are not directly protected or supervised by responsible adults. Some street children live or work on the streets and still maintain certain ties with their families, others do not have such contacts.

13. There is almost no reliable data regarding the number of street children and their identity in member states[12] and partial data is collected in various contexts. In Lithuania, for example, the only statistical data regarding children living or working on the streets concerns children who are brought to police stations because of begging or vagrancy. As regards Sweden, the association Save the Children published in 2009 a study on youngsters who run away or are thrown out of their homes.

14. The lack of systematic data collection is partly due to the fact that these children do not clearly fit into statistical categories. Nevertheless, there is agreement that the issue has recently become one of major significance in a number of European countries and a serious challenge to towns and cities whose authorities must find ways to prevent and counteract the marginalisation and social exclusion of large numbers of children and young people.[13]

3.3. Children separated from biological parents following abuse and neglect

15. Regarding children separated from their biological parents for reasons of abuse and neglect, a similar approach can be found in national legislation across Europe. According to German law, decisions to separate a child from his or her parents are only possible if there is no other possibility to protect them from danger. Likewise, in Bulgaria, raising the child in the family environment is a main principle in the Child Protection Act and placement of the child outside the family is done as a protection measure after exhausting all other possibilities, except for cases where an urgent removal is required. In Serbia, the number of abused and neglected children known to the system of social welfare has increased considerably in past years, not necessarily because of an increase in victims, but rather due to the fact that there is greater awareness of the issue. The problem of child abuse and neglect within the family exists all over Europe and there is increasing awareness in all countries. At Council of Europe level, the launch of a pan-European campaign to stop sexual violence against children is planned for November 2010. Given the extent of the problem and the need to provide comprehensive policy responses, the Assembly should strongly support this initiative.

3.4. Trafficked children

16. In Europe, different legal approaches are adopted when addressing the issue of child trafficking. Less than half of the Council of Europe member states have included a distinct legal definition of child trafficking in national law (23 out of 47),[14] although the issue of child trafficking is considered a burning problem by most European countries. Information was obtained from Lithuania where child trafficking is experienced due to the state's economic and social situation and geographical position (as a transit country), but where the scope of

12. Council of Europe: Building a Europe for and with Children 2006-2008.
13. Recommendation 253 (2008) on the social reintegration of children living and/or working on the streets.
14. UNICEF Innocenti Research Centre: *Child trafficking in Europe: a broad vision to put children first*, 2008.

the problem seems to be difficult to assess. Bulgaria and the Czech Republic indicate that they too are confronted with child trafficking. The Czech Ministry of Labour and Social Affairs believes that there is a lack of fast information exchange mechanisms among countries regarding the victims.

17. In the Council of Europe Convention on Action against Trafficking in Human Beings,[15] special provisions for children are included throughout. The preamble recognises that "all actions or initiatives against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child-rights approach". The convention further calls upon states parties to "take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them". However, only 26 of the 47 Council of Europe member states have ratified the convention. Only recently, the Assembly has once again insisted on the importance of the ratification of the convention by all member states and of subsequent action to be taken at European and national level.[16]

18. Recent studies confirm that there seems to be a general tendency of child trafficking from eastern to western countries for cheap labour, child prostitution or illegal international adoption. When trying to access more specific information, one can observe a dramatic absence of harmonised and systematic data collection, analysis, dissemination and exchange at all levels. Again, this seems to be an obstacle for specific national policy responses, given that only nine countries in Europe have developed national action plans that address child trafficking specifically and comprehensively.[17]

3.5. Children left behind in their country of origin

19. According to available data, the new European Union member states in particular are affected by the considerable migration of workers. The situation of children who are left behind on their own in the country of origin when parents emigrate to other countries in search of a job is an issue of great concern. Although there are comprehensive policies for improving the living conditions and education of children who have migrated with their parents, less attention has so far been paid to the children who are left behind. The migration of parents abroad for work is a social phenomenon with a complex impact on the dynamics and functionality of the family, as well as on society as a whole. Children in such situations certainly belong to the most vulnerable groups.[18] Nevertheless, this issue has not been addressed sufficiently either by existing instruments, such as the recent Committee of Ministers Recommendation CM/Rec(2008)4 on strengthening the integration of children of migrants and of immigrant background, or by relevant national policies.

