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Addressing the issue of Daesh foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe

Committee Opinion[1]
Committee on Social Affairs, Health and Sustainable Development
Rapporteur: Mr Stefan SCHENNACH, Austria, Socialists, Democrats and Greens Group

A. Conclusions of the Committee

1. The Committee on Social Affairs, Health and Sustainable Development (hereinafter the "Committee on Social Affairs") sincerely thanks Mr Pieter Omtzigt (Netherlands, EPP/CD) for his report, presented on behalf of the Committee on Legal Affairs and Human Rights (hereinafter the "Legal Affairs Committee").

2. The Committee on Social Affairs points out that it was the driving force behind the adoption, by a very large majority, of Resolution 2321 (2020) and Recommendation 2169 (2020) "International obligations concerning the repatriation of children from war and conflict zones". Alarmed about the circumstances of their detention in Syria and Iraq, it has regularly sought to alert the national authorities and the Committee of Ministers of the Council of Europe to the plight of European minors being held in arbitrary detention there. In view of the threats to the best interests of the child, it also adopted a declaration on 16 March 2021 entitled "Repatriating children from conflict zones is a matter of urgency". Its members again expressed great fears for the lack of respect for the best interests of the child at the Council of Europe's high-level international conference on the roles of women and children in terrorism in December 2021.

3. The Committee on Social Affairs refers to the recent decision of the European Court of Human Rights of 14 September 2022, backing up a previous finding against France by the United Nations Committee on the Rights of the Child. It continues to consider that these children must be repatriated as soon as possible so as not to further jeopardise their best interests and to spare them from the inhuman and degrading treatment they have been subjected to for over four years now.

4. The Committee on Social Affairs agrees with the thrust of the draft resolution and the draft recommendation regarding the seriousness of the crimes committed by Daesh and the need for the perpetrators to be brought to justice. The committee reiterates, however, that the Parliamentary Assembly has a moral duty to ensure that innocent children do not pay for their parents' crimes. They deserve, here and now, to be able to live in peace, to have access to protection and basic health care, to go to school and to exercise their right to grow up in a safe environment, free from terrorism and destitution.

5. In the light of the above, the committee would like to propose several amendments to clarify the text of the resolution.

1. Reference to committee: Doc. 14878, Reference 4452 of 24 June 2019. Reporting committee: Committee on Legal Affairs and Human Rights. See Doc 15591. Opinion unanimously approved by the committee on 11 October 2022.

B. Proposed amendments to the draft resolution

Amendment A (to the draft resolution)

In paragraph 11, delete the three last sentences.

Amendment B (to the draft resolution)

After paragraph 11, add the following paragraph:

> *"The Assembly reiterates the appeal made in Resolution 2321 (2020) "International obligations concerning the repatriation of children from war and conflict zones" to repatriate children together with their mothers or primary care givers, unless it is not in the best interest of the child. The Assembly is convinced that actively repatriating, rehabilitating and (re-)integrating these children without further delay are human rights obligations and a humanitarian duty, as well as a vital contribution to the national security of the countries concerned."*

Amendment C (to the draft resolution)

In paragraph 12, after the words "in which the survivors of Daesh crimes still live in Iraq or Syria," add the following words:

> *"including children,"*

Amendment D (to the draft resolution)

In paragraph 13.6, delete the following words: "in a non-discriminatory manner, avoiding gender stereotypes".

Amendment E (to the draft resolution)

In paragraph 13.7, replace the word "where" with the following word:

> *"if"*

C. Proposed amendment to the draft recommendation

Amendment F (to the draft recommendation)

In paragraph 4.3, after the words "Daesh foreign fighters," add the following words:

> *"on condition that it may not impose the death penalty,".*

D. Explanatory memorandum by Mr Stefan Schennach, rapporteur for opinion

1. I would like to thank Mr Pieter Omtzigt (Netherlands, EPP/CD) for the report he drew up on behalf of the Committee on Legal Affairs and Human Rights. As I said in my report of January 2020, which was written in response to a request for an urgent Parliamentary Assembly debate, I am concerned for these children detained in squalid camps. Once again, I welcome the adoption by a very large majority of Resolution 2321 (2020) and Recommendation 2169 (2020) "International obligations concerning the repatriation of children from war and conflict zones". I note that they are both in line with the decision of the European Court of Human Rights of 14 September 2022.[2] As a participant in the high-level international conference on the roles of women and children in terrorism, in December 2021, I was able to talk with experts about the complexities of repatriation operations and their sensitive political nature. While I am aware of how difficult it is to ensure that these children are brought back, I note that most European countries have already repatriated their citizens and that only a few States are lagging behind.

