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Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States

Report[1]
Committee on Social Affairs, Health and Sustainable Development
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Summary

Children have the right to be protected from all types of violence, abuse and neglect. But children also have the right not to be separated from their parents against their will, except when the competent authorities determine that such separation is necessary in the best interests of the child. In the absence of a child being judged to be at risk or imminent risk of suffering serious harm, in particular physical, sexual or psychological abuse, it is not enough to show that a child could be placed in a more beneficial environment for its upbringing to remove a child from his or her parents and even less to sever family ties completely.

Children's rights are violated both by unwarranted decisions taken in member States to remove them from (or not to return them to) parental care, and by unwarranted decisions not to remove them from (or to return them prematurely to) parental care. Member States should thus put into place laws, regulations and procedures which truly put the best interest of the child first in removal, placement and reunification decisions. The competent Council of Europe body should develop policy guidelines for member States on how to avoid practices deemed abusive in this context, namely (except in exceptional circumstances) severing family ties completely, removing children from parental care at birth, basing placement decisions on the effluxion of time, and having recourse to adoptions without parental consent.

1. Reference to committee: Doc. 13054, Reference 3926 of 21 January 2013.

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A. Draft resolution[2]

1. Children have the right to be protected from all types of violence, abuse and neglect. But children also have the right not to be separated from their parents against their will, except when competent authorities subject to judicial review determine that such separation is necessary in the best interests of the child. Even when such separation is necessary, children have the right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

2. In most Council of Europe member States, it is the competent social services which take the initial decision to remove a child from his or her family (in particular in urgent cases where the child is deemed to be in immediate danger), or which apply to the competent court to have such an initial removal decision taken. In the majority of member States, this decision is taken on the basis of the child being judged to be at risk or imminent risk of suffering serious harm, in particular physical, sexual or psychological abuse, or of being badly neglected.

3. The number of children taken into care varies widely from country to country, as does the percentage of children taken into care who are later reunited with their family. Most countries place children with relatives, with foster families, in public or private institutions, or – more rarely – give them up for adoption (again with varying percentages).

4. Most countries do not have detailed statistics on the ethnic and religious minority status, immigrant status or socio-economic situation of children taken into care. Statistical analyses providing an authentic vision of which groups of children are more exposed to being removed from their families is also lacking, though evidence suggests that children from vulnerable groups are disproportionately represented in the care population of member States. There is, however, no evidence to suggest that, in similar contexts, parents who are poor, less educated, belong to an ethnic or religious minority or have a migration background are more likely to abuse or neglect their children.

5. Financial and material poverty should never be the only justification for the removal of a child from parental care, but should be seen as a signal for the need to provide appropriate support to the family. Moreover, it is not enough to show that a child could be placed in a more beneficial environment for its upbringing to remove a child from his or her parents and even less to sever family ties completely.

6. The Parliamentary Assembly is concerned about the violation of children’s rights in some countries (or regions thereof), when social services take some children into care too rashly and do not make enough effort to support families before and/or after removal and placement decisions. These unwarranted decisions usually have a – sometimes unintended – discriminatory character, and can constitute serious violations of the rights of the child and his or her parents, all the more tragic when the decisions are irreversible (such as in cases of adoption without parental consent).

7. The Assembly is also concerned about the violation of children’s rights in some countries (or regions thereof), when social services do not take children into care quickly enough, and return children too rashly to abusive or neglectful parental care. These decisions can constitute equally – or more – serious violations of the rights of the child, and can put a child’s life and health in danger. Removal decisions taken by social services are very fraught, and should thus only be taken by social workers with special professional training and qualifications, an appropriate caseload and in an appropriate time frame.

8. The Assembly thus recommends that member States:

8.1. put into place laws, regulations and procedures which truly put the best interest of the child first in removal, placement and reunification decisions;

8.2. make visible and root out the influence of prejudice and discrimination in removal decisions, including by appropriately training all professionals involved;

8.3. support families with the necessary means (including financially, materially, socially and psychologically) in order to avoid unwarranted removal decisions in the first place, and in order to increase the percentage of successful family reunifications after care;

8.4. avoid, except in exceptional circumstances, severing family ties completely, removing children from parental care at birth, basing placement decisions on the effluxion of time, and having recourse to adoptions without parental consent (particularly when these become irreversible);

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2. Draft resolution adopted unanimously by the committee on 26 January 2015.

8.5. ensure that the personnel involved in removal and placement decisions is guided by appropriate criteria and standards (if possible in a multidisciplinary way), is suitably qualified and regularly trained, has sufficient resources to take decisions in an appropriate time frame, and is not overburdened with too great a caseload;

8.6. collect anonymised data on the care population in member States which is disaggregated not only by age and gender and alternative care type, but also by ethnic or religious minority status, immigrant status and socio-economic background, as well as by length of time spent in care until family reunification.

B. Draft recommendation[3]

1. The Parliamentary Assembly is concerned about the violation of children's rights constituted both by unwarranted decisions taken in member States to remove them from (or not to return them to) parental care, and by unwarranted decisions taken in member States not to remove them from (or to return them too early to) parental care. The Assembly believes children's rights and their best interests need to be better protected in these cases, as outlined in Resolution … (2015) on social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States.

2. The Assembly welcomes the commitment of the Committee of Ministers to advance children's rights in this field, including through the current multi-annual Council of Europe Strategy for the Rights of the Child (2012-2015). It recommends that the Committee of Ministers instruct the Committee of Experts on the Council of Europe Strategy for the Rights of the Child (2016-2019) (DECS-ENF) to:

2.1. include the issue of respecting children's rights in decisions to remove them from parental care in the Council of Europe Strategy for the Rights of the Child 2016-2019;

2.2. building on the United Nations Convention on the Rights of the Child, United Nations General Assembly Resolution 2010 A/RES/64/142 "Guidelines for the Alternative Care of Children", Committee of Ministers Recommendation CM/Rec(2011)12 on children's rights and social services friendly to children and families, General comment No. 14 (2013) of the United Nations Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration, and "The Common European Guidelines on the Transition from Institutional to Community-based Care", develop policy guidelines for member States on how to avoid, except in exceptional circumstances, severing family ties completely, removing children from parental care at birth, basing placement decisions on the effluxion of time, and having recourse to adoptions without parental consent.