20. Lithuania, affected by relatively high rates of migration of workers just like other new European Union member states, was ready to share its data on children left behind by migrating parents, which was collected by municipal children's rights protection services. According to their information, as of 31 December 2008, temporary custody was determined for 1 952 children (971 boys and 981 girls) at the request of parents who had left Lithuania. The estimated number of children in Romania affected by their parents' migration at the time of research was about 350 000; 126 000 of these children are affected by the migration abroad of both parents and about half of them are less than 10 years of age. Some 16% of children with both parents abroad spent more than a year without them, while 3% had to live parentless for over four years.[19]

3.6. Unaccompanied migrant minors

21. Some unaccompanied children seek asylum or protection for fear of persecution or because of human rights violations, armed conflicts or disturbances in their own country. Other unaccompanied children become victims of trafficking for sexual or other types of exploitation. Yet others travel to the more affluent European countries to escape serious deprivation or to look for better living conditions. In some cases, unaccompanied children seek reunification with family members already present in a given country. A study by ChildONEurope, conducted from the destination country perspective, shows that a total number of 29 130 unaccompanied children were reported in Europe in 2002. There do not seem to be recent reliable statistics on how many unaccompanied migrant children enter Europe every year. Asylum statistics, although they do not account for all children, are indicative of the proportion of unaccompanied children as compared to other

15. Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005/2008).
16. Recommendation 1895 (2010) and Resolution 1702 (2010) on action against trafficking in human beings: promoting the Council of Europe convention.
17. UNICEF Innocenti Research Centre: *Child trafficking in Europe: a broad vision to put children first*, 2008.
18. Rovana Plumb, Member of the European Parliament, Committee on Employment and Social Affairs, Children of Immigrants Debate, 10 March 2009.
19. UNICEF Romania, 2008.

asylum seekers. According to the United Nations High Commissioner for Refugees (UNHCR), over the past ten years unaccompanied children have consistently made up 4% or 5% of all asylum applicants in the European Union.

22. Recommendation CM/Rec(2007)9 of the Committee of Ministers[20] proposes measures in favour of unaccompanied migrant minors who are outside their country of origin, regardless of their status, irrespective of the reasons for their migration and whether or not they are asylum seekers. The notion of "unaccompanied migrant minors" includes separated children and minors who have been left to their own devices after entering the territory of a member state. They are under the age of 18, have generally been separated from both parents and other relatives and are not in the care of another adult specially appointed for this purpose.

23. With regard to this focus group, Serbia, for example, established a working unit under a specific placement centre that accommodates young foreign nationals who enter Serbia illegally and are not accompanied by their parents. The Czech Republic has also established such a special facility as it is facing problems with children from other European Union countries (Bulgaria, Slovakia and Romania). The Swedish Migration Board is under a legal obligation to search for family members of unaccompanied minors who have applied for asylum in Sweden, often a difficult task due to the fact that most asylum-seeking minors do not present any identity documents or details of their families' whereabouts.

3.7. Children placed in correctional or penal facilities as a result of an administrative or judicial decision[21]

24. There is increasing concern about the practice of depriving children of their liberty in order to provide them with protection, care or treatment in a secure setting. The use of so-called "protective custody", which can play a positive role in certain circumstances, can also mask inadequately developed systems of social welfare and care provision. According to the Council of Europe Commissioner for Human Rights, protective custody is compatible with the European Convention on Human Rights only where it serves the purpose of "educational supervision".[22] It should, regardless of its purpose, only be used as a last resort once other options have been examined (family support services, foster care and temporary shelters). If it cannot be avoided, important measures should include seeking the consent of the child in order to prevent arbitrary placement, and regular review of the placement.

4. National policies in Council of Europe member states

4.1. Prevention of the loss of parental care

25. International and European instruments defending children's rights to parental care and a family environment also govern the obligations of states to ensure that children are not separated from their parents without a due judicial process, and to provide support for parents and the family unit. Many European countries have built up comprehensive family welfare and childcare systems, including health insurance and financial security in case of illness, disability and old age, as well as for families with young children.

26. Despite these childcare systems, neglect within the family environment occurs and children need to be taken care of by social services. In this context, poverty and material deprivation clearly continue to be reasons for, or at least underlying causes of, placement of children in institutions.[23] Moreover, the involvement of children and parents in decision-making processes concerning them should be further strengthened in the future. For this purpose, the Assembly adopted Recommendation 1864 (2009) on promoting the participation by children in decisions affecting them.

27. The Council of Europe has addressed these challenges on several occasions, such as in 2006, when the Committee of Ministers adopted Recommendation Rec(2006)19 to member states on policy to support positive parenting. Current activities at Council of Europe level are aimed at accompanying and supporting relevant prevention policies, such as the preparation of guidelines on child-friendly social services or on child-friendly justice (adoption of the latter expected in November 2010).

