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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

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A. Draft Resolution

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;

Amendment 1
Tabled by the Committee on Legal Affairs
and Human Rights

In the draft resolution, before paragraph 8.1, insert the following sub-paragraph: "sign and/or ratify, if they have not yet done so, the relevant conventions of the Council of Europe relating to the rights of children, most notably the European Convention on the Adoption of Children (Revised) and the European Convention on the Exercise of Children's Rights, and implement all pertinent recommendations emanating from the Committee of Ministers;"

Amendment 2
Tabled by the Committee on Legal Affairs
and Human Rights

In the draft resolution, paragraph 8.1, replace the words "put into place" with the following words: "review existing (or, where necessary, put in place new)".

Amendment 3
Tabled by the Committee on Legal Affairs
and Human Rights

In the draft resolution, after paragraph 8.1, insert the following sub-paragraph: "continue and strengthen their efforts to ensure that all relevant procedures are conducted in a child-sensitive manner, and that the children concerned have their views taken into account according to their age and level of maturity;"

- 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;

Amendment 4

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, at the end of paragraph 8.3, insert the following words: ", in line with their obligations stemming from the European Convention on Human Rights ("the Convention") as interpreted by the European Court of Human Rights, as well as the United Nations Convention on the Rights of the Child as interpreted by the United Nations Committee on the Rights of the Child;"

Amendment 5

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, after paragraph 8.3, insert the following sub-paragraph: "ensure that any (temporary) placement of a child in alternative care, where it has become necessary as a measure of last resort, be accompanied by measures aimed at the child's subsequent reintegration into the family, including the facilitation of appropriate contact between the child and his or her family, and be subject to periodic review;"

- 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);

Amendment 6

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, paragraph 8.4, after the words "except in exceptional circumstances", insert the following words: "provided for in law, and subject to effective (timely and comprehensive) judicial review".

Amendment 8

Tabled by Ms Boriana ÅBERG, Ms Carina OHLSSON, Mr Niklas KARLSSON, Ms Eva-Lena JANSSON, Mr Olof LAVESSON, Ms Tina GHASEMI

In the draft resolution, paragraph 8.4, delete the following words : "(particularly when these become irreversible)"

- 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.

Amendment 7

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, at the end of paragraph 8.6, insert the following words: ", while ensuring the effective protection of personal data".

Amendment 9

Tabled by Mr Ahmet Kutalmış TÜRKEŞ, Ms Tülin ERKAL KARA, Mr Şaban DIŞLİ, Mr Yıldırım Tuğrul TÜRKEŞ, Mr Reha DENEMEÇ

In the draft resolution, after paragraph 8.6, insert the following sub-paragraph: "ensure that, except in urgent cases, initial removal decisions are based only on court orders, to avoid unwarranted removal decisions and to prevent biased assessments."

B. Draft Recommendation

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.