2. The best interests of the child must be the one and only principle that guides us. Protracting repatriation decisions by operating on a case-by-case basis not only squanders resources, it has left children trapped in a living hell for far too long, depriving them of their basic rights, including the right to be cared for; be protected

2. Grand Chamber judgment, *H.F. and others v. France*, Applications Nos 24384/19 and 44234/20.

from disease; have a good and well-balanced diet; go to school; be protected from violence, abuse and any form of exploitation; not engage in warfare; have access to shelter; be helped when in danger; have decent living conditions; to play, and more. All our member States have ratified the International Convention on the Rights of the Child and I expect the Assembly to interpret this crucial text in the same way.

3. I hope that the best interests of the child will guide the authorities in their choices, for the welfare of these children and of their relatives who are demanding their return to Europe, and also for our shared interest and safety.

4. Paragraph 11 of the draft resolution contradicts Resolution 2321 (2020), which was adopted by a very large majority, in particular, paragraphs 8.1.1: "take all necessary measures to ensure immediate repatriation of all children whose parents, believed to be affiliated to Daesh, are citizens of their State, regardless of their age or degree of involvement in the conflict" and 8.1.2: "repatriate children together with their mothers or primary care givers, unless it is not in the best interest of the child" ***(Amendment A)***.

5. It is our duty to uphold the indivisibility of human rights while recognising their universal and inalienable nature. The proposal in paragraph 11 for the Assembly to consider that "having taken into account the ongoing threat posed by Daesh fighters, it is crucial to consider that they have forfeited their right to family life under Article 8 of the European Convention of Human Rights (ETS No. 5)" fails to recognise that Article 8 of the Convention also provides that the children of Daesh fighters have their own right to family life, of which they cannot be deprived on the basis of their parents' crimes ***(Amendment A)***.

6. In its recent decision, the European Court of Human Rights pointed out that the requests for repatriation "were made on the basis of the fundamental values of the democratic societies which make up the Council of Europe, while [women and children] were facing a real and immediate threat to their lives and physical well-being, on account both of the living conditions and safety concerns in the camps, which are regarded as incompatible with respect for human dignity". Being deprived of the right to family life is a violation of the best interests of the child. The tools for tackling the ongoing threat posed by Daesh fighters are inherently different from those that enable children to thrive and grow up into responsible adults participating in community life. Punishing acts of terrorism is only one way of effectively combating the obscurantism of Daesh. Our values will always prevail over their hatred ***(Amendment A)***.

7. The proposed new paragraph incorporates elements of the declaration adopted by the Social Affairs Committee and is in line with the previous Assembly resolution and the decision of the European Court of Human Rights ***(Amendment B)***.

8. I propose a slight amendment to paragraph 12 to widen its scope. All children living in the region who have been harmed by acts committed in the name of Daesh should be regarded as victims of this terrorist regime. Most of the children in the Al-Hol and Roj camps were very young at the time of the events. They need special care and attention to ensure that their development is stable and smooth in future. I recommend placing emphasis on the situation of children in this part of the draft resolution ***(Amendment C)***.

9. I propose removing from paragraph 13.6 the segment "in a non-discriminatory manner, avoiding gender stereotypes", as it does not provide any useful clarification. The battle for gender equality is one that is waged by the Assembly every day. In this case, we are talking about women who have been perpetrators or accomplices of serious crimes and must be prosecuted and held accountable for their actions. Many European countries have already repatriated children and their mothers. Repatriation is not an escape route that would prevent justice from being done. My initial report was considered by the Assembly almost three years ago. These children have been living in inhuman and degrading conditions for far too long. It is urgent that they now come home and that the perpetrators and accomplices of crimes be brought to justice, including by our own courts and in our own jurisdictions ***(Amendment D)***.

10. I propose to replace the word "when" with "if" in paragraph 13.7 because I consider that children cannot be tried as members or supporters of Daesh, as they, too, are its victims. Even if some of them have since grown into young adults, they were only children at the time of the events. They are first and foremost the victims of a criminal regime which does not honour the commitment to the child's welfare that we have all made. These children need to be received in the best possible conditions so that they can rebuild their lives, with their specific needs being met ***(Amendment E)***.

11. I propose that paragraph 4.3 of the recommendation be amended to include a reference aimed at preventing any risk that perpetrators of crimes – covered by international law and committed by Daesh foreign fighters – could be sentenced to death by a special international tribunal or a hybrid tribunal ***(Amendment F)***. Since we mark the World Day against the Death Penalty every 10 October and all member States have abolished the death penalty, it is important to reaffirm this commitment set out in Protocol No. 6 (ETS No. 114)

and reiterated in Protocol No. 13 (ETS No. 187) to the European Convention on Human Rights. I would also like to point out here that the Rome Statute of July 1998, which established the International Criminal Court, does not provide for the death penalty to be imposed as a sentence either.