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20. Recommendation CM/Rec(2007)9 on life projects for unaccompanied migrant minors.
21. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126, 1987/1989); Committee of Ministers Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.
22. "Children and juvenile justice: proposals for improvements", by Thomas Hammarberg, Commissioner for Human Rights.
23. Eurochild: *Children in alternative care, national surveys*, second edition, January 2010.

4.2. Alternative care arrangements

28. According to Article 20 of the United Nations Convention on the Rights of the Child (UNCRC), "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state. States Parties shall in accordance with their national laws ensure alternative care for such a child. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children".[24]

Foster care

29. It is generally agreed that foster family care is the least restrictive and most nurturing out-of-home placement for children in need. A foster family can be one which is not related to the child concerned, but can also be part of the child's direct family context. Foster care is an attractive choice for out-of-home placement as it provides the child with an alternative family, it is potentially capable of accommodating the different needs of children due to its flexibility and, finally, it is cost effective as it is estimated, for example, in western countries to represent only a fraction of the cost of residential care.[25] In some cases, the foster family may become a permanent solution for those children who cannot be reunited with their parents. As early as 1977, in its resolution on the placement of children, the Committee of Ministers of the Council of Europe called upon member states to promote foster care as being frequently the best mode of temporary placement, especially for young children.[26]

30. Certain countries have made particular efforts in recent years to further promote foster care as an alternative care arrangement. Amongst countries surveyed, Serbia, for example, indicates positive results in this field according to the number of foster care services and the increased level of efforts invested in strengthening and enhancing foster care services. Measures taken included a public campaign for foster care promotion, a network of foster care families, as well as a number of training courses for relevant social services. In the Czech Republic, despite a strong tradition of institutional care, foster care is also recognised by law as the best mode of temporary placement for children without parental care. Therefore, support for foster care was increased and the accompanying services for foster families were improved. Bulgaria also boasts enormous progress in this field. If in 2002 the number of children raised by relatives other than parents was only 878, their number had already reached 5 919 in 2008.

National and international adoption

31. Adoption is sometimes seen as a way to fulfil one's wish for a child. However, one must not forget that adoption is first and foremost a service for children and undertaken in the best interests of the child (again, according to the UNCRC). The European Convention on the Adoption of Children (Revised) (opened for signature in November 2008) deals essentially with national adoption, and therefore complements the relevant international standards, principally the Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption ("The Hague Convention on Adoption of 1993").

32. In its Recommendation 1828 (2008)on the disappearance of newborn babies for illegal adoption in Europe, the Assembly firmly condemned all practices designed to steal or sell newborn babies, as well as all other forms of child trafficking. It drew attention to the fact that children are increasingly traded on a real "marketplace", notably to the detriment of poorer countries. Such practices were said to be all the easier due to the absence of strict rules on registration of birth in some countries, although the "fine line" between international adoption and child trafficking also concerns older children. In order to continue the fight against mercantile practices of child adoption, member states of the Council of Europe should also subscribe to the principles laid down by The Hague Convention on Adoption of 1993, which to date has been signed or ratified by only 36 of the 47 Council of Europe member states.

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24. Article 20, United Nations Convention on the Rights of the Child (1989). *Kafala(h)* = Childcare for the purpose of protection, education and subsistence without creating any formal parental link. Source: "Care (*kafala*) of abandoned children", Minister of Justice of the Kingdom of Morocco, January 2005.
25. "A decade of transition", UNICEF, 2001.
26. Committee of Ministers Resolution (77) 33 on placement of children.

Institutional care

33. It can be roughly estimated that around 1% of children – approximately 1 million children – are taken into public care across the European Union, although figures may vary from one country to another (examples: Latvia 2.2%, Romania 1.6%, Sweden 0.66%). It is widely recognised that infants under 3 years of age in institutional care for several months suffer irreversible damage to their brain development, as their fundamental need for attachment is not met. Nonetheless, and although child protection law prohibits this, the practice of placing young children in institutions (such as orphanages, maternity wards or paediatric hospitals) still exists in several European countries. As a result of a procedural void, many children are furthermore left without any identification papers, leaving them particularly vulnerable to exploitation, including trafficking. A 2005 study of the World Health Organization estimated that about 22 000 children under 3 were in institutional care across Europe (figures of 2003).[27]