3. Draft recommendation adopted unanimously by the committee on 26 January 2015.

C. Explanatory memorandum by Ms Borzova, rapporteur

1. Introduction

1. On 10 October 2012, my colleague, Mr Alexey Pushkov, and several other members of the Parliamentary Assembly others tabled a motion for a resolution entitled "The abuse by social services of member States of the Council of Europe of their authority to remove children from their parents' custody" (Doc. 13054). This motion raised concerns about an excessively broad interpretation by social services of their rights to remove children from their parents' custody becoming more frequent. According to the motion, this measure is often used in relation to children of migrant families. The authors of the motion thus asked the Assembly to carry out a thorough analysis of such cases and take measures in order to "truly protect the rights of children and families where they live".

2. The motion was referred to our committee for report (and the Committee on Legal Affairs and Human Rights for opinion). I was appointed rapporteur on 24 January 2013, and on 19 March 2013 the Legal Affairs Committee appointed Mr Volodymyr Pylypenko (Ukraine, SOC) rapporteur for opinion. Upon my suggestion, our committee changed the title of the report to a more "neutral" one at its meeting in Berlin on 15 March 2013.

3. My aim in preparing this report was to study the legislation and the practice of the removal of children from their families in Council of Europe member States in order to determine:

– whether there has been an increase in unwarranted removal decisions in the last years;

– whether there is a pattern to these decisions: are migrant parents, parents belonging to national minorities or minority religious groups or from poor socio-economic backgrounds disproportionately victims of such unwarranted removal decisions;

– how the national laws or implementing guidelines can be improved in order to improve decision-making at the level of the social services;

– whether there are good practices in some member States which could inform other member States.

4. Following a discussion of my outline report in committee, I undertook three fact-finding visits, and reported back to the committee orally after each one of them: to Finland (13-14 June 2013), Romania (14-15 October 2013) and the United Kingdom (10-11 February 2014). I would like to thank the national delegations and the members of their Secretariats who facilitated my fact-finding visits, which were most useful to me in preparing this report.

5. In order to receive information from a maximum number of member States, the Secretariat distributed a survey on legislation and practice of the removal of children from their families, through the European Centre for Parliamentary Research and Documentation (ECPRD) network in autumn 2013. By 24 January 2014, 30 replies had been received from the parliaments of 29 member States and from one observer parliament.[4] A quantative and qualitative analysis of the replies was presented to the committee in January and April 2014.

6. Finally, during the April 2014 part-session, the committee organised a joint hearing with the Committee on Legal Affairs and Human Rights on the issue,[5] with the participation of two eminent experts, Ms Karen Reid, Registrar of the Filtering Section of the European Court of Human Rights, and Ms Maria Herczog, Rapporteur of the United Nations Committee on the Rights of the Child (UNCRC).

7. I would once more like to underline that this is a general report, which is not directed against the social services of any member State, visited or not. However, to make some particular tendencies visible, I used the information received during my visits, from the answers to the ECPRD questionnaire and from documents of the United Nations Committee on the Rights of the Child and judgments of the European Court of Human Rights.

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4. Andorra, Austria, Croatia, Cyprus, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and Canada.

5. See the declassified minutes of the hearing, AS/Soc (2014) PV 03 Add 2, available from the Secretariat.

2. An outline of the issue at hand

8. The removal of a child from its family is a difficult decision to take for social services in Council of Europe member States, for obvious reasons: if the social services do not take this decision when it is necessary, the child can come to serious harm, and its most fundamental rights can be violated. But if the social services take this decision unnecessarily, the child can also come to harm, and its rights – and the rights of its parents – can also be violated. Since the decision to take a child into care is normally subject to judicial decision and/or review, practically all cases are ultimately decided in court; court judgments are often appealed to the highest court of the land and some have reached the European Court of Human Rights.[6] But the initial removal decision is nevertheless of paramount importance: once a child has been removed from its family, even if the removal turns out to be unwarranted, it is often difficult,[7] if not impossible,[8] to undo the damage done.

9. The crux of the matter is that some cases are clear-cut, but many are not. The decision-making process, while often minutely regulated by law (and implementing guidelines), can also be fraught with emotion, for example in cases where widely mediatised failure by the social services to protect another child has led to the death or serious injury of that child: this may influence the social services to err on the side of caution. At the same time, even trained, competent and professional social workers are only human: they may also fall victim to prejudice, and this may influence their decision to remove a child from the care of a parent (or parents) who do not fit the "normal" pattern: migrant parents, parents belonging to national minorities, from a poor socio-economic background, of a different religion, etc.[9]

3. The legal situation

3.1. At international level

10. The legal situation is relatively clear as concerns the international level. It is built on the United Nations Convention on the Rights of the Child of 1989, Article 3.1 of which provides:

> *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

11. As indicated in Article 24.3 of the European Union's Charter of Fundamental Rights, "[e]very child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests".

12. The European Court of Human Rights, based on the European Convention on Human Rights (ETS No. 5), has summarised the legal situation well in the case of *Neulinger and Shuruk v. Switzerland* (judgment of 6 July 2010):[10]

> *"134. In this area the decisive issue is whether a fair balance between the competing interests at stake – those of the child, of the two parents, and of public order – has been struck, within the margin of appreciation afforded to States in such matters …, bearing in mind, however, that the child's best interests must be the primary consideration …. The child's best interests may, depending on their nature and seriousness, override those of the parents …. The parents' interests, especially in having regular contact with their child, nevertheless remain a factor when balancing the various interests at stake ….*
>
> *The child's interest comprises two limbs. On the one hand, it dictates that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to*

6. This was the subject of Assembly Resolution 1908 (2012) on human rights and family courts.
7. Judicial proceedings may take years – and the passage of time can mean that a child removed from its family very early in its life may find the return to its family as traumatising as the initial removal.
8. In some countries, adoptions against the wish of the parents can have a final character: there are thus cases where children removed from their family ultimately proven innocent of any abuse have not been returned to their family so as to respect the final nature of adoptions.
9. In fact, the question of who brings abuse allegations to the notice of the social services in the first place may play a role in this regard: an anonymous referral by a member of the general public may well be grounded in prejudice, and possibly even be malicious. But even a referral by a professional may be grounded in a misunderstanding, for example due to a language barrier.
10. Even though this case did not deal with the specific question of the removal of a child from a family by social services.

preserve personal relations and, if and when appropriate, to 'rebuild' the family …. On the other hand, it is clearly also in the child's interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development …."

13. The Court notes that there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount. The concept of the "best interests of the child" has been key to all international and European treaties and recommendations. However, application of this concept in practice is a source of concern, as the UN Committee on the Rights of the Child has lamented frequently in its reports. This concept is also one of the most widely abused[11], which led the Committee to issue "General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)".[12]

14. In my opinion, it is worth citing the key paragraphs of this general comment here, as they relate to the removal and placement of children in alternative care:

"60. Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1 [of the UN Convention on the Rights of the Child], which requires 'that a child shall not be separated from his or her parents against their will, except when … such separation is necessary for the best interests of the child'. Furthermore, the child who is separated from one or both parents is entitled 'to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests' (art. 9, para. 3). …

Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents. …

Likewise, a child may not be separated from his or her parents on the grounds of a disability of either the child or his or her parents. Separation may be considered only in cases where the necessary assistance to the family to preserve the family unit is not effective enough to avoid a risk of neglect or abandonment of the child or a risk to the child's safety.

In case of separation, the State must guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with article 9 of the Convention, ensuring that no other option can fulfil the child's best interests.

When separation becomes necessary, the decision-makers shall ensure that the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child's best interests. The quality of the relationships and the need to retain them must be taken into consideration in decisions on the frequency and length of visits and other contact when a child is placed outside the family."

15. At the 18th meeting of the Parliamentary Assembly Network of Contact Parliamentarians to stop sexual violence against children, held in Nicosia (Cyprus) on 13 May 2014, Dr Antonios St. Stylianou, Director of UNic Law Clinic, University of Nicosia and member of the Senior Advisory Board of "Hope for Children", UNCRC Policy Center, made the very good point that "holistic approaches were needed, based on the principles that an adult's judgment of a child's best interests could not override the obligation to respect all other rights of the child under the Convention, and that no one could make a negative interpretation of a child's best interests".[13]

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11. See paragraph 34 of the comment: "The flexibility of the concept of the child's best interests allows it to be responsive to the situation of individual children and to evolve knowledge about child development. However, it may also leave room for manipulation; the concept of the child's best interests has been abused by Governments and other State authorities to justify racist policies, for example; by parents to defend their own interests in custody disputes; by professionals who could not be bothered, and who dismiss the assessment of the child's best interests as irrelevant or unimportant."

12. To provide substantial input to this General Comment, Belgium organised, on 9 and 10 December 2014, with the support of the Council of Europe Children's Rights Division, a European Conference on the best interests of the child.

16. In this regard, I would also like to make reference to the judgment of the European Court of Human Rights in the case *Wallová and Walla v. the Czech Republic* (of 26 October 2006), which laid out very clearly that children should not have been separated from their family on the sole basis of the lack of adequate housing for a family with many children, as other, less intrusive measures would have been available to ensure respect for the best interests of the children concerned.

3.2. At national level

17. National legislation in most countries of the Council of Europe complies with international law. The decision-making process is often minutely regulated by law (and implementing guidelines).

18. Thus, the bar for the decision of social services to remove a child from its family is generally quite a high one in all Council of Europe member States, usually involving the concept of serious harm. The majority of countries who answered the questionnaire (20) take removal decisions based on serious harm having occurred, the imminent risk of serious harm, or the risk of serious harm (although the exact wording may differ from country to country).

19. The definition of what constitutes serious harm differs from State to State, and has often evolved over time to include not just physical abuse, but also sexual, emotional or psychological abuse. Some countries add further possible motives such as “economic violence”, a child committing a criminal offence or using drugs or other toxic substances, or a child being beyond parental control.

20. In almost all cases, the final decision to take a child into care is subject to judicial decision.

21. In most Council of Europe member States, the competent social services take the initial decision to remove a child from his or her family (in particular in urgent cases where the child is deemed to be in immediate danger), or apply to the competent court to have such an initial removal decision taken.

22. In most countries, social services and courts work hand in hand to take removal decisions, and often whether or not a court order is required for the initial removal will depend on the circumstances of the case, such as whether the parents agree to the removal.

4. A brief overview of the facts and figures

23. The number of children taken into care varies widely from country to country. Of the 30 replies received to the questionnaire, only one country could not provide any statistics (and another one does not have official statistics at national level). Since many replies furnished only total numbers (not percentages in relation to the size of the child population in the country), it is sometimes difficult to judge whether the number of children taken into care is in the low, medium, or high range. Similarly, sometimes statistics were given regarding the total number of children in care, and sometimes they were given regarding the number of new children taken into care that particular year.