34. According to other sources, in central and eastern Europe alone, almost 1.5 million children live in public care. In some countries, the annual number of "children left without parental care" has more than doubled over the last ten years, despite falling birth-rates.[28] The vast majority of children in institutions still have biological parents who are alive, and only a small percentage of them are orphans. The social and economic instability of the early transition period put family structures under particular pressure, and in the absence of preventive measures and support mechanisms, led to an increase in the number of children left without parental care and being placed in formal care, usually in institutions. In many countries these trends have also continued in the period of economic recovery. They are extremely worrying and suggest that state support of families in difficulty is still inadequate in many cases.[29]

35. Despite the identification of these basic figures, existing data on the scope of residential care in Europe is fragmented. Official data is collected in various ways by different states and even within the state administrations, where responsibilities are often divided between several ministries or official bodies. International comparisons are also difficult due to variable definitions of target groups, type of care, reasons for out-of-home placement, legal status of children, etc.[30]

4.3. Deinstitutionalisation of childcare

36. The so-called "deinstitutionalisation" of childcare in favour of other arrangements is nowadays addressed at different levels. The notion does not only refer to the simple "removal" of children from residential care in favour of other alternative care arrangements such as foster families or adoption. Deinstitutionalisation is essentially the process of moving away from a care system based on large institutions, not necessarily by closing them down, but also by developing modern and effective care systems for children and families. This reflects a global concern to redefine residential care systems and to support family-based care models, including prevention work with biological families.[31]

37. In accordance with this broad understanding, the concept of deinstitutionalisation first of all encompasses any measures undertaken by relevant social services enabling children to return to their original family environment in better circumstances, and should therefore be part of preventive strategies. Secondly, it can describe any efforts undertaken to place children in alternative care arrangements other than residential care. Finally, the concept can be seen as a complete restructuring of institutional care systems. This tendency was led by some of the northern countries in previous decades, but can nowadays be observed in other states of western Europe as well as central and eastern Europe, where increasing efforts are made to create family-type environments in public institutions. Given the fact that for such a pressing matter as children without parental care innovative approaches are welcome, the rapporteur would like to address the issue of deinstitutionalisation in this differentiated way.

38. In this context, the rapporteur would like to draw attention to the very recent work undertaken by the European Commission and other partners with regard to central and eastern Europe and the Commonwealth of Independent States (CEE/CIS), the result of which is an excellent "Guide to good practice" concerning the deinstitutionalisation of childcare.[32] This guide firstly defines the main preconditions for successful deinstitutionalisation, such as the concern for the best interests of the child as a motivation (instead of cost-

27. Eurochild: *Children in alternative care, national surveys*, second edition, January 2010.
28. UNICEF, "The state of the world's children", 2005.
29. *Innocenti Social Monitor*, UNICEF, 2009.
30. "Children in institutions: prevention and alternative care", report by Mr Bragi Gudbrandsson (Iceland), as approved by the European Committee for Social Cohesion (CDCS) of the Council of Europe, May 2004.
31. "Children without parental care or at risk of losing it", SOS KDI recommendations – background paper, 7 February 2008.

cutting intentions) or the capacity to welcome children as individuals in traumatic situations in a sensitive and appropriate way. Secondly, it addresses recommendations for policy makers with a view to designing childcare policies in general, and finally presents a 10-step approach to deinstitutionalisation containing very pragmatic measures and indicators. Another interesting text is the above-mentioned Recommendation Rec(2010)2 of the Committee of Ministers of the Council of Europe on deinstitutionalisation and community living of children with disabilities, which develops important aspects to be considered when it comes to the requirement of well-planned and structured transition processes related to deinstitutionalisation. Both documents should serve as central references when it comes to further work on the issue at European or national level.

5. Conclusions

39. The present report shows that, on the one hand, children in Europe today can be deprived of parental care due to numerous causes and situations. Many problems they are facing have been known for a long time, others are new phenomena occurring or increasing in a globalised context where most countries are currently confronted with the economic crisis to some extent. On the other hand, research undertaken for this report has shown that more efforts and resources could be deployed to develop and strengthen childcare systems as close as possible to family settings and following the best interests of the child as the main guiding principle. With a view to tackling these two sets of problems, a comprehensive, co-operative and innovative approach at European and national level is needed.