24. Slovenia stands out as only very rarely removing or restricting parental rights of one or both parents.[14] According to the replies given to the questionnaire, other countries in the low range (below 0.5% of the child population in care) are: Andorra, Cyprus, Estonia, Georgia, Greece, Luxembourg, Montenegro, Norway, Serbia and Turkey.

25. In the medium range (with up to 0.8% of the child population in care), we have Austria, Croatia, Latvia, Spain, Switzerland, Sweden, the United Kingdom and Canada (an observer State whose parliament also holds observer status with the Assembly).

26. On the high end of the scale, with up to 1.66% of the child population in care, we have Finland, France, Germany, Hungary, Lithuania, Poland, Portugal, Romania and Russia.

27. Trends are diverging in different countries: while the number of children taken into care has been decreasing quite dramatically in Estonia (by more than two thirds in the 10 years from 2002 to 2012), Romania (by more than half since the fall of communism) and Turkey (by nearly half in the 4 years from 2008 to 2012), the numbers are rising in Germany (where 39 400 children aged 3 to 18 were taken into care in 2012) and in Hungary (where the number of children taken into care has tripled since 1998).

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13. AS/Soc (2014) PV 04 add, p. 5. He further explained (p. 7) that “a “negative interpretation” of the “best interest principle” could, for example, be observed when it came to deciding whether it was better to leave children within their families or to remove them for their protection.

14. Six cases in 2011 and four cases in 2012.

28. Few countries have statistics on the ethnic or religious minority status, immigrant status or socio-economic background of children taken into care. In Andorra, about half of children placed had immigrant status, and most came from a low socio-economic background. In Finland, there is no official data on the number of children from minorities or immigrant families taken into care, or on their socio-economic background. However, from data provided by experts, it appears that children from immigrant families are not over-represented, but that the majority of parents who have their children taken away from them have a low socio-economic background, and that single-parent and divorced families are over-represented.[15]

29. In Germany, between 17.5% and 26.7% of children taken into care in recent years do not have German citizenship (in comparison, the foreign population of Germany – not holding German citizenship – makes up less than 9%). In Norway, children born there to immigrant parents had the lowest placement rates (0.6%), compared to 0.74% for children with no immigrant background and 1.93% for immigrant children. Romania does not collect statistics on the status of children in care, but non-governmental organisations (NGOs) I met estimated that nearly 70% of them came from the Roma minority. The United Kingdom, in contrast, has detailed data on the ethnic background of children taken into care: "black" or "mixed-raced" children are over-represented by four times in the care system, while children with a family background from India, Pakistan and Bangladesh are under-represented by three times.

30. All 30 countries which responded to the questionnaire confirm that the child is heard on the removal decision before it is taken. Most countries take into account the child's maturity and capacity of discernment, but some countries have age-limits set by law above which the child is heard.

31. In most countries, both children and parents have the right to appeal/ complain to the competent courts. Children do not have this right in six jurisdictions: Estonia, Germany, Italy, Lithuania, Poland and Serbia (exceptions apply).[16] Children (and sometimes parents) can address themselves to instances other than courts in some jurisdictions, such as a Child Rights' Commissioner.

32. Most countries place children with relatives, with foster families, in institutions, or give them up for adoption (though other possibilities are also mentioned, such as shelters or adolescents living alone), and percentages differ widely from country to country. Thus, the percentage of children placed with relatives ranges from 3% (Finland) and 5% (Sweden, United Kingdom), to 63% in Latvia and 75% in Portugal. Foster families take in 0.5% of children in Portugal and 10% in Estonia, but more than half in France and Spain, 69% in Norway, and 75% in the United Kingdom. Institutions look after 10% of children in Norway, Portugal and the United Kingdom, and just over 50% in Hungary and Sweden.

33. The percentages of adoptions range from 1.5% in Portugal and 4% in Estonia to 5% in the United Kingdom (this concerned 3 350 children), 9% in Croatia and Hungary and up to 20% in Andorra (this concerned four children) of children taken into care.

34. Adoptions are not possible following the removal of a child from a family in Austria, and none are reported in Finland (where removal of parental rights is impossible) and Lithuania. Norway mentions few adoptions (by foster parents).

35. Adoptions without the consent of the parents are not possible in France, Greece, Luxembourg and Spain. They are rare (practiced only exceptionally) in: Cyprus, Lithuania, the Netherlands, Romania, Serbia, Switzerland and Canada. In some countries which proscribe adoptions without the consent of the parents (for example, in Russia), the child can be given up for adoption if his/her parents are unknown, legally incapable or if their whereabouts have been recognised as unknown by a court. They are possible in Andorra, Croatia, Estonia, Georgia, Germany (in 2010, 250 children were placed for adoption without the parents' consent), Hungary, Italy, Montenegro, Norway, Poland, Portugal, Slovenia, Sweden, Turkey, and the United Kingdom (in 2013, 3 020 children were placed for adoption without the parents' consent).

36. Twenty-one countries do not have statistics on the rate of successful reunifications with the family of origin. In Estonia, 10% of children removed from their families in 2012 were reunited with them the same year. In Croatia, the rate of successful reunifications was 18%, in Germany 53%, in Greece 70%, in Andorra 71%, and in Portugal over 90%. In Romania, nearly 4 300 children returned to their families in 2012. In Austria, of the children who returned to their families in 2012, 60% had been in care for less than 12 months, and 10% for more than five years. In Russia, the number of parents whose parental rights have been restored has increased 1.4 times in the last five years (to 2 256 cases in 2012).

15. No-one seemed to be able to determine whether children from Sami or Roma families were over-represented.
16. Children have to have reached a certain age in some other jurisdictions to exercise this right.

37. Most countries require that social workers who work on removal cases have completed a three- or four-year university degree in a relevant subject such as “social work”, “social education”, “social welfare” or psychology. The following countries also require at least one year’s work experience in addition: Georgia, Greece, Lithuania, Slovenia and Sweden. Multidisciplinary teams for this task are set up in Andorra, Italy, Luxembourg and the United Kingdom.

38. It should be noted that the analysis of the facts and figures is difficult due to the heterogeneity and ambiguity of the statistical data, the lack of terminological comparability (including legal terminology), and the lack of data available on the reversal of decisions to remove a child from a family. Consequently, estimating the number of justified or unwarranted decisions of removal does not appear to be possible.

5. The issues in practice

39. I will argue in the next chapters why it is so important that the “best interests of the child”-principle be applied in such a way that not only laws and regulations, but also the actors on the ground (e.g. social services) truly put the best interest of the child first in removal, placement and reunification decisions.

5.1. Lack of support to families

40. There are a number of circumstances which can make it difficult for parents to fulfil a child’s need to be nurtured, recognised, empowered and to have a structured upbringing, when, in principle, they would like to be good parents. These can be personal, such as alcohol or drug abuse or psychological problems (or even “parental fatigue”, as one of our interlocutors told us), but also socio-economic, such as extreme poverty (which can result from factors outside parents’ control such as unemployment and discrimination).

5.1.1. Personal problems

41. Committee of Ministers Recommendation CM/Rec(2011)12 on children’s rights and social services friendly to children and families, in its Appendix on “The child’s right to protection” (section C), posits that:

> *“1. Social services for children and families should ensure the protection of children from all forms of neglect, abuse, violence and exploitation by preventive measures as well as through appropriate and effective interventions. These should aim for the preservation of family strength and unity, especially in families facing difficulties.*
>
> *2. Situations of child abuse and neglect require supportive and comprehensive services with the aim to avoid family separation for him or for her. …”*

42. In keeping with this recommendation, parents should also be given more help to deal with psychological problems and alcohol or drug abuse.

43. New parents (in particular, young parents or one-parent families) should also be offered help early to develop better parenting skills – Germany could share good practice here; it runs a scheme of “family helpers”, where trained professionals help at-risk families develop a daily routine. Indeed, it is also very important to continue support to families during the time that a child is placed in alternative care, so as to increase the chances of successful family reunifications after care.

44. There is a particular problem which I was made aware of in the United Kingdom, but which may pose a problem in several other countries, too: many mothers who are victims of domestic violence themselves seem to be re-victimised by the child protection system, as the child witnessing such violence (or threats of it) is considered to be subject to emotional abuse and thus significant harm. This means that if the mother has nowhere to turn to her child can be taken away from her. This is a problem which should not be underestimated, as the impact of the crisis and the effect of austerity cuts on social services means that more and more mothers are now trapped in abusive relationships (with shelters closing) and are afraid to signal domestic violence lest their children be taken away from them.

45. Similarly, mothers with serious postnatal depression can also apparently have their children permanently taken away from them, despite the fact that they may well recover relatively quickly and be able to be a good parent if treated.

46. I believe that single parents in particular may need more support to avoid a situation in which it becomes in the best interest of the child to remove it from parental care.

47. Of course, unfortunately there are also parents who are wilfully (and criminally) violent, neglectful and otherwise abusive to their children, and, in such cases, the child's removal from the family – including permanently – will indeed be in the best interest of the child.

5.1.2. Economic problems

48. United Nations General Assembly Resolution A/RES/64/142 "Guidelines for the Alternative Care of Children" pointed out in its paragraph 15 that: "[f]inancial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care ... but should be seen as a signal for the need to provide appropriate support to the family". Recommendation CM/Rec(2011)12 contains similar provisions.[17]

49. In this context, I would like to cite the Romanian experience. The most frequent reason why children are taken into care in Romania actually seems to be poverty (there was consensus on this: this was the view of the Minister, the Children's Ombudsman, parliamentarians and the NGOs). Thus, in the county I visited, 120 km from Bucharest, the most important removal reason was neglect due to severe poverty. We are talking extreme poverty here: children ring child helplines because there is not enough food in the house, for example. In particular in rural areas, the poverty can be very extreme (also due to the lack of services in rural areas). Roma families are particularly hard-hit, in particular when it comes to substandard housing and unemployment.

50. All my interlocutors mentioned the phenomenon of abandoned children in this regard: 300 000 Romanian parents have left to work abroad – and there seem to be more than 100 000 abandoned children left entirely to their own devices, the others left with one parent, grandparents or with family friends, who cannot fully provide for the children. This is an acute problem which can also be observed in other countries of eastern Europe, and should be given appropriate attention.

51. I would also like to point out the effects of possible multiple discrimination in this regard: parental ability to look after their children well economically-speaking may be affected by joblessness or homelessness, which in turn may be linked to discrimination based on belonging to an ethnic minority group such as the Roma, which may then lead to the development of personal problems such as substance abuse or neglect, etc.

52. Taking children from extremely poor families into care is not the right solution: the right solution is to provide better support and services to these families, including financial and material support. In a country like Romania, which has been badly hit by the financial and economic crisis, this is, of course, easier said than done – though the cost of keeping a child in proper alternative care is certainly higher than the cost of providing more support to families. Further efforts must be made in this regard: As the judge I spoke to pointed out, love is a very strong bond, and many children would prefer to go hungry rather than be separated from their family.

53. I think it should be the primary obligation of the State to ensure that no child goes hungry, for example by instituting a "food stamp" programme and free school meals rather than removing these children from their family because of poverty.

5.2. Discrimination

54. Alleging discrimination in removal decisions is a very sensitive issue. However, when a country has a high percentage of certain vulnerable groups in its care population – such as overwhelmingly poor, up to 70% Roma, or up to 25% immigrant – stereotypes and prejudice may be a contributing factor.