40. On these grounds and first of all, the overall objectives should be to:

i. follow a broad approach, based on a fine analysis of all possible situations of abandoned children in a globalised context;

ii. promote high quality childcare arrangements in a comprehensive and differentiated manner and notably those considered as most favourable for a child's personal development;

iii. address the issue of children without parental care at all possible levels of intervention:

- preventing the abandoning of children by strengthening the capacity of families to care for, protect and empower their children, by providing relevant training to professionals in social services and by strengthening the participation of children and families in decisions concerning them;
- systematic data collection and appropriate mechanisms for the exchange of information at international, European and national level;
- implementation of existing international standards at European level and development of new standards where required;
- focused policy making at international, European and national level, including the development of quality standards for children in out-of-home care at national level, corresponding to a broad approach to the issue of deinstitutionalisation;
- commitment to the implementation of policies and regular monitoring of progress made at all levels.

41. Recently increasing phenomena, such as street children, child trafficking or children left behind by migrating parents, should be further analysed and relevant and co-ordinated policy responses provided at national and European level. National and European work should also be pursued on topical issues where international standards already exist, but need to be better implemented, such as the field of international adoption. In order to provide for a full understanding of these complex issues, which would allow for the development and implementation of focused and co-ordinated policies at national level, the rapporteur would recommend that specific studies on children without parental care be carried out in each country, not only highlighting national situations but also relevant bi- or multilateral interdependences with other European countries. Efforts made in respect of the present report have shown that it is very difficult to access coherent national data on children without parental care.

32. European Commission Daphne Programme, WHO Regional Office and University of Birmingham: "De-Institutionalizing and transforming children's services: a guide to good practice", Brussels, February 2010.

42. A new and more far-reaching approach should be followed when it comes to the situation of children in institutions and the quality standards of residential care. There is a lack of focused and committed action in favour of alternative care arrangements to institutional care, such as foster care, which is generally considered to be the solution closest to a child's own family context. The development of new types of institutional care (small-size institutions, family-type settings, etc.) should also be further explored. Considering deinstitutionalisation as a long-term process which is to be thoroughly planned and structured, the rapporteur strongly recommends taking the above-mentioned approaches and methodologies recently developed at European Commission and Council of Europe level as starting points for any future national action. Member states should further be prepared to regularly report on progress made regarding the deinstitutionalisation of childcare in their respective countries and in the context of relevant monitoring procedures to be set up at a European level.

43. The lines set out here should also be followed at Council of Europe level when it comes to future intergovernmental work on children without parental care. The focus suggested is entirely coherent with the current programme Building a Europe For and With Children and its Strategy 2009-2011. In the future, however, not only the situation of children residing in institutions and the quality of institutional care should be looked at, but more visible efforts should also be made towards the deinstitutionalisation of childcare in Europe. Furthermore, the Assembly should support and promote specific Council of Europe action, which can be useful to consolidate the situation of children without parental care, such as activities related to child-friendly social services, health care or justice systems. In the same spirit, the upcoming launch of a pan-European campaign to stop sexual violence against children (November 2010) could also be a measure supportive of children at risk of losing their parental care.

44. As in individual studies so far, data on children without parental care should generally be collected more systematically by member states, through specific national surveys as suggested above, and at European level wherever appropriate. Any data collected should be presented in an accessible manner so as to be operational as a source of information and European "best practice" when it comes to public action to be taken. A more co-ordinated action at Council of Europe level, for example by linking up different monitoring mechanisms (European Convention on Human Rights, European Social Charter, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, European Charter of Local Self-Government), could be a first step in this direction.

45. Any action at Council of Europe level should be undertaken in close co-operation with European and international organisations that have already done substantial work on the issue, such as the United Nations and its agencies (UNICEF), the European Commission, as well as networks such as Eurochild, SOS KDI, Save the Children and others. Their activities have delivered most valuable elements for a comprehensive policy approach at European level. In order to tackle the complex issue of children without parental care in a more efficient manner, it will, however, be necessary to better co-ordinate and link-up existing activities, for example by reinforcing the use of United Nations instruments – notably the United Nations Convention on the Rights of the Child and the recent United Nations Guidelines for the Alternative Care of Children – as central reference points for all. Member states could be asked to contribute to better European policy co-ordination through the preparation of national action plans for the implementation of the United Nations guidelines.

46. The Council of Europe has yet to define its specific role and contribution in this international landscape of stakeholders. Its added value could certainly be found in joint programmes aimed at policy making and implementation strategies related to specific national situations, such as the Joint Council of Europe/European Union programme Enforcing the Rights of the Child and Re-integrating Children at Risk into Society, Russia 2007-2008. The rapporteur considers that, regarding both its substance and methodology, this programme constitutes a positive example that could be reproduced in other national contexts and thus increase the impact of international and European standards at national level.