55. The understanding of what is considered to be child abuse has evolved greatly in the last 50 to 100 years,[18] and often at different rates in different countries and cultures. Thus, categories such as "risk of emotional abuse" or even "over-chastisement" can be vague and easily misunderstood by families who do not

17. In Chapter IV of the Appendix to the Recommendation, "General elements of child-friendly social services", paragraph A.b posits the necessity of general social services to guarantee "the fulfilment of basic needs of children and families in situations of poverty such as financial assistance, subsidised housing and access to health care and education for all children".

18. The National Society for the Prevention of Cruelty to Animals predates the National Society for the Prevention of Cruelty to Children in the United Kingdom, for example.

belong to the majority culture. Coupled with a different understanding of the role of the State in child protection, and possibly deepened by language barriers, it is understandable that some immigrant and ethnic minority families feel that they are unfairly "targeted".

56. This is especially problematic because, if distrust and fear of discrimination reigns, it becomes difficult for social services to successfully support the child and its family, and thus avoid fraught removal decisions. That said, fear of discrimination can also lead to discrimination in a type of self-fulfilling prophecy, when the family's distrustful behaviour in its dealings with the authorities reinforces previously held stereotypes and prejudice.

57. Migrant families, or families belonging to national minorities, often do not receive adequate assistance from the social services because of the language barrier: the family does not speak (or speaks badly) the official language of the country where they live, and social services are not provided with an interpreter. This situation often leads to social workers not being in a position to render the necessary assistance to the family in a timely manner, which sometimes leads to the subsequent removal of the child, with all the attendant consequences.

58. In order to make visible the influence of prejudice and discrimination in removal decisions, better data collection is necessary in most countries, as I have already pointed out. I also cannot stress enough the necessity to engage early with at-risk children and their families and offer them appropriate support, rather than using removal and placement decisions as the first tool in the arsenal (when it should be the tool of last resort).

5.3. Lack of resources and/or qualified personnel

59. A persistent problem in all countries I visited – and, I assume, in most, if not all member States – seems to be case overload. For example, one social worker in England has between 16 to 45 families to assess at any one time depending on the area. The pay structure in England also does not encourage social workers to stay on the job, so that many social services are understaffed or staffed with short-term agency staff to a significant degree. This has an effect on the system: It appears that threshold levels at which children are deemed to be at risk of significant harm can also vary based on workload and staff shortages in the child protection services.

60. In all the countries I visited, and I assume in all other member States, there have been horrific cases in the past of children who have been killed by one of their parents (or their parent's partner), often following the most harrowing abuse. In many such cases, social services and/or the police had been alerted to the plight of the child before its death, but the necessary measures to protect the child were not taken in time. I believe this reality must be taken into account when distributing resources to social services (without playing a blame-game).

61. There is a problem with the lack of qualified personnel in Romania, in particular in rural areas, also linked to the low salaries paid in the profession and the freezing of posts, in addition to a 25% salary cut across the board for all State employees during the economic crisis. This has an effect on the system as well, albeit a different one: It seems that sometimes children are returned to their families of origin without the prior establishment of proper conditions for their return (e.g. parental training), leading to some of them returning to the child welfare system, while yet others just go and live on the streets. Even in Finland, social services were feeling the strain of the financial and economic crisis to a certain degree when I was visiting the country.

62. I thus believe it is crucial to ensure that the personnel involved in removal and placement decisions is suitably qualified, has sufficient resources to take decisions in an appropriate (neither rushed nor delayed) time frame, and is not overburdened with too great a caseload. The Council of Europe has also called for sufficient financial, infrastructural and human investment to be allocated to achieve the objectives established in its Recommendation CM/Rec(2011)12.

5.4. Abusive practices

63. Unfortunately, some countries engage in practices which can only be labelled as abusive, even if they are well-intended. The most frequent of them are: the unwarranted complete severing of family ties, often in combination with removing children from parental care at birth; basing placement decisions on the effluxion of time; and recourse to adoptions without parental consent.

5.4.1. Unwarranted complete severing of family ties

64. As I already underlined in the third chapter of this report, children have the right, guaranteed to them in Article 9.3 of the United Nations Convention on the Rights of the Child, to maintain personal relations with their parents:

> *"States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."*

65. This right has been expansively interpreted in the last twenty-five years by the UNCRC to also encompass other family members ("siblings, relatives and persons with whom the child has had strong personal relationships").[19] The UNCRC also posited in its most recent General Comment that the "quality of the relationships and the need to retain them must be taken into consideration in decisions on the frequency and length of visits and other contact when a child is placed outside the family".[20]

66. In the same vein, children in alternative care also have the right to have their situation reviewed regularly with the aim of reintegration of the child into the family and society by provisions of aftercare (Recommendation CM/Rec(2011)12). The European Court of Human Rights has also underlined that "it is in the child's best interests that his ties with his family be maintained except where the family has proved particularly unfit … It is clear from the foregoing that family ties may only be severed in very exceptional circumstances and everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing".[21]

67. Of course, there are situations where it is indeed in the best interest of the child to completely sever its ties with parents who are wilfully (and often criminally) violent, neglectful and otherwise abusive. However, I believe that these situations are not as common as the frequency of recourse to the complete severing of family ties would suggest: in many cases, parents can (and do) change their behaviour, in particular if it is due to external circumstances such as extreme poverty or intimate partner violence, mental illness which can be treated or substance abuse which can be ended. Indeed, the temporary removal of a child can be the "wake-up"-call which can lead a parent to at last seek help in a bid to be reunited with the child. This is why it is so important to collect and analyse data on the percentage of successful reunifications, including the length of time spent in alternative care (as Austria does, for example).

5.4.2. Frequent recourse to removing children from parental care at birth

68. In this regard, frequent recourse to removing children from parental care at birth should be a warning sign. Indeed, the European Court of Human Rights has qualified such a removal as "an extremely harsh measure" and "drastic", and has thus posited that a newborn can be removed from his or her mother only for "extraordinarily compelling reasons".[22]

69. My attention has been drawn to a number of cases in which a mother who had already had a child taken into care (for example, because she was considered an unfit parent because of her very young age, because she was in an abusive relationship with the father, because of substance abuse, because of mental illness), had another child removed from her care at birth many years later, despite a total change of circumstances.

5.4.3. Basing placement decisions on the effluxion of time

70. Similarly, the European Court of Human Rights abhors basing placement decisions on the effluxion of time. For example, placing a young child in a foster family while severely limiting contact with the birth family, and then, a few years later, allowing that foster family to adopt the child simply because the child is now "settled" in the foster family while, in the meantime, the birth family would be able to provide a perfectly secure and good environment for the child's upbringing, makes a mockery of both children's and parents' rights. Luckily, I have not come across too many such decisions in my research.

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19. Paragraph 65 of General comment No. 14 (2013), op. cit.
20. Ibid.
21. *Case of Y.C. v. the United Kingdom* (2012), paragraph 134.
22. *Case of K. and T. v. Finland* (2001), paragraph 168.

5.4.4. Frequent recourse to adoptions without parental consent

71. Like frequent recourse to removing children from parental care at birth, frequent recourse to adoptions without parental consent should also be a warning sign. Indeed, some countries expressly forbid adoptions following the removal of a child from his/her birth family, as outlined earlier.

72. England and Wales[23] are really unique in Europe in placing so many children for adoption, in particular in the young age group which is "popular" on the adoption market. Statistics show that under 20% of children forcibly taken from parents who leave care aged under five, return to their parents. The former Prime Minister Tony Blair went so far as to establish "adoption targets" for local authorities from 2001 to 2008.[24]

73. While these targets have been officially abolished, the Secretary of Education at the time of our fact-finding visit, Michael Gove, himself adopted, has also put much emphasis on increasing adoption rates with a view to the 7 000 children on waiting lists in England being adopted, and has allowed 30 large private adoption agencies and a plethora of smaller ones to get involved in the process. Identifying alternative carers within the family circle through "family group conferences" earlier in the process could be a better way of ending the over-reliance on adoption by strangers and making it really the solution of last resort, "when nothing else will do" – which is meant to be the threshold standard as set by English/Welsh law and enforced in English/Welsh courts.

74. My attention has been drawn to a handful of cases which are extremely tragic and concern miscarriages of justice. In several of these cases, an underlying medical condition of the child such as brittle bone disease or rickets was overlooked, and the children were placed for adoption (without parental consent). The tragedy is that even when the parents finally win in court, and can prove their innocence, they cannot get their children back, because a flaw in the English/Welsh legal system means that adoption orders cannot be reversed in any circumstances – in a misunderstanding of the "best interest of the child" who actually has a right to return to his/her birth family.

5.5. Insufficient data collection

75. The United Nations Committee on the Rights of the Child publishes regular reports on the implementation of the United Nations Convention on the Rights of the Child by States Parties. It regularly remarks on the "insufficient data collection on living conditions of children in vulnerable situations, and on abuse, neglect and violence against children and on services provided to them".[25]

76. I cannot stress enough the importance of proper data collection. Allow me to take the example of the United Kingdom when it comes to collecting data on the ethnic background of children taken into care: as pointed out in paragraph 29, children of certain ethnic backgrounds are largely over-represented in the British care system, while others are largely under-represented.

77. As the Head of Policy at the NGO National Society for the Prevention of Cruelty to Children (NSPCC), whom I met, pointed out, both over-representation and under-representation can be problematic: services which should be there for all are often less well developed for ethnic minority communities, which means that families come to the notice of the authorities only when it is too late, in the middle of crisis situations (which leads to over-representation) – or not at all, because the community is too closed up and no-one knows how to deal with culture-specific threats such as "honour"-based violence and the local authorities are loathe to intervene (which leads to under-representation). With this type of data being collected, the United Kingdom has the possibility to identify the problem and start addressing it – which is not the case if a country is "blind" because it does not collect relevant data.

78. It seems that every country has its own "blind spots" because of insufficient data collection: even the United Kingdom does not collect data systematically on other common "blind spots" such as the socio-economic background of children taken into care or their immigration status. The majority of the countries which answered the questionnaire (21 out of 30) also did not have any statistics on the rate of successful reunification with the family of origin. Here, Austria can inform good practice, as it also collects data on the length of time children spend in care before being reunited with their families.

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23. The Adoption and Children Act 2002 applies to England and Wales. Separate legislation applies in Scotland and Northern Ireland.

24. From statistics made available to me, it appears that local authorities were also financially rewarded (to the tune of 500 000 to 1 million pounds) if they reached such targets as "additional looked after children adopted".

25. This particular citation is from the CRC report on Finland of 17 June 2011, though it is not a problem specific to Finland, and is often repeated with regard to other countries, as well.

79. I would thus urge governments to collect data on the care population in member States which is disaggregated not only by age and gender and alternative care type, but also by ethnic/religious minority status, immigrant status and socio-economic background, as well as by length of time spent in care until family reunification.

5.6. Other issues

80. Another problematic aspect in many countries is the organisation of social services in a very decentralised way, for example at the level of the municipalities. When there are no unified nationwide standards establishing criteria for placement in alternative care, on care planning and regular review of placement decisions of children removed from their families, this can lead to subjective decisions of social workers. Coupled with a relatively weak system of control at national level, this can result in a sort of "postcode lottery", which is aggravated by budgetary constraints in the context of the current economic crisis.

81. Finally, it bears noting that the European Court of Human Rights has been particularly critical when siblings were separated. In the judgment *Olsson v. Sweden* (1988), the Court found a violation of Article 8 of the Convention on the grounds of siblings being separated and placed in foster homes at great distance from each other and their parents:

> *"81. As for the remaining aspects of the implementation of the care decision, the Court would first observe that there appears to have been no question of the children's being adopted. The care decision should therefore have been regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measures of implementation should have been consistent with the ultimate aim of reuniting the Olsson family.*
>
> *In point of fact, the steps taken by the Swedish authorities ran counter to such an aim. The ties between members of a family and the prospects of their successful reunification will perforce be weakened if impediments are placed in the way of their having easy and regular access to each other. Yet the very placement of Helena and Thomas at so great a distance from their parents and from Stefan (see paragraph 18 above) must have adversely affected the possibility of contacts between them. This situation was compounded by the restrictions imposed by the authorities on parental access; whilst those restrictions may to a certain extent have been warranted by the applicants' attitude towards the foster families (see paragraph 26 above), it is not to be excluded that the failure to establish a harmonious relationship was partly due to the distances involved. It is true that regular contacts were maintained between Helena and Thomas, but the reasons given by the Government for not placing them together (see paragraph 79 above) are not convincing. …"*

6. Conclusions and recommendations

82. The questions I set out to answer at the beginning of this report are:

– Is there an increase in unwarranted removal decisions in Council of Europe member States?

– Is there a pattern to these decisions: are migrant parents, parents belonging to national minorities or minority religious groups or from poor socio-economic backgrounds disproportionately victims of such unwarranted removal decisions?

– How can the national laws or implementing guidelines be improved in order to improve decision-making at the level of the social services?

– Are there good practices in some member States which could inform other member States?

6.1. Conclusions

83. On the first question, due to the insufficient data collection and analysis in member States, it is impossible to answer the question outright, whether there is an increase in unwarranted removal decisions in Council of Europe member States. However, the information and evidence I was able to collect point towards two principal trends and possible conclusions of this report:

83.1. On the one hand, in some countries (or regions thereof) social services take some children into care too rashly, and do not make enough effort to support families before and/or after removal and placement decisions. These unwarranted decisions usually have a – sometimes unintended – discriminatory character to them, and can constitute serious violations of the rights of the child and his or her parents, all the more tragic when the decisions are irreversible (such as in the cases of adoption without parental consent).

83.2. On the other hand, in some countries (or regions thereof) social services do not take children into care quickly enough, and return children too rashly to abusive or neglectful parental care. These decisions can constitute equally – or more – serious violations of the rights of the child, and can put a child's life and health in danger.

84. On the second question, most countries lack statistics and statistical analysis on the removal of children from families belonging to ethnic or religious minorities, migrant families, or families from socio-economically disadvantaged backgrounds. This complicates the qualitative analysis of the causes and prevents the adoption of effective public policies in the areas of prevention and of assistance to families.

85. On the third question, the legislation of Council of Europe member States as a whole corresponds to international standards, but lacks enforcement. In the countries I visited, the national laws (and often the guidelines) were not the main problem – it was the way the laws and guidelines were being interpreted and implemented by actors on the ground, taking (or not) the initial removal, placement and reunification decisions. While certainly well-intended in most cases, these decisions were sometimes tainted by a misunderstanding of the "best interests of the child"-principle, vicious circles of self-reinforcing stereotypes and prejudice leading to discrimination, or simply by overwork or lack of experience of the personnel taking the decisions. As detailed above, rare cases of abusive practices were also brought to my attention.

86. On the fourth question, there are good practices in some member States which could inform other member States, as I have pointed out in this report.

6.2. Recommendations

87. It is my firm conviction that the first thing every single member State should do is to improve its data collection. Data on the care population in member States should be disaggregated not only by age and gender, and alternative care type, but also by ethnic and religious minority status of the families concerned, immigrant status and socio-economic background, as well as by length of time spent in care until family reunification.

88. My second recommendation is to support families more: with proper, early and sustained support (including financial and material support to families struggling with poverty, and psychological support to parents who have personal problems). In this regard, I would recommend that member States elaborate national programmes on social support to particularly vulnerable groups (for example, very young parents, single mothers, victims of domestic violence, parents with disabilities or mental illness), to assure that many more children can stay in their families in the first place, and more could be successfully reunited with their families following a period of alternative care.

89. My third recommendation concerns the fact that the quality of the decisions made is dependent on the people making them. More money needs to be invested into the following measures:

– proper professional qualification and special training of social workers;

– adequate staffing of social services in order to avoid overburdening social workers with too high a caseload;

– adequate salaries for social workers;

– the development of appropriate criteria and standards for the removal of children from their families in order to avoid subjective errors.

90. My fourth recommendation is to studiously avoid abusive practices, which should constitute a warning sign that something in the system is badly wrong, such as frequent recourse to: severing family ties completely; removing children from parental care at birth; basing placement decisions on the effluxion of time; and adoptions without parental consent.

91. If we manage to ensure that these recommendations are put into practice, we will have made a big step towards putting into place social services, laws and regulations, and practice which truly put the best interest of the child first in removal, placement and reunification decisions – to the benefit of all children.

92. Progress on this front should be monitored by the intergovernmental side of the Council of Europe: the Committee of Ministers, in the framework of the next Strategy for the Rights of the Child (2016-2019), should undertake follow-up work to ensure that member States implement the relevant international and European standards in the area of the removal of children from their families, including the Guidelines for the Alternative Care of Children adopted by the United Nations General Assembly A/RES/64/142 (2010), Committee of

Ministers Recommendation CM/Rec(2011)12 on children's rights and social services friendly to children and families, and General comment No. 14 (2013) of the United Nations Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration.