European Commission

11th European Forum on the rights of the child – Forum

Children deprived of their liberty and alternatives to detention

7-8 November 2017

REPORT

Justice and Consumers

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EUROPEAN COMMISSION

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11th European Forum on the rights of the child 7-8 November 2017 – Children deprived of their liberty and alternatives to detention.

7 November 2018, Tuesday

Plenary session I: EU and international commitments on children deprived of liberty

Tiina Astola, Director-General, Directorate-General Justice and Consumers, welcomed participants and encouraged all of them to take forward the side event discussions into the Forum. **Tiina Astola** ensured that **the voice of the children will be heard** and highlighted the importance of promoting rights-based alternatives to deprivation of liberty. Furthermore, she encouraged participants to take a child rights approach and to think of the individual children concerned during their discussions. Ms Astola pointed out that this Forum should lead to **clear follow-up actions** ultimately contributing for better outcomes for the children concerned.

Věra Jourová, Commissioner for Justice, Consumers and Gender Equality, gave a special and warm welcome to the young speakers of the Forum, whose testimonies are necessary for everyone to understand the depth of the problem. She further underlined that the guiding principle of the Forum is that all children have the fundamental right to liberty and that deprivation of liberty may only be used as a measure of last resort. The Commissioner mentioned the different actions taken at EU level, including the Communication on the protection of children in migration, the steps towards the set up a European network on guardianship, and the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings She brought up the recurring issue of children from European countries being used in trafficking. She also recalled that the available data on children in institutions is patchy and insufficient and therefore stressed the acute need for the UN Global Study. She highlighted the importance of funding alternatives to detention, and said that existing EU funding efforts will help the implementation of new directives. She expressed her hope that the Forum will promote the exchange of good practices and the prioritisation of alternatives to detention and wished participants fruitful discussions.

Anna Maria Corazza Bildt, Member of the European Parliament, Co-chair of the Child Rights Intergroup in the European Parliament, promised participants to take their contributions at the European Parliament's heart and to work on them. She believes that *"detention is a failure of society to take care of children"* and that prevention, including family and school, is a crucial aspect. In her speech, she focused on the issue of detention of migrants, highlighting that children should never be detained because of their migration status: it is a violation of the child's rights, and has been shown to cause lifelong harm. Additionally, detention centres can be areas of exploitation and recruitment. She said more must be done on all levels to prevent sexual exploitation of child migrants. She called on participants to enforce the ban on detaining child refugees. Another problem she highlighted is children fleeing centres out of fear and distrust of authority, and going missing. A solution is guardians and trust-building. Ms Corazza Bildt drew attention to the fact that one of the biggest source of stress and distress of these children is uncertainty. The Parliament has made several amendments regarding the obligation to inform them on their status in a child-friendly manner and encouraged Member states to implement it. She also raised the issue of fingerprinting and clarified that the age has been decreased from 14 to 6 years old in order to be able to identify children and protect them. Ms Corazza Bildt concluded with a call of action for Member States in which she expressed the need to work together to create a culture of non-tolerance of detention and respect for children.

Caterina Chinnici, Member of the European Parliament, Co-chair of the Child Rights Intergroup in the European Parliament, made it clear that child detention, including for children in conflict with the law, is not always in the child's best interests and that the obligations of the protection for children deriving from international conventions should not be forgotten. She focused her intervention on children in conflict with the law and reminded that young children in prison often have no adequate access to basic services, education, health and mental care, or psychological support. Ms Chinnici explicitly mentioned the rights contained in the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings (e.g. right to information, right to legal assistance and defence, etc.) and highlighted the importance of carrying out an individual assessment of the child's needs. She further referred to social rehabilitation and reintegration initiatives in

order to be able to create a bridge between prisons and communities and combat stigmatisation. Ms Chinnici finally mentioned the Italian Memorandum of Understanding as an example of good practice and expressed her wish to build on this and promote a similar Memorandum at European level.

Manfred Nowak Independent Expert leading the Global Study on children deprived of liberty, recalled the two major global studies on children in armed conflict and violence against children and presented the importance of the Study on children deprived of liberty. He emphasised that reality shows that far too many children are locked up in all kind of detention facilities but there is no reliable statistic data on the number of children deprived of liberty. Manfred Nowak explained his first-hand experience as the Special Rapporteur for Torture (2004-2010), which made him well aware of the fact that putting children behind bars leaves *"a very, very deep mark in their lives and also in the life of the society they are living in.*" He highlighted that the joint collection of data by different UN agencies, governmental officials and civil society has in itself an important awareness raising effect. Moreover, it constitutes the basis to develop well-reasoned recommendations and drawing upon the best practices what can be done. Mr Nowak indicated that the methodology of the Study relies on both quantitative and qualitative research, including questionnaires, which will be sent out by the end of 2017, regional and thematic consultations as well the views and experiences of children. Last but not least, he used the opportunity of the Forum to appeal to the EU, its Member States, other Member States and State foundations as well as the corporate sector to contribute to the financial needs of the Global Study, which he believes will have a major impact on the situation of children deprived of liberty.

Marta Santos Pais, Special Representative of the UN Secretary-General on violence against children, described the close link between deprivation of liberty and violence against children. In her visits to places of detention she often heard children asking *"Why are people looking at us as human beings without values and without a value for society? When will we be looked at as children like anybody else?"* She explained that some years ago, Indonesia invested in alternatives to deprivation of liberty, restorative justice and capacity building which resulted in a decrease of 30% in the number of children deprived of liberty and a 50% increase of diversion. Ms Santos Pais believes that change is within reach, it is a question of political will and investment and she trusts that Mr Nowak will make a change. She pointed

out that girls were particularly vulnerable to sexual abuse and to detention due to moralistic attitudes. In the second part of her speech, she further focused on children with parents in prison, and recommended the creation of safe spaces where they can speak about their situation. She also recommended steps to prevent and address measures of violence, and to offer children better psychosocial and financial support. Ms Santos Pais finally noted that children deprived of liberty certainly are an indicator of the implementation of the Sustainable Development Goals, which calls for leaving no child behind.

Plenary session II: EU and international commitments on children deprived of liberty

Leon Horváth, personal testimony:

Leon Horváth shared his experiences of spending 14 years growing up in Hungarian state institutional care. He was mistreated and abused in kindergarten as well as by his caregivers with lasting psychological effects, and as a result, became interested in children's rights and psychology. He began to file complaints and legal procedures. His efforts to draw attention to the system's failings made him unpopular: he was emotionally abused, and eventually put into a special residential care home for extreme cases to prevent him from contacting the government. After two years, he won a civil lawsuit which found that he had been illegally placed in this care home. Next, Mr Horváth highlighted some of the problems in Hungarian child protection: that civil society organisations run child protection services, not the state, and also that child refugees are treated inhumanely by the system, and are imprisoned and treated like animals.

Gholam Reza Hassanpour, personal testimony:

Gholam Reza Hassanpour, a former unaccompanied child refugee from Afghanistan, shared his experience of travelling from Iran to Turkey to Greece. At the age of 16, he left his family in an Iranian refugee camp and paid a smuggler to be taken to Turkey. He was caught by the Turkish army and detained in an outdoor camp, before being left at the Iran-Turkey border. Here, he was captured for ransom by smugglers, shot at, and threatened with torture. After finding money to pay for his release, he made his way to Istanbul and boarded an overcrowded lifeboat. The boat arrived at Lesvos after several hours of rowing, and contrary to his dream of safety and schooling, the Greek coast guards interrogated him, beat him, and put him behind bars in a detention camp for two weeks. Conditions were miserable: it was freezing, sanitation was inadequate, and he was

scared and confused. Gholam Reza Hassanpour underlined his horror that child refugees are treated like criminals after surviving awful experiences. After the camp, he lived in close quarters with other Afghan refugees and worked as a tailor in Athens, but after a year, decided he wanted a better life after what he had been through. He contacted an NGO and, through them, learned Greek and went to school. He is now a Greek citizen and works as an interpreter, helping other refugees and visiting "hotspots." He has seen that unaccompanied children are in danger in these hotspots, as well as during their journeys. They are targets of violence, exploitation, rape, and abuse from the people around them. He called for the end of detaining child refugees, and recommended three changes: adequate shelter and reception for unaccompanied children; for child protection officers to deal with unaccompanied children instead of soldiers and police officers, and better access to services such as interpretation, psychological support, education, healthcare, and asylum proceedings. Additionally, accessing these services should not lead to children being arrested.

David Raymond, personal testimony:

David Raymond explained his first-hand experience as a child in conflict with the law. At 16, he was sentenced to two months in prison for being drunk and disorderly, but served only one week. His trial took two years, as the case kept being remanded. He struggled with addiction at the same time. He was then charged with assault and drunk and disorderly behaviour and sentenced to five months (of which he served seven weeks). Mr Raymond remembers having to share a cell with a man who was serving a life sentence in prison for murder, probably due to overcrowding. He also pointed to uncertainty, fear, violence, and strict limits on contact with visitors as making life harder in prison. He believes that there should be more youth facilities, more time to spend with youth workers and less rotation between them as well as a faster juvenile system. He also felt that young people should be provided with access to drug counselling and treatment faster. Mr Raymond deeply appreciated the consistent support of his parents and thanked Don, of the Cork Life Centre, for being able to share not only his story, but the struggle of many other juveniles.

Simon Mordue, Deputy Director-General for Migration, Directorate-General Migration and Home Affairs provided an overview of the EU acquis and policy on the detention of children in the context of migration. Mr Mordue underlined the exceptionality of detention of migrant children and made it clear that the shortage or lack of appropriate accommodation, and/or the absence of alternatives to detention in national legislation or policy, cannot be seen as an excuse or a legitimate reason to resort to the detention of migrant children. He explained that DG HOME monitors compliance with the existing protection standards, including infringement proceedings against states which do not meet these standards (such as Hungary). He acknowledged that frontline Member States have been through tremendous challenges and

pressure and that there is very often an absence both of alternatives and solidarity. DG HOME has been working together with agencies such as the European Asylum Support Office (EASO) and the European Border and Coast Guard Agency (Frontex) to offer concrete logistic and financial support to Member States in order to improve the situation at the hotspots. Moreover, they have been working with Member States to improve the mainstreaming of reception facilities, to look for alternative care pathways and to ensure qualified assistance. He argued that states should readily invest in answering the challenges of unaccompanied children, as the cost of non-integration is higher than investment in the future. Mr Mordue finished by pointing out that the child's best interests should be the guiding principle and that finding alternatives that work has become an urgent priority.

Tomáš Boček, Council of Europe Special Representative of the Secretary General on Migration and Refugees, described the Council of Europe's standards and actions on children deprived of liberty and alternatives to detention across all the four subthemes. He started by stating that detention is synonymous to physical, emotional and intellectual isolation; alternatives are safer, less expensive and more effective to implement state criminal, immigration and social policies. Firstly, as regards children in conflict with the law, he stressed that the Strasbourg Court and the Committee for the Prevention of Torture have long advocated that all detained juveniles accused or convicted of a criminal offence should be held in detention centres designed for people of this age, offering a non-prison-like environment and regimes tailored to their specific needs, and staffed by professionals trained in dealing with children. In the context of child immigration detention, he recalled the necessity test established by the Strasbourg Court, according to which if the same aim can be achieved by other means, the detention will be incompatible with the ECHR. Thirdly, Mr Boček made it clear that the existence of a disability as ground for involuntary confinement amounts to arbitrary deprivation of liberty, and constitutes discrimination. Lastly, if no adequate measures are taken to counter the trauma parental imprisonment causes, states will ultimately have to attend to the serious health, educational, and integration problems these children may have to face later in life.

Sandie Blanchet, Director, Office for Relations with the EU, UNICEF, focused on child deprivation of liberty in the context of juvenile justice, migration and institutional care. She underlined many of the consequences of child detention: exposure to danger and abuse in institutions, developmental delays, physical and psychological harm, long-term societal effects, etc. UNICEF has supported directly juvenile justice reforms in 81 countries with a clear priority to reduce the number of children deprived of liberty and to promote diversion and alternative measures (e.g. in Georgia 200 children avoided criminal procedures and sentences). UNICEF is fully supportive of the CRC's position that detention of children for the purposes of migration control is never in their best interests. She explained that the normative framework on non-detention of child migrant is developing both at global and national level (e.g. Ireland has abolished child immigration detention). The number of children in institutions has also decreased dramatically in some countries such as Bulgaria and Croatia. Ms Blanchet urged EU institutions and Member States to strengthen their legal and institutional instruments to prevent deprivation of liberty and support alternatives. She is confident that the same way death penalty has been eliminated in all EU countries, deprivation of liberty of children can also become a practice of the past.

Sophie Magennis, Head of Unit, Policy & Legal Support, Bureau for Europe, UNHCR provided an overview of UNHCR's positions and actions the detention of children in the context of migration. She emphasized that the solutions regarding children on the move can only be addressed effectively through cooperation among the wide range of actors, including the children themselves. For this to be achieved, there must be a common ethic of care, not of enforcement. UNHCR recalled that seeking asylum is not an unlawful act and calls on states to end the harmful practice of detention of children from migration purposes. Ms Magennis referred to several reports published by UNHCR[1] and drew special attention to the detention of stateless persons who are at risk of prolonged and repeated detention. As regards unaccompanied children, she stressed the importance of identifying and registering the child at an early stage and carrying out a multidisciplinary best interests assessment with priority for family reunion. She also referred particularly to the need to immediately appoint a

[1] Options for governments on open reception and alternatives to detention (UNHCR, 2015) Beyond Detention Baseline Report and Progress Report (UNHCR, 18 August 2016) Stateless Persons in Detention: A tool for their identification and enhanced protection (UNHCR, June 2017)

guardian. UNHCR's representative believes that the global compacts which will flow from the New York Declaration represent a crucial turning point and offer an opportunity for states around the world to move towards ending child immigration detention and promoting alternatives to detention.

Tuomas Kurttila, Children's Ombudsman, Finland, Chair of European Network of Ombudspersons for Children (ENOC), described ENOC members' positions and actions related to deprivation of liberty of children and alternatives to detention. Mr Kurttila believes that the question of today is to listen to these children and to take their views seriously. He also underlined the need for more public control and monitoring mechanisms as well as quality data that truly reflects the experiences of these children. He touched on key challenges such as the fact that some institutions close their doors to investigators, and that children do not know their rights, the authorities they can rely on or the legal instruments in place. Moreover, he explained that alternatives are weak and that the lack of services means children and their families are being left alone. Mr Kurttila highlighted that seminars and talks are indeed important but it is up to the heads of state to really acknowledge the difference between the law in books and the law in action.

Dainius Puras, UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Health, focused on the right to physical and mental health in the context of deprivation of liberty. Mr Puras started by emphasising the child rights approach by stating that children are owners of their rights. They have the right to life, survival and development and must exercise their freedom, independence and autonomy. Also, they have the right to be free from any form of violence, which is detrimental to their physical and mental health and explained that violence needs to be addressed as a public health issue. Mr Puras stated that "*children with disabilities need to be liberated from the legacy of institutional care,*" especially in Central and Eastern Europe, which creates environmental chronic neglect and toxic stress in children. He further believes that the health sector should integrate the standards set by the Convention on the Rights of Persons with Disabilities and integrate modern policies. Lastly, he suggested that NGOs may be the perfect partners and leaders in the effective management of change.

8 November 2017, Wednesday – Plenary session III - key note address and personal testimonies

Margaret Tuite, Commission Coordinator for the rights of the child, welcomed participants back to the second day of the Forum and drew their attention to the publications and reports available for them from various organisations. She invited participants to use the events app and introduced the day's keynote speakers.

Renate Winter, Chair of the UN Committee on the rights of the child, began by reiterating that deprivation of liberty is never in the best interests of the child, and highlighting that the UN's Global Study will have a real impact on children's rights, as "*what we do not have in statistics and data does not exist.*" She put the following questions to the discussion groups: What added value could they bring? How could they convince States to divert children from detention, particularly in countries that have no other measures to tackle the problem? How could they convince States and companies to provide healthcare and education to children? Another problem she raised was abstract terminology in common phrases such as "a measure of last resort," "strictly necessary" and "for the shortest time possible," which from a legal standpoint, do not set definite limits on the sentencing of children with regard to deprivation of liberty. Her final point was that children of prisoners are consistently secondary in every discussion, and they should not be ignored.

Dylan Moore, personal testimony:

Dylan Moore related his experience of growing up with a parent in prison. Up until the age of 12, his mother had told him his father worked abroad, but at 12 she told him that his father was in prison. This revelation affected every part of Mr Moore's life. It made him grow up more quickly, assume a parental role with his father, and constantly be guarded against gossip. He felt he could not talk about it with anyone, and felt disconnected and removed from everyone in his life. "*In hindsight, the only reason I felt like I had to hide it was because I'd never heard anyone talk about it before.*" However, Mr Moore pointed to some positives in the experience: isolation leads to self-reflection, which is necessary in the healing process. After several years, Mr Moore was able to talk openly about having a parent in prison. He was disappointed in how uncomfortable people were when he told them about his father; to

change this, he began working with KIN, a Glasgow-based project which aims to support people with relatives in prison and to spread awareness. He played a video he had made after joining KIN, in which young people with relatives in prison share their perspectives on their experience; their regrets; and their messages to their imprisoned relatives. After this, he reflected on the positive impact KIN has made, including for example helping his aunt understand what he had been through. Despite 27 000 other children in Scotland also struggling with having a parent in prison, Mr Moore said that KIN's message was still misunderstood or misrepresented. He finished by saying that they still had a lot of work to do, and hoped that the Forum would help.

Pavel Hájek, personal testimony:

Pavel Hájek shared his story of growing up in Czech institutionalised care from the ages of 14 to 21. He explained the four types of institutions in the Czech Republic: the diagnostic centre, which every child spends three months in, to evaluate where the child should be placed; the children's home, for children with no behavioural problems but unsuitable home situations; the children's home with school, for children with challenging behaviour; and the correctional institution, which has barred windows, strict rules, and acts as a sort of prison. Mr Hájek described the problems he faced: firstly, being in the diagnostic centre meant obeying very strict rules despite his not having done anything wrong. He was deprived of his liberty unjustly – something which he can now recognise because of Lumos' help. Another problem is that he was taken away from his mother because she had difficulties, but she receives very little help from the state, and she struggled with housing. A related problem he saw is that children in the homes get pocket money, but not when they spend a weekend with their parents, which leads to children not wanting to visit their parents. Ultimately, "*the institutions do not support the relationship between children and family*." More could be done to keep families together in the first place. The last issue Mr Hájek mentioned is the lack of respect for individuality. Mr Hájek will now reside in a children's home until he is 26, but he is still subject to the same rules as the children. He ended his

testimony by pointing out how negative experiences in institutions will affect children well into their adulthood.

Plenary session IV – concluding remarks and next steps

Margaret Tuite welcomed participants to the final plenary session. She introduced the first speaker, **Nathalie Griesbeck**, who, among others, prioritised the protection of unaccompanied children and was the Parliament's rapporteur on unaccompanied children.

Nathalie Griesbeck, Member of the European Parliament, Vice-chair of the Child Rights Intergroup in the European Parliament, began by underlining the large number of participants who are committed to ensuring effective legislative protection for children. She welcomed Commissioner **Věra Jourová's** strong engagement to the protection of children's rights. She said "*what I would like to see is an end to child detention*." Child incarceration runs counter to the UN's and the EU's human and fundamental rights charters, as well as their values. She talked about the need for alternatives to detention, the effects of incarceration on children, the difficulties of reintegration and deinstitutionalisation, the risk of discrimination and marginalisation, and the likelihood of children deprived of liberty becoming repeat offenders, or becoming radicalised. Ms Griesbeck called for specialised measures adapted to each child's situation as well as better financial and psychological support. She recalled seeing children in cages in some Member States and called on participants to continue to fight against and prevent such violations. She finished by stressing that everyone's priorities should be the health and well-being of children, especially as they are more vulnerable and less protected than adults.

Rositsa Dimitrova, Deputy Minister of Labour and Social Policy, Bulgaria, outlined Bulgaria's experience with regard to child detention. Her first point was that the principle of the best interests of the child is central to every policy concerning children. Since 2010, Bulgaria has been focusing on deinstitutionalising Bulgarian childcare and finding alternatives by supporting families and developing community-based social services. The results have been promising: for example, the number of children in specialised care has dropped by 87%. Social services specific to children have been tripled. The quality of child care has been improved via these measures, which were funded mostly from the State budget. The European Regional Development Fund and the European Social Fund also financed the

changes. For the reform to be successful, transparency, common goals, and continued funding are crucial. Her second point outlined Bulgaria's international efforts to promote the rights of the child, such as in the Asia-Europe Meeting (ASEM) seminar taking place in Sofia at the same time as the Forum, dedicated to children's rights. Its main topics were 1) international cooperation and the role of the State for children's survival and development 2) the protection of vulnerable children and 3) children's involvement in decisions. Bulgaria has consistently championed children's rights on an international level. Ms Dimitrova's final point delineated Bulgaria's plans for implementing further measures in the future, including focusing on poverty and social inclusion and integrating health, social and educational elements into one service. She announced that a debate would be held on integrating childcare services, and that an event will take place in Brussels centred on children's involvement in decision-making.

Emmanuel Crabit, Director, Fundamental Rights and Rule of Law, Directorate-General Justice and Consumers, thanked the 350 participants and the speakers for their involvement in the forum. He said that the children and young people who gave personal testimonies expected participants to now act in light of this knowledge. The forum had served to raise awareness of the inexcusable use of child detention as well as providing useful examples of good practice. He highlighted that children are often deprived of liberty due to government system failures and violence. Having parents in prison also led to children being vulnerable to stigmatisation and victimisation. He referred again to personal testimonies which had been heard at the forum and pointed to a common thread of isolation and lack of support in those stories. He also announced that the Commission is considering contributing to the UN's Global Study and reminded participants of the expected results of this forum as set out by Ms Jourová the day before. He said the forum would serve as a driving force for policy change.

Margaret Tuite made closing remarks, thanking participants, speakers, interpreters, and those who gave testimonies. She encouraged participants to continue the discussion between them and at home. She pointed to the summary graphic recording illustrations done by Maria María Foulquié García (*Visuality*). She underlined that the forum was not "*just a meeting, it's a process*" and that work would be ongoing.

PARALLEL SESSIONS, 8 NOVEMBER 2017

Session 1 – Children in conflict with the law

The session was chaired by **Isabelle Perignon,** Head of Unit, Procedural Criminal Law, Directorate-General Justice and Consumers, and co-chaired by **Benoit Van Keirsbilck,** Director, Defence for Children Belgium. In this session, seven panellists presented practice in various Member States and shared their views on alternatives to detention in the case of children in conflict with the law, followed by discussion with participants.

In her introduction, the Chair recalled that it is estimated that in the EU every year more than one million children are in contact with the criminal justice system. Children are particularly vulnerable in criminal proceedings due to their young age: they may have difficulties to understand what is at stake in criminal proceedings; they may not easily understand the law and their rights. Therefore they need the highest possible protection.

Before joining the Commission, Ms Perignon worked for a few years as a defence lawyer, including on cases in which children were involved. She mentioned an EU-funded project, which started in 2016 and is implemented by the Paris Bar. The project includes different bar associations in Europe, which help children to have defence lawyers with specific training on psychological issues and on how to deal with the children. They involve both criminal and defence lawyers, having the capacity to help and defend children, to communicate with and approach children in an appropriate manner.

The European Commission has always recognised the need for specific rules for the protection of children involved in criminal proceedings. The Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings was adopted on 11 May 2016. Member States are now transposing and implementing the Directive, and the deadline for transposition is June 2019. The aim is to considerably improve the European standards for procedural rights for children when faced with criminal justice, and an important step forward in building a European area of justice, considering the large disparities in the levels of protection of children in criminal proceedings, taking account of international standards. The Directive gives specific rights to children involved in criminal proceedings and at all stages of the proceeding: the core element of the Directive is the right for children to access to a lawyer and (with some countries having very specific trained defence lawyers), the mandatory assistance provided by the lawyer to children in detention in

serious and complex cases. No prison sentence can be imposed if the child was not assisted by a lawyer, at least during the hearing before the court. Additionally, there are some other safeguards for children: right to information on their rights, the right be assisted by their parents, the right to privacy and hearing of the child undertaken in the absence of public; an individual assessment of their family and social background, specific needs concerning protection, education and social integration will be taken into account during the trial and before the sentence. Ms Perignon highlighted the special safeguards for children deprived of liberty: Article 10, in line with international standards, states that deprivation of liberty of a child should be limited to the shortest appropriate period of time and only as a measure of last resort. Article 11 requires, where possible, to enforce alternative measures to detention (such as the prohibition for the child to be in certain places, obligation to reside in a specific place, restriction of contact with certain persons, reporting obligations, participation in education or therapeutic programmes). Finally, the Directive also contains rules on the fact that detained children should be held separately from adults, unless contrary to the best interests of the child. Specific rules apply when a detained child turns 18 and in the cases of detention of children together with young adults. Detained children have access to education and training, programmes to foster social reintegration, measures to ensure health and physical and mental development and the right to regularly see their family. The Chair concluded that this Directive demonstrated the strong will of the Commission to have it adopted in line with Article 24 of the Charter of Fundamental Rights and the Treaty objective to promote the protection of the rights of the child. She stated that it will be interesting to see how the Directive is implemented in different States.

The Co-chair underlined that the aim of judges and the justice system has often been to take a punitive approach to children in conflict with the law. In the mind of the person who takes decisions the aim of the decision is very often to punish the child and to make sure that the child understands that he or she has breached the law and should not do it anymore. Nevertheless, such punitive measures and approach have limited effects and very often the punishment and the way the justice systems treats children does not reach the goal. The goal should primarily be educative and the education of children should be the outcome of any kind of intervention. The first question posed is if it is possible to educate children placed behind bars in a closed institution. He recalled that often these are children who have difficulties to deal with limits

and rules. The Chair queried whether detention behind bars or walls can help these children to deal with and respect the rules when they are outside of the institution.

Mr Van Keirsbilck drew attention to the necessity of education in closed centres. He recalled that many children who have committed an offence or who are in conflict with the law have behavioural or mental health difficulties. In addition, other questions asked were if a closed centre or an institution is the right place to help them behave better, to deal with other people in an acceptable way. He said that there is ample evidence to show that detention, as well as being harmful is to children, is a costly solution for society at large. The question was posed as to why detention is still so much used, since there are other known ways of dealing with children. The aim of the panel was to try to understand the current situation on the use of detention and contribute to bringing about change. On possible solutions, he considered that Directive 2016/800 will help to have some rules to follow. The experts and the EU are requesting national legislation to be changed, which needs to come together with other changes in the system. Alternatives to detention need to be in place and the meaning of alternative means needs to be understood. Besides, there is also a need to divert children from the justice system: the justice system should aim at making sure that the child in conflict with the law goes out of the system in a better capacity to live in and respect the rules of society.

He recalled the difficulty in reducing the number of children in detention if the number of detention centres is not reduced. He considers that sending a child to detention is sometimes seen as an easy and risk-free solution. The contrary happens in education, as in this case the judge takes a risk: if the child reoffends, society may target the judge for having been too lenient. The important question is if we are able to reduce the number of places of detention, of institutions that are closed, as there are some consequences, such as for the people working there, who would need retraining to be able to work somewhere else.

He recalled the importance of training and awareness-raising in order to change the mind set and make people understand that punishment is not the best possible way. Respecting procedural rights and defence rights are very important as recalled by the provisions of this new Directive and it was highlighted that children's defence lawyers need to be very committed and experienced and child-friendly. He said that, in that regard, the EU-funded project run by Defence for Children "My Lawyer, my rights" aims at training defence lawyers.

The project has two main outcomes: to produce a manual for Member States on how to apply the Directive in line with the rights of the child, including the CRC and other provisions, and to produce a manual for lawyers who will deal with children, to have the right training, to know the standards, to be able to communicate in the right way with children.

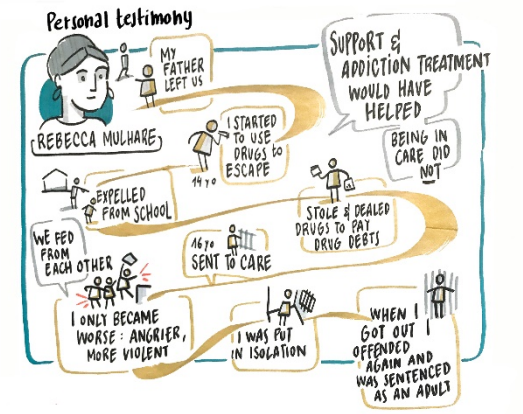
Finally, as regards the expression that "detention should be a measure of last resort and for the shortest period of time", he said that many people do not have a clear idea on this principle. Mr. Van Keirsbilck gave an example of a Belgian case a few years ago in which two children aged 17 killed another child when attempting to steal an mp3 device. Both of them were prosecuted: one was tried in the adult system, judged by a judge for adults, while the other one was dealt with by the juvenile justice system. The first one got 20 years of detention in a prison for adults (though it is known that this is probably not the best place to get education), while the other one spent about 20 months in a juvenile detention centre with educators, with a programme, and with the possibility to undertake action and activities that would help him understand what he did and to try to improve himself. The Co-chair asked what was understood as the shortest period of time in those cases and if such long periods of detention

were needed to deal with children, even if they had committed such serious crimes. Lastly, on the question on what is the specificity of a juvenile justice system when we compare it to a system for adults, namely to what extent the juvenile justice system is different when it deals with children or adults:

- Is it enough to call an institution a child detention centre when it looks like a prison and everything is organised in the same way as a prison?
- Is it enough to call a judge a juvenile judge if she or he does not have the right training and right approach?
- Is it enough to have a system that mirrors that for adults, but which is simply segregated for children?

The panel session started with a testimony by Rebecca Mulhare (video message).

"My name is Rebecca Mulhare and I am 22. I'm from Cork City in Ireland. I'm here to tell you about my own personal situation.



In primary school, I was OK until third or fourth class but then problems started at home, when I was around 8 or 9 years old. From there it went downhill and at 11 I started smoking weed. I was depressed and very down in myself. My dad leaving the family home had a big impact on me. My mum was around and she was great but it wasn't a family anymore so I would take drugs to feel better. Sometimes I would blame my mum because my dad walked away.

I continued to take drugs and experiment with harder drugs and alcohol. I would go missing for nights, nobody would know where I was and that would cause my mum huge panic. At this stage, the Garda knew me for going missing and being arrested. My acting out in relation to my mum continued. In secondary school, I took it out on teachers and in the end I was expelled from school when I was 14. I went to Cork Life Centre where I sat my Junior Certificate exams, which I passed. While there I saw a counsellor and a drugs counsellor who worked in the Centre. However, I was still on drugs and was still getting into a lot of problems with the police.

My first dealing with the court was during this period. I was taking drugs resulting in me wrecking my home and hitting my mum, taking anything I could get from my mum because I had drug debts. Drug dealers were attacking my house because I owed them money. The social workers took me to court for supervision orders, which resulted in me being taken into care at the age of16.

When I was in care, I just got worse. I was able to get drugs and was still drinking. I would abscond from the care home, which was still in Cork City. My mum continued to visit me and I continued to go to school in the Life Centre. I got into trouble with other residents of the care home. We would feed off one another. We did damage to the care home and lashed out at staff continuously. I was charged with assault and taken to court after one incident that myself and a number of other residents were involved in. While the other residents were left in the

home, I was taken to the Garda station, held for the night and brought before the court next morning. The judge detained me to Oberstown detention centre that morning. On arrival there, I was drug-tested and drugs were found in my system. I was there for three weeks that time. I didn't get to meet or associate with anyone else. I was kept in single separation until my last night there. When I was released from there, I was put on a good behaviour bond and curfew and allowed back to the care home. My drug use was getting worse and I was becoming more violent. Part of this was because I wanted to go home. They kept telling me I would be going home in three months, but they kept lying and telling me it would be another month before I could go back home. During my period in care, I ended up in hospital a number of times for taking drugs.

Not too long after this, I was sitting with other residents we were taking drugs and drinking in the care centre. Staff came and told us to turn down the music. We attacked the staff. We were totally off our heads and we were very violent. I was arrested that night and held overnight in a Garda station. When I came before the judge I was again detained in Oberstown. Similar to the first time, I had a drugs test which was positive and was not allowed mix with others. I was kept in single separation for three weeks. While attending the school there, I was with one other person, but outside of those classes, I was never allowed to meet another person. Staff wouldn't allow me writing materials in the cell. I only had a TV. Staff wouldn't talk to me and my only interaction with them was them staring at me through the little window every half an hour. I was only 17 at that time.

When I came out, I was placed in Wicklow, about three hours from Cork City. While there I was still taking drugs and would run away for a couple hours but always came back that day. When finally I was allowed to visit my family in Cork after five months, I ran away for a few days until the staff came to take me back. I run away mainly because I didn't want to leave my family and go back to Wicklow, as I was very lonely back there. When I went back to Wicklow, I lost my visits to Cork, and wasn't allowed out of the care centre at all. During this period, I received charges from before my last visit to the detention centre but it didn't come up until I was 18. I was charged with three assaults from an incident in the care home and brought before the judge. In the end, the judge gave me a two year suspended sentence and also bound me to the peace. A curfew was also imposed. Because I was charged as an adult, this charge remains still today. After this again, I was charged with breaking a bail bond when I was 16 years of age. The judge in the district court gave me five months. I appealed it and the judge in the circuit court through it out saying it was crazy how long it had taken to come before the courts because it was nearly two or three years later.

What could have helped me from an earlier stage would have been access to supports and if there was someone around to talk to on drugs. A drug treatment centre should have been available, instead of just being dumped in care, which is not like home and just makes vulnerable young people angrier. My visits to the detention centre – even though still angry and violent, I was terrified before my first visit and, if anything, it made me get worse. Solicitors and judges should be honest and open with young people and listen to what they say and for those who need support, the support should be in place rather than being sent to care homes or detention centres. My drug taking and violence got worse while I was in the care of the State. I continued to run away and put myself in very dangerous situations and I was still only a child. I don't want the same thing to happen to other young people and for them to go through the same thing as I went through because I hope they have a better chance at life. I believe the care and justice system will lead you down the wrong path and get you

into further trouble rather than helping you. In my short life, while I have experienced huge difficulties, I have also had supports. However, 15 of my friends have died either from suicide or drug overdose in the last two year with little or no support.

There needs to be proper support for people with mental health and anger issues. Counsellors and drug treatment should be available for young people in need. Putting vulnerable young people into care, taking them from their families is not helpful. Young people in detention centres should not be separated from other young people while in detention. Supports for the families and the young person is what is needed. From my experiences, being in care led me into a very abusive relationship which was life threatening to me. To me, the detention settings, even though I was on remand, offered me nothing to be hopeful about in the future and increased my violence and anger.

My mother stood by me through all of this even though I made her life hell. I broke up her house, I stole from her. I hit her. I blamed her for my dad leaving. I brought drug dealers to her door. And she still stayed with me. When I was in the Life Centre they gave me all the support I needed and even when I left they were still there for me and helped me through all the hard times and I am very thankful for that. One Friday night, Don O'Leary, the director, collected me from the Garda station when he wasn't even working and it just shows that the Life Centre goes above and beyond for all its students and will always be there when you need them.

Thank you for giving me the opportunity to tell my story and I hope the people in power will make the changes that vulnerable young people need, so they have a better opportunity at life."

Yannick van den Brink, Assistant Professor, Law School, Child Law and Criminal Law, Leiden University gave a presentation on strategies and challenges regarding the implementation of children's rights principles in pre-trial detention of children in domestic juvenile justice systems. Pre-trial detention of children is a global concern as stated in the UN Committee for the rights of the child's General Comment No 10 "The Committee notes with concern that, in many countries, children languish in pre-trial detention for months or even years" and that concern also applies for the Netherlands, as noted by the Committee in 2015. According to the ECHR, pre-trial detention is a coercive measure that can be imposed in the pre-trail stage of the proceedings for the purpose of moderating the immediate risk that the accused frustrates the process of truth-finding, absconds, commits another crime or that his or her release causes disorder in society. It is important that it is not a punishment, because this would violate the presumption of innocence.

The judge's decision on pre-trial detention of children is very complex and delicate and it requires a balancing of divergent interests at stake. General criminal justice interests (such as a juvenile will not reoffend), personal liberty interests of the juvenile (that he or she can go home, that she or he can go to school), fair trial interests (including the presumption of innocence, but also all the pedagogical interests of early intervention, responding directly to inappropriate behaviour) can be taken into account. In this balancing exercise, the best interests of the child should always be a primary consideration. Judges have to balance these interests in each and every individual case, but in the end the decision should always be lawful and never be arbitrary, which means they should be in line with international human rights law principles.

Mr van den Brink listed three important principles:

- pre-trial detention of children should be used only as a measure of last resort and for the shortest possible period
- pre-trial detention cannot be used to anticipate a custodial sentence
- the use of alternatives must be carefully structured to reduce the number of children in pre-trial detention rather than 'widening the net'

Based on his PhD research which analysed Dutch law and practice in light of international children's rights standards, with empirical research, covering 225 court observations and 71 interviews with judges and other professional stakeholders, Mr van den Brink presented issues regarding the implementation of children's rights principles not only in the Dutch system but in other domestic juvenile justice systems. He addressed three levels of implementation: legislation, state or policy and decision making.

The first level, **legislation**, as the law needs to establish that pre-trial detention is a last resort and for the shortest possible period, with a limited amount of grounds for pre-trial detention, which need to be in line with European Court of Human Rights (ECtHR) case law and the European Court accepted the risk of reoffending, absconding, frustrating the process of truth-finding and public disorder. There should be strict time limits. According to the Committee on the Rights of the Child, pre-trial detention should be reviewed every two weeks, and alternatives to detention should have a legal basis, for which States should develop an effective package of alternatives. The question is what is an alternative for pre-trial detention? For example, in the Netherlands there is an alternative to 24/7 pre-trial detention night detention measure where children spend nights and weekends inside a juvenile detention centre but they are allowed to leave to attend their own school. But it is still a deprivation of liberty according to the Havana Rules. The same applies for closed shelter homes, for house arrest or other alternatives to secure detention but still alternatives to deprivation of liberty. Secondly, the accumulation of alternatives such as a curfew, a restraining order, or intensive probation supervision can be very intrusive if combined at once and as accepted by the European Court, a combination of multiple restrictions can constitute deprivation of liberty in some cases.

Secondly, as regards the **state and policy** in relation to the development of alternatives, it is important to be aware of the risk of net-widening and net-strengthening. As for net-widening, especially when new alternatives are developed, it can happen that it does not really reduce the use of pre-trial detention, but rather widens the net of children being in the net or the system of control basically. As regards net-strengthening, it related to the excessive use of alternatives, such as conditions that can be attached to pre-trial release, a combination of multiple conditions that basically criminalise behaviour that is quite normal, (e.g. such as

children who are not allowed to enter certain stores or that have to be home at six o'clock in the evening). If you impose a lot of conditions like that, it increases the chances that a child will violate these conditions and will end up in detention after all and will get deeper and deeper into the system. Therefore it is very important that alternatives to pre-trial detention are surrounded by legal safeguards as well, reflecting the principle of proportionality and strict time limits. On the other hand, it is necessary to monitor the use of alternatives to safeguard that alternatives reach the target group, i.e. only the children who otherwise would have been detained.

Thirdly, as regards **decision-making,** understood as a collective process, as the judge's decision on pre-trial detention is part of a chain of decisions in which the output of one actor is the input for the other actors. A judge's decision on pre-trial detention is the result of interactions between different stakeholders. In the Dutch system, for example, the Child Protection Agency is very important when it concerns the use of alternatives and if it does not advise a certain alternative, it is very likely that a judge will never use this alternative.

Mr van den Brink highlighted the importance of perceptions of decision makers. In his research he had come across several examples of perceptions of judges that for example, pre-trial detention is a very effective response to criminal behaviour of children, that pre-trial detention is sometimes in the best interests of the child because then the child learns that what he or she did was wrong for example. This approach can be seriously questioned according to the ECtHR case-law: it is not a legitimate ground, unlawful, arbitrary, and pre-trial detention cannot be used to anticipate a sentence, it violates the presumption of innocence and it is not only a theoretical objection. It is a serious concern. His research revealed that one in 10 children who spend time in pre-trial detention was eventually not convicted, but acquitted. As long as judges think that sometimes the needs of the child require pre-trial detention or that it is “for his or her own good”, even if many alternatives are developed, probably the judge would not use them.

Mr van den Brink instead tried to develop a decision making scheme for judges, a rights-based protocol for pre-trial interventions, instead of a needs-based approach. Mr van den Brink used the concept of "pre-trial interventions" because it is important in order not to use pre-trial detention as the point of departure in decision-making. The following scheme can be used by judges when making decisions, based on the ECtHR case-law:

- offence of a minimum level of severity
- very strong suspicion
- grounds to depart from the principle that the child suspect awaits trial without being subject to interventions and the only grounds can be risk of absconding, collusion, reoffending or public disorder
- Which interventions are strictly necessary for the juvenile for the purpose of moderating these risks?
- balancing of interests

In determining which interventions are strictly necessary, Mr van den Brink proposed a continuum of pre-trial preventative measures. The judges have to move along this continuum that starts with no pre-trial preventative measures and with detention as the absolute last resort, to look at which interventions are strictly necessary. Of course the individual needs of the child should be taken into account, but not as a justification for using detention, but more to determine which interventions are suitable and which interventions are effective for modifying these risks.

Finally, the key messages of Mr van den Brink were:

- it is needed to move beyond this strict distinction between pre-trial detention and alternatives and towards a continuum in which the liberty of the child without restrictions is the point of departure for decision making and pre-trial detention is the absolute last resort
- non-custodial pre-trial measures, so alternatives to detention, should be surrounded by legal safeguards: there is a risk that when reducing the use of detention, it should not be forgotten that alternatives to detention can be very intrusive for children as well
- if we want to reform the system, it should be a comprehensive reform. All stakeholders should be involved because if some stakeholders do not have trust or faith in certain alternatives, it is very likely that these alternatives will not be used.

Angus Mulready-Jones, Lead Inspector on Children in Detention, HM Inspectorate of Prisons (England and Wales) presented the evidence from their work in police custody, as well as with the probation inspectorate around offending work in the community in England and Wales, and their findings in detention centres across those territories. He focused on the work done in the UK and some successes that have been brought to light over the last 10 years but also some of the current challenges for the UK and other jurisdictions that never went to incarcerate 3 000 children in the first place, on diverting those more difficult, serious and persistent offenders within the children's population. Mr Mulready-Jones started by reminding that the reason for diversion is the consistent evidence that contact with the formal criminal justice system is harmful for children, and they will more likely re-enter the justice system afterwards (and not just that going to prison is harmful and has some poor outcomes).

When talking about diversion and reducing the number of children sent to prison, it needs to start at the beginning. It is not possible to start with admitting the same number of children to the criminal justice system and expect the criminal justice system to manage to ensure that the prison population decreases by some act of alchemy. When talking about diversion from the police station, it might be that the focus is different to those children currently being detained but Mr Mulready-Jones would argue that efforts at that very early stage may well prevent more persistent offending or that these children are later in custody.

To start with, in the English and Wales justice system, at the top there is crime and at the bottom there is custody and the numbers diminish. Mr Mulready-Jones presented figures from 2016 on "children diverted from entering the youth justice system". In England and Wales approximately 88 600 children were arrested in England and Wales, which is not everyone that went to the police station, as the police did not arrest a large number of children who went to the police station. They diverted them out of the system at that point where they were pre-arrested. The model that has been implemented in many police stations where it works well is that children who come into contact with the police will not be dealt with through formal criminal justice measures. Diverting them means triaging them out of the system and dealing with them by way of a local panel which typically includes youth probation officers, youth offending workers, health and education professionals. Mr Mulready-Jones said there is

no figure on that; it is not nationally recorded, but he said he would present some of the direction of travel since this approach has been introduced, where it could be seen that that there is a significant number of children going through the diversion system.

What that means for the child is that they will essentially undertake a voluntary arrangement with local services to both offer some sort of apology or reparation for the harm they have committed but also work on some of the underlying issues that are directly related to their offending. This model accepts that the cause of offending lies sometimes in things like poor education, poor health outcomes for these children and without addressing those that will simply have more entrants into the justice systems.

The other point is that diversion works within the system itself. To get to court near the bottom of this chart, there are several schemes that work on a very similar model to the one described, but which are directed by the court. They are more or less intensive depending on the severity or the persistence of the offending.

The idea is when talking about this issue about a last resort to many professionals in the system, there is the current situation in England and Wales where at each point, there are question asked about why that child needs to be in the formal system or going towards custody rather than a community disposal. There were some successes, so the number of arrests had been reduced by 75%, the number of cautions has reduced by 85%, the number of children convicted by 73% since 2006. They are real outcome for real children.

This has happened because of several government initiatives all at the same time (and not because of one intervention): there is pressure on the police not to arrest and detain children, as well as on local authorities to provide decent alternatives to custody at later stages as well.

The upshot of that and as seen in a very optimistic graph is that, in 2016, the number of first-time entrants into the youth justice system was 18 000 compared to a peak of 110 000 less than nine years ago, and children who are entering into the system for the first time are getting older. This would be expected, as if you had a system that diverted those children initially away, those first-time entrants are generally people that have been involved in diversion several times and have failed in those diversion schemes.

The final point on this is that the number of children imprisoned has reduced by 73% since 2006, which has led to significant cost savings, to fewer prison institutions in England and Wales and hence the need for fewer prison inspectors. But this success over the last 10 years

presents some challenges; including for the people present at this conference because there have been implications as a result of fewer people entering the criminal justice system. Notably, the money that was once there is no longer in the youth justice system, the central government spend has more than halved the budget on youth justice. That means that those local authority teams who are dealing with diversion are dealing with fewer individuals and broadly speaking have fewer resources to do that. They have to look at different models of working, more aligning with those youth services for those children who are not going through the criminal justice system. The main challenge however is that those 73% diverted children were easier to divert than those that remain.

Mr Mulready-Jones said that it is easy to say that children should not be imprisoned, but the difficult thing is to say, in the case of children who persistently offend or breach diversion interventions, what needs to be done next. There are intervention that work, but they do not work for everyone. Therefore, it is important to present decision makers at arrest, at court as well as policy makers in central government with credible alternatives for those children convicted of more serious crimes against others in their community. While, as said by some speakers, alternatives can sometimes look like detention, they will not be acceptable for some of those children that remain or they will not be acceptable to the communities from which those children have come from unless they have fairly stringent, intensive support and supervision of those children involved.

Mr Mulready-Jones pointed out that there are still 960 children in custodial institutions in England and Wales. Those existing institutions which will continue to exist in the EU need to be improved to be better able to deal with a group of children that are not more complex than they were before, because those children were in prison before, but there are fewer of the relatively less complex children in those institutions with them. This situation had obliged his organisation to write in February 2017 to the Secretary of State to state that none of the institutions holding children were safe. He said that while there have been successes and there has been progress, if we would need to move to a situation in 10 years' time and have another two-thirds of the population taken out of the justice system, we need to think long and hard about what alternatives mean for those 960 who are currently in custody.

Laëtitia Dhervilly, Deputy Public Prosecutor, Head of Children's Department, Paris Prosecutor's Office, said she deals not only with child perpetrators, but also child victims**.** She gave a brief introduction of the French juvenile justice procedures, and stated that in her experience as a public prosecutor, justice to children is something that magistrates in France (and indeed in Paris) are familiar with. Children in the judicial system are a 'frightening population' for those who work with them (as young colleagues or new staff that will be integrated in the team) because of the risk and they are perceived as 'complicated cases' and with a huge burden of responsibility for dealing with children for magistrates or public prosecutors. She referred to those cases in which taking the decision not to deprive a child of his or her liberty is a far more weighty decision than perhaps incarceration, in which it is know that there is a structure, a framework.

As regards children in conflict with the law, she shared the experience they had set up as a pilot project for combating trafficking in human beings in Paris, involving children, too. It is the perfect example of the paradox in dealing with the child as a perpetrator and as a victim, where it was needed to look at repression before education, being a very difficult paradox to deal with and where it was needed to think out of the box. This is an example of the fact that when there is a child in conflict with the law, there needs to be a very specific and special law,

not only in terms of the legislation that you are applying but there is a need to have specialised professionals who are networked and who are part of a multi-disciplinary team, as the prosecutors for juveniles can be a danger if acting alone.

In Paris, two phenomena have been noted. The first phenomenon concerns communities from the Balkan States which have been exploiting children and using them to commit crimes, such as thefts targeting tourists in Paris. The second issue concerns the sexual exploitation and prostitution of juveniles, predominantly of Nigerian origin. Ms Dhervilly gave a brief overview of how these crimes are detected and how these child victims are found. In fact, the magistrate in Paris has a very large structure and there are specialised structures in organised crime, which allows them to combat effectively, using international investigations based on cooperation, to find the perpetrators, the organisers of this trafficking in human beings. There are both victims and children committing crimes or theft on a daily basis, often in the metro in Paris. They deal with them as they are apprehended. There is a paradox facing these children. In order to echo what Angus Mulready-Jones said about poor educational attainment, they try to privilege European legislation and in France it is obligatory to favour educational measures above deprivation of liberty. There are dealing with Bosnian, Romanian and Algerian children, who are exploited as part of a criminal network committing crimes of theft on a daily basis. Educational measures do not work. These children absolutely reject any form of protection whatsoever. She believed that the reasons are cultural incentives, as since very young ages they are taught to lie, such as about their age. They have cases of Romanian or Bosnian children using violence, who, if they are arrested or caught in possession of stolen mobile phones, are forced to tell police officers that they are 12 and half years old even though they look like they are 25. That is a major problem for police forces and for magistrates and prosecutors; they have to work out how old they are. Sometimes they have young women who had experienced violence, who are covered in cigarette burns and are threatened by clans, who have suffered physical abuse and who reject any form of identification whatsoever, without fingerprinting or DNA testing. They are even violent with police officers. As they do not know who they are dealing with, the first thing they have to do is identify the person. From the outset and the moment they are apprehended, she said she cannot apply the basic principles of education before repression. Often they are obliged – and this is statistically proven, to apply repression and incarceration. In the largest prison, Fleury-Mérogis, in Paris, there are children who are exploited as part of human trafficking networks. They fit every criterion. Education does not work, as they are repeat offenders, and there is no dialogue with social workers. They do not want to know and they have been working on this for a decade now. That is an example which speaks volumes. Because what they have done is to bring associations, educators, social workers into those detention centres; they are operational field workers. In any case, social workers are well aware of the community issues linked to trafficking in human beings, who have been trained, have been in the countries of origin, have gone to see how the judges work, to build up confidence with the victims, relationships, etc.

Another experience that was shared with the audience was Ms Dhervilly's leading role as prosecutor for the very important trial of Fehmi Hamidović, a clan head in 2010-2012, a Bosnian network exploiting about 60 children, with an average age of 12. They were identified as being part of this network, having committed crimes and with delinquent behaviour. The speaker was the only person able to speak on their behalf, as not one child was present at the trial after a three-year investigation. This was something that marked her and she found it incomprehensible, as her role was to prosecute, but she had to speak for them, as they were victims as well. She had to prove that they were victims as well as perpetrators because everybody, including the traffickers in the clan, said that that those children were not being forced to steal. The fight here and the fight of all the partners is that they should be considered as children first like any other child. This is an example of the challenge for every child in conflict with the law, and not just those victims of human trafficking. It is a tangible example of the specificity of the multidisciplinary nature and above and beyond that, of the way they are dealt with in prison.

There is a need to have lawyers and they need to have be specialised in protecting children, in particular in dealing with trafficking in human beings. The children's magistrate in Paris agreed to systematically refuse the family appointing the lawyer, given the conflict of interests when a family is exploiting their child. For such children, it is an ongoing process and the family needs to be included as part of the educational process. A very specific measure needs to be taken, and the judge needs to be obliged to say that they are not going to use the lawyer appointed by the family. There are also some conventions signed, which is more a standard to ensure that all institutions are committed to this. In fact, to deal with this challenge of the child in conflict with the law, there is a convention which allows associations to send identifications. A social worker has to come to them and say: this is what the child looks like and this is the crime they are committing, because a social worker knows that further down the line they can protect these children. In those cases where it is managed to convince that this child needs to be protected and sheltered is that sometimes even when he or she is detained they have to be sent to institutions which are located in the provinces at places where there is tailor-made help, with educational specialists for those people. There is a constant updating. In Paris, there are many other challenges, too.

Ms Dhervilly flagged other questions being raised in Paris and elsewhere, for example, that of the incarceration of a 13-year-old for being associated with terrorists. The speaker said that there needs to be tailor-made solutions, with networks and to bring everybody into this specialisation. This is how they have set up their various efforts. Even if on a daily basis there is a need to respect the principle of not incarcerating a child, we need to be pragmatic and if incarceration can bring about education, it is not necessary to hesitate.

Eva Kogiannaki, Head of Department of Probation Officers in Athens, presented an overview of the juvenile delinquency legislation in force in Greece, particularly on how juvenile offenders are treated. She recalled that a recent law reform has been undertaken in Greece, initiated in 2003, which has resulted in modifying the legislative framework of the juvenile justice system and aligning it to the CRC as well as to other international legislation**.** Before the adoption of alternative measures for juvenile offenders, some prosecutors and judges were quite creative and identified a number of alternative measures that could be applied based on applicable law and which are currently laid down in the legislation. In 2003 Greek legislators started a legislative reform under Law 3183/2003, 43/2002 and 4356/2015. The main points of the reform were the following:

- the change of the age of criminal liability of children (now from 8 to 18 instead of from 7 to 17 years old);
- the increase of the availability of alternative measures, such as so-called therapeutic measures
- the limitation to the possibility of detention
- the greater use of diversion (in other words, the prosecutor's decision on not to prosecute for minor offences), such as the imposition of alternative measures with a compliance deadline providing an assessment of the situation has been done and that the official authority for juveniles has given its opinion;
- a number of measures have been laid down, such as reprimand
- it is compulsory to designate a lawyer
- it is no longer compulsory to record offences on the juveniles' criminal record (the minor offences will not be recorded in their criminal record)
- a child could go to a prison for young offenders from 8 to 18 years of age, regardless of the seriousness of the offence. At the time, children who had not committed any offence but were victims of an offence could actually end up in jail. But luckily this provision was repealed, and now for a child to end up in this kind of detention centre they have to be at least 18 years of age, and have committed a serious offence.

The heart of this reform was to put education first. In other words, when it comes to juvenile delinquents the process needs to be considered as an evolution, so we should not simply focus on punishing them, but rather educating children, because juveniles need to be accompanied. This principle was asserted in Law 4322, also known as Paraskevopoulos Law after the name of the Minister. This Law has changed the mentality towards juveniles, particularly on detention. The Law states that in order to send a juvenile to a detention centre, this has to be a measure of last resort and a number of conditions need to jointly apply: the person needs to be over 15; he or she must have committed a crime or an offence which would have led to a life sentence if it had been committed by an adult; a duly motivated court decision (explaining why an alternative measure cannot be applied and why detention is the most suitable choice). In case all these conditions are jointly complied with, there is still no automatic decision on detention and the judge has to consider whether there are any other alternative measures. Therefore, a judge can decide to impose a combination of one or more alternative measures, stressing the importance of measures that provide the best outlook for the juvenile. These measures include reprimand, placing a child under the responsible supervision of parents, guardians or a foster family; education programmes; other measures can be applied in cases of mental health which have a more therapeutic approach in cases of drug or alcohol addiction, in which case the juvenile will have to follow some kind of therapy or they can be placed in a mental health institute.

Ms Kogiannaki explained that the legislature has completed this reform and the issue now was to see whether the measures are able to be applied and if the infrastructure is appropriate. Although she recognised that they were already late, some progress had been achieved. She said that now the stress is put on social work, of the kind of work the juveniles have to

perform to make amends for the harm they have caused. Other amendments in the legal framework include social work, so that forms of abuse are avoided or that community service could be better used; the reform of measures linked to traffic offences (as many are not going to be included) or the reform of the foster care system.

The Ministry of Justice has realised that detention is a measure of last resort; that juveniles are a very vulnerable group with many needs and many other measures than detention can be applied. Greece has set up a study group under the presidency of a judge from the high court. In fact, now a holistic approach is being followed by a network of open and closed detention centres, in order to better meet the needs of juveniles.

On the assessment of these measures and this reform, particularly with respect to the recently passed Law 4322, she briefly said that given the deep crisis under which the country is, children are the most vulnerable. Although it could be assumed that there would be a higher risk of juvenile offenders, the studies have shown a decrease, particularly on serious offences. On the other hand, a greater use of drugs have been seen, particularly cannabis, with a decrease in the age in which young people first consume these drugs, though this does not relate to the legal framework.

Kelvin Doherty, Assistant Director, Youth Justice Agency in Northern Ireland, Representative on Diversion, gave an overview of the legislation and architecture in and around the Youth Justice Agency and its operation, to try to keep children out of detention and of the main criminal justice system. He recalled that detention very rarely has any positive outcomes for children.

On the organisation of the Agency, as a part of the Department of Justice, they have their own business objectives, with two primary directorates: youth justice services in the community (staffed by social workers and youth workers) and a custodial provision, the Juvenile Justice Centre. It has space for 48 beds. In the week preceding the conference, there were 18 young people in custody. Mr Doherty recalled that the age of criminal responsibility is 10 to 18, and with three young people sentenced, the majority were on remand (mentioning that it was perhaps too many). He said that although he would have preferred to be zero, it was going on the right direction. The criminal justice system was modernized during a peace époque in the region with a review which introduced the 2002 Justice Act, an important piece of legislation. It introduced the concepts of agreement and consent for children, so before a child is sentenced, they have to agree to that for community sentence. It also introduced the Office of the Law Chief Justice with overall responsibility over the judiciary, as well as the Criminal Justice Inspectorate, which can inspect any criminal justice agency to ensure compliance by the agency with international law and the rights of the child.

The Agency was established in 2003. Regarding the governing legislation, the principles of youth justice are threefold:

1. to protect the public by preventing children from offending: all bodies and all who exercise youth justice functions must have regard to the principle aim in exercising their function with a review
2. to encouraging children to recognise the effects of crime and to take responsibility for their actions that hints on restorative justice
3. all such parties must also have the best interests of the child as a primary consideration and have regard to the welfare affected by the exercise of their functions (as per an amendment two years ago).

As regards young people who commit offences, restorative youth conferences have been used. Young people are supervised on a range of court orders and programmes. In fact, they engage with the children and work with their families as well, because it is not possible to work only with the child. Their cornerstone is a relational approach, developing relationships with children because they know that it has more impact that any programme or intervention planned.

The 2002 Justice Act initiated Youth Conferences. That is a restorative intervention. In the majority of restorative justice schemes throughout Europe, it happens after custody or it is an alternative to going through to prosecution. They work on two levels: all young people can be referred from court or prosecution service (if it comes to prosecution service, it is not a conviction).

As regards the process, it is choreographed and the restorative justice coordinator meets and prepares the child and the victim, the lawyer is entitled to attend, as well as other supporters and any other individuals that the coordinator or the facilitator deems as appropriate.

Nevertheless, restorative justice is not suitable for all young people all of the time. There is the issue of responsibility. Can children of a young age fully accept responsibility? Can children who have undergone significant trauma in their lives, who have a background in care, who have a complex background and are currently abusing substances be considered as suitable to participate in restorative justice?

It is extremely difficult and they have tried to make sure that there is a process that fits the child (and not the child fitting the process). When restorative justice was first used, it was more the case of the child having to fit the process. Nevertheless, they have completed almost 18 000 conferences since inception.

Mr Doherty said that what he liked about this model is that it needed to feed it back to courts. The judge before the Courts has to consider a restorative conference before any other sentence, which adds a barrier towards the consideration of custody for a child.

In their criminal justice system, a child has to give informed consent and agreement, and the child can agree on a variety of responses in the conference: to apologise, to make reparation, payment to a victim, they can submit to supervision of an adult (who does not need to be a social worker, but can be a family member of the child, such as an uncle or an aunt), to participate in activities to address their offending, to submit to restrictions of conduct or whereabouts, to submit to treatment for a mental health condition or alcohol dependency. A plan is designed according to those listed under the law and it will be bespoke to the child and to the seriousness of the offence. Then a report is written, which goes back to the court, which can reject, amend or pass it. Likewise, the prosecution service can make referrals to bypass courts. This is the same process, but without a conviction. Currently the number of young people in custody has decreased by 15 percent (from 163 to 139), which includes young people sentenced, on remand or PACED under the Police and Criminal Evidence Act (the police would deem the juvenile justice centre as a place of safety and a child may be placed there for a 24-hour period). Mr Doherty

said that, in his experience, children in the care system are significantly disadvantaged throughout not just the child protection system (the welfare system) but also the criminal justice system. Some of their workload is changing: the majority of his work comes from the prosecution service and voluntary referrals (and not directly from a court although they are a justice agency). He further explained that they have an active bail support scheme, in which they provide bail packages for young people, this is put before the court so the court can make an informed decision not to remand a child in custody.

He said that it is known that in Northern Ireland their criminal justice system is quite slow, as well as the case file preparation, the police gathering evidence, solicitors fight longer if there is an incentive, which is not always in accordance with Article 3 of the Convention on the Rights of the Child (best interests of the child).

The demography has changed, they are getting better at keeping young people out of the system, and the average age is around 17 years old. They work with an age group of 10 to 18, 10 being the age of criminal responsibility in Norther Ireland.

Mr Doherty said that a third of the young people remanded into the juvenile justice centre have experienced domestic violence in their home environment and 92% has misused drugs. These people are the most complex, with higher needs. It is more difficult to work with them, matching that with a restorative justice approach does not always fit. Restorative justice works for some young people some of the time, but it does not always work, especially for those young people who have very complex needs.

Marcin Wolny, Helsinki Foundation for Human Rights started his presentation with a brief introduction on the Polish juvenile justice system. In the last 10 years, there was a large decrease in the number of juvenile delinquency cases. In the same period, the number of cases concerning antisocial behaviour remained at the same level, which might indicate that less serious behaviours were considered as antisocial. A decrease in the number of cases carries some risk for the rights of children and the idea of alternatives.

The number of children in detention, correctional and educational facilities is currently low. As the unit employs 50 people, it has an annual budget of €1 million and only five children; there might thus be pressure to use custodial measures more often.

As an example, one of the unions, the Union of Correctional Facilities Employees is currently lobbying for an amendment to the Juvenile Justice Act, the main act on juvenile justice, pushing for a change under which the family court would be empowered to detain children in a shelter for juveniles, which is a form of pre-trial detention in every case, no matter the offence the juvenile has committed. According to them, it would provide the court with the possibility to examine the child thoroughly.

As Benoit said previously, it is on making alternatives work, not just about a change of law, but on redefining the philosophy of the proceedings, changing stakeholders' mentality,

creating new tasks and goals for the staff of correctional facilities who work in the system and convincing them that they can focus more on reintegration, street working and prevention.

On the other side of the coin, social pressure on judges need to be minimised or avoided, so that they do not resort to more severe measures against children. He recalled the importance of guaranteeing judicial independence (which might sound like a truism, but only in systems where such values are not threatened). Another important factor is to provide the court with a range of possibilities so that they can freely assess which measures will be able to fit the best to guarantee the child's welfare according to the rule of principle of proportionality.

The family court in Poland has great powers: it can place children in a half-institution, move his or her case to the criminal court in particular circumstances or impose educational or correctional measures.

A second measure is the placement of the juvenile in an educational facility, which Mr Wolny said looks more like a boarding school and not a prison. However, there is no rule in the Juvenile Justice Act guaranteeing that deprivation of liberty will be a measure of last resort.

He also cited that the implementation of the Directive on procedural safeguards will not change anything in the field, as according to point 18 of the Preamble, the Directive will not be applied to educational correctional proceedings. He agreed that although it will be a strong signal for Polish children, he was not sure whether that would mean that the EU cares about their rights.

On the measures that can be applied, most of the vast majority of measures can be considered as non-custodial. On the other hand, the family court has ordered placement in an educational facility in nearly 1 900 cases, 70% of those cases were cases of antisocial behaviour. Despite this, the court did not decide to use non-custodial measures or try to solve the case through alternative dispute resolution. Mr Wolny said that many cases could be resolved at an earlier stage in the family, community, church, school, but this did not happen. The reason is mainly because mediation does not work in Poland. Out of the 25 000 cases per year, a low number of them end up in mediation (only 400). His explanation for this was that those judges who had positive experience with mediation are moving the cases to mediation, which emphasises the need of training the judges in that field.

A second ADR in the proceedings is referring a juvenile case to a school, or a youth organisation, I in which the situation is far worse. Looking at the data of cases referred by the court, while in 2016 there were nearly 300 cases of mediation, the family court only decided to refer the case to the school in 24 cases, among which 15 were cases from juvenile delinquency. The reason why the court is not referring the case to school might be the lack of trust of knowledge about the school's capability to solve the problem of the juvenile.

Mr Wolny said that mediation could be used more extensively, thus safeguarding against deprivation of liberty, in the same vein as the presence of a lawyer or the presumption of innocence. It is a guarantee that the child will be detained only if there is a real need for detention, that all alternative options have been used before the court decides to detain children.

Sophie Louis, Public Prosecutor, Department of Families and Youth, Prosecutor‘s Office in Liège, gave an overview on the Belgian diversion measures to young people, particularly those used by the office she works for, such as for children who have committed an offence. The Belgian system makes a distinction between children at risk and children who have committed an offence. The Public Prosecutor's Offices are responsible for both groups, who are very much interlinked. In the latter case the office is responsible for the whole dossier (family background, problems with siblings, among others). First, the office decides if the case falls under the first category (a child in danger) or under the second one (a child who committed an offence), or if both paths are going to be pursued at the same time (which seems to be the most effective way). Social services are involved in cases of children who have committed offences and who are children at risk. Ms Louis focused on children who have committed an offence.

At the Public Prosecutor Office there are alternatives which can be pursued before referring to a judge:

- closing of the case, depending on the young person’s situation; closure of the case with a written warning (sent to the young person but also to the family as his/her responsible person, so that they know that they are given a second chance);
- a contextualisation interview (conducted by a criminologist linked to their office who tries to identify what leads to the offence being committed), which is followed by a reprimand to make the person understand the unacceptability of the situation and what may happen if he/she reoffends; or a formal reprimand from a magistrate, in which the young person goes to the Public Prosecutor's office and it is explained to him/her, why her or his behaviour is wrong, the risk involved and what might happen if the act is repeated.
- mediation between a mediator and the victim, a legal obligation to consider before referring the case to a youth court. In Liege there is an association called ARPEGE, which has a mandate to instigate the mediation between the perpetrator and the victim. Mediation can work as a direct meeting or by using indirect channels, as the victim may not want to meet the perpetrator. This can lead to agreements which addressed the relational aspects and the material aspect, with an agreement between the victim and the perpetrator, which is simply an apology.

All these possibilities have to be considered before referring the case to a youth court.

The process before a youth judge in Belgium has two phases. The pre-trial phase, during which the judge takes educational measures, and the trial phase, after the investigation is finished. Nevertheless, this last phase is normally not reached, as it is often felt that there is no need to have a trial. There are two scenarios in case the Public Prosecutor's office decides to have a trial. Sometimes we can see that in some cases the person has not learned from other measures, and continues to offend or refuses to participate in educational measures. There are also some other situations where the victims need a sentence, violence cases, for example. We have to take the victims needs into account, as the victim may need a trial solution.

Looking at the first phase, the pre-trial phase, the judge also has a wealth of possibilities open to him/her which has to be considered before considering a custodial approach. First, the judge has to see whether it is possible to maintain the young person in their home environment and on which conditions. The conditions are set up by the young person who has to draft a project in writing explaining what he/she thinks that might be a way forward, what can amend what the person has done. In the few cases where this is done, the judge gives priority to this project. Ms Louis considered that the reason why this is not always done might be the lack of training of lawyers defending these young people. Another possibility is mediation, between the perpetrator and the victim by a decision made by a judge. There may also be group restorative dialogue, a group process involving the perpetrator and the victim, a member of the police, and someone from a victims' organisation. The young person can be kept in his/her home environment, but under the supervision of social services. Their situation varies from one region to another and there are various organisations involved. The Public prosecutor office in Liege works with CAPNOR, which work with families and tries to identify the problems that need solving within the family. Another organisation for an intensive intervention service is CAMEO, which tends to concentrate on the facts and acts to try to help young people to concentrate on how this came about. Another possibility is to work with the social services; the judge can also decide that the young person has to undertake community service (a maximum of 30 hours at this stage). The judge can also decide that the person has to attend a counselling centre, attend a training course (there are two special ones in Liege, one called recto-verso, awareness raising from the victim's standpoint) and a course called PEPS, which deals with dependency issues (alcohol and cannabis addiction, because quite often these young people have a whole series of problems). All of these vary from one region to another, as they depend on the local solutions that are in place. Other possibilities are attending sporting or social activities, but with supervision. There are a whole series of possibilities, before considering placement. For placement, there are different kinds: with a trustworthy person or in an educational institutional (e.g. a boarding facility, a facility to place young children at risk, placement in a hospital institution, in case of mental health problems, and placement in a youth protection institution). There are two types of institutions, open and closed, under certain conditions, considering the age and the type of offence. Therefore, the judge has a range of diversion measures, and detention is very last on the list.

Ms Louis recalled that some remaining challenges are the often long waiting lists for training courses, for specialised institutions or from receiving support from social services. The difficulty is to relate the list of 36 situations with those real life realities.

Last, as for the trial phase, there are alternatives to detention similar to the ones already listed (written projects, maintenance in the home environment and placement measures).

Discussion

The interactive discussions with participants highlighted the applicability of the guiding principles of the CRC in the case of juvenile justice. They also highlighted the importance of a multidisciplinary (including social, health, psychological/neurological and educational) approach to the topic, the need for gender-sensitivity, and the sharing of good practices of using alternatives to detention among Member States.

Participants referred to strengths and weaknesses of practices in different countries, where the main obstacles to using alternatives seem to be based on bureaucratic measures and legal restrictions on certain (serious) offences. Restorative measures, as regards to harmonising the offender's responsibility with the victim's rights were also raised in the context of challenges and possible subjects of further discussions.

In their concluding remarks, the Chair and the Co-chair reiterated the main messages of the presentations, stressing that the **implementation of alternatives to detention of children in conflict with the law requires a holistic approach and multidisciplinary cooperation among actors of the justice system, as well as preventive and follow-up measures and programmes that recognise and reduce the vulnerability of children who are at risk of being in conflict with the law.**

Session 2 – Detention of children in the context of migration

The session was chaired by **Stephen Ryan**, Deputy Head of Unit in DG Migration and Home Affairs and co-chaired by **Melanie Teff,** Senior Child Rights Adviser, International Detention Coalition.

The Chair provided an overview of the EU legal framework with regard to the detention of children in the context of migration. EU law allows for the detention of irregular migrants and asylum seekers, including accompanied and unaccompanied children, under restrictive circumstances. The legal framework is contained in two main instruments; the Return Directive (2008) and the Reception Conditions Directive (2013), which should be complemented by the jurisprudence of the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR).

In the context of return, it is only possible to detain a person for the purposes of preparing the return or carrying out the removal, particularly when there is a risk of absconding or lack of cooperation. The Reception Conditions Directive contains six specific grounds related to ensuring the effectiveness of the assessment of the asylum claim or the process (e.g. Dublin transfer). Decisions must always be individualised and detention should be carried out for the shortest possible period of time and only for so long as it is necessary. The law provides very explicitly that detention should only be contemplated where other less coercive measures cannot be applied effectively. In this sense, Member States must provide for alternatives to

detention in their national law. Other guarantees include the right to a judicial review, free legal assistance, visiting rights, etc.

With regard to children, detention must be a measure of last resort, for the shortest period of time and all efforts shall be made to place them in suitable accommodation. In the asylum system, unaccompanied children should only be detained in exceptional circumstances, never in prison accommodation and they must always be kept separate from adults. Families with children must be provided with separate accommodation and adequate privacy. Additionally, children should have access to leisure and recreational activities. There are also some specific restrictions on the use of border procedures and the circumstances in which they can be applied, which are fewer than for adults. Last but not least, when the detention of a child is being contemplated, a best interests assessment must be taken at every stage of the process both in the return and in the asylum contexts.

When it comes to policy, the 12 April 2017 Commission Communication on the protection of children in migration underlines that children have been detained because of the lack of availability of suitable accommodation and a general lack of capacity, which is unacceptable. It also recalls the exceptionality of detention and emphasises the importance of promoting effective alternatives to detention. Notwithstanding the drawbacks of detention, the Commission Recommendation on making returns more effective as well as the recently revised version of the Return Handbook mention that Member States should have this possibility available to them as a measure of last resort.

The Chair reminded participants that when governments and authorities make assessments, they have to take into account the realities they are faced with. Member States have had to cope with situations which are far from ideal and may require the use of detention as a measure of last resort, including for family groups and unaccompanied children. However, this should be weighed against the harmful effects of detention on all persons, particularly children. Participants were invited to work towards alternatives to detention which are both effective and compatible with the child's rights and dignity.

Melanie Teff, Senior Child Rights Adviser, International Detention Coalition (IDC), outlined the IDC's role in ending child immigration detention and promoting alternatives. The Co-chair broadly defined alternatives to detention as any law, policy or practice by which persons are not detained for reasons related to their migration status. Her presentation conveyed three key messages related to the possibility of States of moving away from detaining children while achieving better outcomes; the need to shift the focus in Europe to alternatives that are proven to work; and the idea that every government can take steps together with civil society.

The IDC has identified over 250 examples of alternatives to detention from over 60 countries. Successful alternatives have achieved high compliance rates (between 70-99%), higher levels of case resolution involved in return and lower costs (less than 20%). The main elements of successful alternatives to detention in terms of cost, compliance and well-being are:

- Using screening and assessment to tailor management and placement solutions, including best interests assessment
- Providing holistic case management focused on case resolution and children's best interests
- Early engagement (not just at the stage of return) with individual families to look at all the possible options in their case
- Ensuring individuals are well-informed and trust they have been through a fair and timely process
- Ensuring fundamental rights are respected and basic needs are met
- Exploring all options to remain in the country legally and all avenues for voluntary or independent departure
- Ensuring that conditions imposed are not overly onerous.

The Communication on the protection of children in migration states that "everything possible must be done to ensure that a viable range of alternatives to the administrative detention of children in migration is available and accessible" and the Return Handbook refers to "tailored individual coaching", "early engagement", "holistic case management" and to a "systematic horizontal coaching" of all potential returnees.

The Co-chair further believes that civil society is in a good position to build trust with migrants. The idea that NGOs and government should work together to develop alternatives to detention is backed by the IDC's experience which proves that those which have worked better come from a partnership between both actors.

There is not a one-size fits all model; the best alternatives are part of a changing process that must adapt to the system's gaps and to challenges in the national context. Governments should be encouraged to keep taking steps towards ending child immigration detention, including strengthening alternatives when they are not working well in order to test models and adapt approaches.

Taking into account the latest developments such as the New York Declaration, the CRC and CMW Joint General Comment and the work of the European ATD Network, the Chair is convinced that there is a momentum to end child immigration detention.

Eliška Hodysová, Ministry of Justice, Czech Republic, presented a summary of the International conference "Immigration Detention of Children: Coming to a Close?" which took place in Prague on 25-26 September 2017. The event was an expert conference which aimed at enhancing the understanding of international human rights standards on the detention of migrant children, identifying and sharing good practices on alternatives to detention and exploring possible steps to move forward. The three main topics discussed during the conference were the following: experiences and findings from the field; existing international standards relating to detention; alternatives to detention.

Firstly, with regard to the experiences and findings from the field, Ms Hodysová pointed out that detention of migrant children is still a reality and that it is even making a comeback since the peak of the migration crisis in 2015.

Some European countries have presented a backward movement; conditions of detention have been extended and detention has been often been applied as an automatic measure. The recent findings of the CPT reveal inappropriate places and conditions of detention (e.g. children detained in prison cells, no access to showers, etc.). Moreover, the impact of detention of children, including the psychological impact was heavily discussed. It is known that 50% of people in detention start to suffer mental illness and even if the conditions are "adequate" or if the detention is "short", it often causes very serious and long lasting harm to children.

Secondly, the documents produced by bodies such as UNHCR, CRC, CPT, PACE, ECHR clearly reflect that the international human right norms are increasingly against the detention of migrant children. Meanwhile, the ECtHR is restricting the possibilities of States to resort to detention and is pushing them towards the use of alternatives. In recent cases, the Court found even if the conditions of detention may be adequate, other factors such as the child's age or the duration of detention may result in a violation of Article 3. Furthermore, there is a clear message that detention can never be in the best interests of the child and that it must be a measure of last resort.

Thirdly, Ms Hodysová recalled that there are several examples of promising practices in different Member States; however, there are still practical challenges and obstacles regarding the effective implementation of alternatives. It is often repeated that alternatives remain unused in practice mostly because of State concerns on their effectiveness. This is why the expert group CDDH-MIG focuses its report on the elements or prerequisites of the effectiveness of alternatives:

- Screening and assessment of individuals
- Access to information
- Ensuring legal assistance
- Building trust
- Safeguarding dignity and fundamental rights
- Case management as essential element

One of the conclusions of the conference was that detention is never in the best interests of the child and it is potentially very harmful for his or her health and development. Also, according to international law, the space for the detention of migrant children is extremely narrow and it is prohibited as a general rule. This is why States should resort to existing and effective alternatives to detention. The conference discussions also highlighted the need to improve aspects related to the guardianship system, the age assessment procedure and family reunification. Finally, the key message conveyed at the conference was that *"in a free democratic society of the 21st century we must do all we possibly can to avoid getting used to the image of children behind bars"*.

Pinar Aksu, Young Advocate, International Detention Coalition**,** in a personal testimony, explained her first-hand experience as a Turkish refugee child who sought asylum in the UK together with her family. In 2001, as a result of the UK's dispersal programme they were all sent to Scotland. She highlighted the uncertainty and barriers they had to face as asylum seekers. Among others, she explained that asylum seekers were not allowed to work, they had no right to decide which school to attend and were counted as international students at university and therefore charged very high fees.

In 2006, after having spent more than qix years seeking asylum, the UK Home Office decided to detain many families, including hers. They were detained twice; for five days and for two

months. She compared the detention centre to a prison: *"you are put behind a wall, you are not allowed to get out of the place and you are treated as a criminal […] which is a way of dehumanising you and making you feel hopeless […] I witnessed a couple of times people trying to commit suicide in different ways […]".* Thanks to local campaigning groups who took on board for her family they were lucky enough to leave the detention centre.

Some years later, driven by her will to make a change, she went on to study Community Development and completed her masters in Human Rights and International Politics. In 2010 it was announced that the detention of children at Dungavel centre would be ended which she described as a great success. Despite this promise, another detention centre was built and, unfortunately, it is expected that those children will be transferred and that the detention of children will rise in 2018.

Ms Aksu believes that no child should be in detention but, if they are, it is obviously better that significant efforts are put in place to make facilities safer for children, rather than placing them in a prison for adults. One important strategy to help end child immigration detention is to engage with the local people and organise meetings and community events which *"help to educate and connect people so they know there is no 'them and us' and there is only a 'for us'".* Alternatives to detention have proved to enable people to meet their basic needs, they cost less and allow them to get support and it is more humane. Ms Aksu further underlined the need to ensure that alternatives to detention are not alternative forms of detention.

A person should not be detained for seeking safety in another country, let alone a child. It is a very basic human right not to be tortured or treated inhumanely and not be discriminated based on race, colour, religion or place of birth. She suggested that:

- It is important to create local and national campaigns and networks of support which share true stories to reflect the human side of the process of seeking asylum. She explained her experience at "the living library" event by means of which Parliamentarians could "borrow" her or other experts for a 10 minute conversation: *"It added a human face to the situation, beyond dry statistics and reports. It created discussion, dialogue and understanding […]".*
- It is important to have a strategy to engage politicians and all of the arms of a government system.
- Child rights organisations need to do more by consistently using evidence and international instruments and use them as a tool for the country to change its policy.

Ms Aksu finally shared her observations from the Forum and concluded that detention creates both isolation and mental health issues and it is a structural strategy to make you feel hopeless. She thanked everyone and, in particular, NGOs, for working with people in their journey towards safety and encouraged everyone to end child immigration detention and *"create a humane system where people are not treated as numbers, but where people are*

treated as people". Lastly, she reminded that *"if you don't take action, no one else will"* and that *"where there is hope, there will always be change"*.

Geert Verbauwhede Advisor, Federal Public Sector Interior, General Directorate Immigration Office, Internal Control Directorate, Identification and Removals Sector, Belgium, provided participants with an overview of the alternatives to detention for families with children in Belgium. In particular, since 2015, Belgium has provided coaching at home for a limited amount of irregularly staying families. They are given the opportunity to organise their return from their homes provided that they fulfil certain conditions and show their willingness to comply. Otherwise, they are transferred to open family units.

Around the turn of the century, it was customary to detain only the head of the family (in practice the father). Family members were invited to present themselves at the airport on the date of removal, however, they frequently absconded. This led to the possibility established on 15 May 2001 to detain the families as a whole. Later on, on 1 October 2008, it was decided that families with children already present in the Belgian territory should no longer be detained in closed centres; only families who were refused entry at the border remained detained in closed centres. It was then decided that from 1 October 2009, families with children would not be detained, not even in border cases. This change was encouraged by the pressure of NGOs and the Parliament towards the search for alternatives.

The Family Identification and Return Unit was created on 1 October 2008 with the aim of assisting families in the preparation of their return, responding to legal questions, helping with logistical matters, etc. This initiative requires the cooperation of IOM, local authorities and NGOs and is sponsored by the EU Return Fund. There are currently nine coaches for 27 units, one coordinator and two people in charge of technical support.

Family units are community-based individual houses or apartments for families. There are 27 family units in use which are completely furnished and equipped. Due to privacy concerns, there is only one family per unit; however, if the house is big enough, it is possible to place two families. Children are able to go to school and have access to different forms of leisure (toys, TV, DVD, books, etc.) as well as medical support. They are currently working on providing permanent internet access. Special needs are also taken into account, especially with regard to their return and they stay in contact with child welfare agencies.

The non-compliance rate is still high (35%) but lower than before (45%). In 2011, the State Secretary for Migration and Asylum Policy created specific family units in the detention centre at the airport for specific border cases and for families who did not respect the rules in family units. These units are separated from the detention centre; there are five prefabricated vacation houses with the necessary infrastructure as well as dedicated staff. It must be noted

that this possibility is limited to a maximum of two weeks and must only be used as a last resort.

Despite the concerns regarding the absconding rate, the Belgian alternative of family units has received a relatively positive evaluation by NGOs and the administration and has raised international interest among the EU and non-EU Member States and the Council of Europe. Family units have been embedded in the return procedure but there is still, however, a need to develop further cooperation with other State agencies such as reception centres.

For more information, see Dutch documentary "The Return Coach ("de terugkeercoach").

During the **session discussion**, Smile of the Child highlighted the need for quality alternatives and a holistic approach. In that sense, alternatives must take into account aspects such as access to education or healthcare. Melanie Teff agreed that one of the elements for effective alternatives to detention is that the children's basic needs are met.

Human Rights Watch expressed concern about the compatibility between European standards and the CRC's interpretation, and the guidance of the UN Committee on the Rights of the Child, which urged States Parties to expeditiously cease immigration detention, which is never in the child's best interests. He further asked about EU plans to realise the political commitment adopted in the New York Declaration "towards ending child immigration detention". Stephen Ryan answered that despite the divergence in terms of the tone between the international dialogue and the reality of EU law, there is no formal incompatibility between them. He further insisted on the exceptionality of the detention of children and the obligation to provide for alternatives and recognises, however, that the legal framework does not represent the reality of how Member States apply it, which falls short even of the legal obligations that EU law provides.

An independent expert underlined the need to move the focus from migration to child protection and called for the participation of the departments for social welfare and the governmental agencies in charge of children.

An official from the Belgian Migration Office's Unit for unaccompanied children expressed concern on the situation of unaccompanied children who, after being offered all available services (guardian, education, medical care, etc.), decide to resort to smugglers and continue their journey to the UK. Melanie Teff responded that the IDC has looked at this issue and, whilst secondary movement cannot always be prevented, screening and assessment become fundamental to understand what drives those children. If they feel that their situation is being addressed they will engage with the system, however, if they fear that detention will be the outcome they will not. Geert Verbauwhede further stressed the importance of working together against smugglers and informing the child about the possibility of staying in the country and applying for asylum. An official from the reception and identification service of the Greek Ministry of Migration Policy, believes that the words of smugglers are more attractive to children because they are more absolute (e.g. "you will go to this place" v. "you have the possibility"). Moreover, he emphasised that all actors should convince authorities to find alternatives to detention and, if they fail, focus at least on visibility and transparency to know what is happening inside detention centres.

The European Network on Statelessness, referred to the report on Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change", in particular, the failure of States to identify stateless persons or to apply alternatives has resulted on stateless people being detained and punished simply for having no country to which they could be returned. He asks

the Commission what is it doing to improve the identification of stateless migrants and what processes governments have in place. Geert Verbauwhede mentioned that stateless persons are a minority in Belgium, however, the law establishes that if there is no other nationality that can be designated then he or she will automatically become a Belgian citizen.

Niclas Axelsson, Legal Expert, Legal Department, Swedish Migration Agency, provided an overview of the work of the Swedish Migration Agency on the asylum process and minimising the use of child detention.

In Sweden, it is possible to detain both families and unaccompanied children under three grounds: if it is probable that the child will be refused entry with immediate enforcement; if the purpose is to enforce a refusal of entry order with immediate enforcement; or if there is already a refusal of entry order with no immediate enforcement and it has proved not to be sufficient to place the child under supervision. A child can only be detained for 72 hours and this period may be extended for the same time. The most common scenario is having the child detained overnight prior to departure. Last year, 108 children were detained and 6 300 were part of the return process.

The only alternative to detention in Sweden is supervision. The person is therefore obliged to report to the police authority or to the Swedish Migration Agency at certain times (2-3 times per week) and may be asked to surrender his or her documents. Sweden takes a child rights perspective in its decisions and relies on dedicated reception and asylum officers who fully inform the individual throughout the process. When it comes to unaccompanied children, the fact that the process involves many different stakeholders (the Swedish Migration Agency, the municipalities, the county councils, the public council and the guardian) ensures that the best interests of the child is met from the different child perspectives.

Finally, Mr Axelsson recalled that detaining individuals is expensive both from an economic and humanitarian point of view. However, a complete absence of detention may also be inefficient from a return perspective. This is why he believes that the solution should be a mix between alternatives and detention, which should always be used as a measure of last resort.

Katarzyna Słubik, Legal Counsellor and Project Coordinator, Association for Legal Intervention, Member of the European Alternatives to Detention (ATD) Network, Poland, explained that the Association for Legal Intervention (SIP) is active in the fight against detention, in particular, it provides legal advice, monitoring, litigation and advocacy. Furthermore, in June 2017 the SIP implemented an ATD pilot project in Poland in order to gather evidence for advocacy aimed at implementing engagement-based alternatives.

In Poland, the rules governing the detention of adults apply to the detention of children with families. However, the best interests of the child must always be taken into consideration. Furthermore, detention should be used only as last resort measure and for a maximum period

of 18 months. Unaccompanied children not seeking asylum may be detained only if they are at least 15 years old and the Court must consider circumstances such as the child's physical and mental health, personality, etc. In terms of numbers, in 2016 there were a total of 24 unaccompanied children and 292 children with families detained whereas in 2017 (until June), there have been 11 and 148 (25% of the total number of people detained). Ms Słubik further referred to problems related to the detention of children such as the limited access to education, the lack of psychological support and the fact that, despite the legal provisions, the courts do not consider in practice the child's best interests.

The European ATD Network brings together NGOs in the UK, Cyprus, Bulgaria and Poland in order to build knowledge to help governments and other stakeholders develop engagement-based ATDs. She informed the conference that authorities are actually looking for alternatives but they want to see evidence and this is what the Network provides. The IDC's research shows that people are more likely to stay engaged and comply with immigration requirements, including negative decisions on their status, when they feel they have been through a fair process and can meet their basis welfare needs.

The "No Detention Necessary" project is a new initiative that works with a group of 25-30 migrants released from detention or/and with ATDs imposed. They provide legal assistance, psychological support, case management and financial support in case of emergency. They do not, however, offer social support, accommodation or healthcare. The results from this project show a compliance rate of 95% and include two releases from detention and one decision on return successfully challenged. Katarzyna Słubik finally underlined that the way forward should involve government engagement together with civil society.

Radostina Pavlova, Project Manager, Centre for Legal Aid – Voice in Bulgaria, outlined the legal framework and practice in Bulgaria and described the pilot project conducted by Centre of Legal Aid – Voice in Bulgaria on applying community-based alternatives to detention.

Pre-removal detention requires not only an active deportation but also the existence of one of the following circumstances: the identity has not been established; there is a risk of absconding; or an obstruction of the order's execution. Moreover, the maximum period of pre-removal detention is also 18 months. To this day, there are two pre-removal detention centres[2] and this practice has been applied extensively[3]. Furthermore, the return rate in Bulgaria is estimated to be at most 20%.[4] Children may be detained in pre-removal detention for a period up to three months, which may be prolonged. In 2015, there were 2 523 children detained and, even if detention of unaccompanied or separated children is prohibited by law, in practice,

[2] Busmantnsi has a capacity of 400 and Lyubimets 300.
[3] According to AIDA Report for 2016, in 2016 11 314 persons were detained whereas in 2015, 11 902.
[4] Calculated as percentage of actual returns in 2016 and 2017 (to September 30), incl. non-forcible/assisted by IOM, of deportation orders issued in 2015 only minus positive asylum decisions issued in 2015 and 2016

they are attached to an adult travelling in the same group and are detained under the same order.

On the contrary, the placement of asylum seekers in closed-type facilities for the purpose of assessing their application on the grounds of the protection of national security or public order does not count with a maximum period. There are currently 24 asylum seekers in closed-type facilities and no children among them; however, in this case it is not forbidden to detain unaccompanied or separated children.

Short-term immigration detention, which has not yet put into practice, refers to the possibility of detaining any foreign national who does not have an ID for up to 30 days. It is also possible in this case to detain accompanied and unaccompanied or separated children.

With regard to alternatives to detention, the Centre of Legal Aid has made a proposal for adding a legal provision on "community-based alternatives" and is carrying out a pilot project on “Protecting migrants with precarious status: decreasing the use of detention and applying community-based alternatives”.[5] The idea is to work with 50-60 migrants at risk of detention for over two years with the aim of stabilising them in the community after their case is resolved. This project will also help gather evidence on the functioning of community-based alternatives (e.g. absconding rates, engagement, etc.).

Case management is an essential part to this initiative and, as of 31 October 2017, the results have shown high levels of engagement, no absconding, no re-detention and no deportations. Furthermore, there have been four return decisions and two people have received humanitarian status in Bulgaria. Among other factors, success has been due to high levels of trust on the part of migrants. Nonetheless, the lengthy process and the difficulties in accessing basic services risk that migrants lose hope and confidence in the system which could demotivate them to comply.

Radostina Pavlova finally insisted that they will use the evidence gathered to continue advocating for community-based alternatives at EU and national levels. The Centre for Legal Aid also aims to establish a closer collaboration with the Ministry of Justice to possibly to release detainees into the case management programme.

Popi Gkliva, Project Manager, Refugee Emergency Relief Programme, SOS Children’s Villages, Greece, described their project on quality care for unaccompanied children in Athens.

First of all, she explained that since 2016, over 9 000 unaccompanied children have been registered in Greece and almost two thirds are waiting for appropriate accommodation. Among them, 200 are still in detention either in police stations or closed reception centres.

[5] Funded by the European Programme for Integration and Migration (EPIM), conducted in partnership with Bulgarian Lawyers for Human Rights (BLHR)

The situation is still difficult due to the continuous arrivals of migrants at the Greek islands and the lack of designated spaces for children.

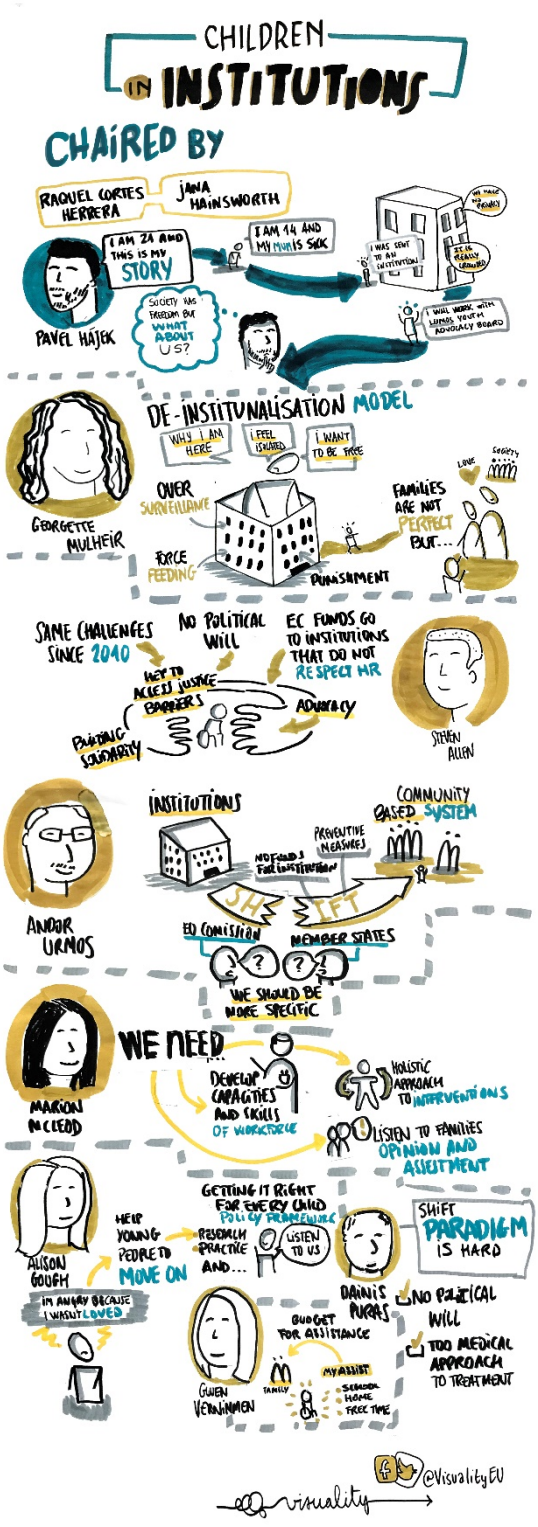
While dealing with this emergency situation, SOS Children's Villages has cooperated with governments and NGOs in order to remove children from detention and offer them proper care. At this very moment, they run two houses for 50 unaccompanied boys and for nine unaccompanied girls, including underage mothers with their babies. During the 18 months of operations, more than 10 000 people have received psychosocial support, material aid and educational, recreational and sports activities in refugee camps.

According to Ms Gkliva, one third of the children currently living at SOS Children's Villages care have been detained. Many of these children reported that they received food only once per day, that they had no access to bathing facilities or natural light and that they did not even have the right to go for a walk outside their rooms. Communication with their families was rare and difficult and they were not provided the necessary legal support and information about their cases.

SOS Children's Villages offers personalised care, including psychological, legal, pedagogical and social support and integration. This approach has resulted in an increased engagement in legal procedures. Children acquire the necessary skills to improve their self-confidence and prepare them for their adulthood. It is important to support children in finding their talents and creating a future wherever their choices lead them. Experience has shown that when children are found to be in the right environment they are able to learn how to trust and how to work on their life skills, even those who have been exposed to danger.

SOS Children's Villages finally suggested creating more facilities that not only host but also support children in the way their rights demand. They also recommend establishing a foster care system, in particular in Greece and training more professionals. Moreover, there should be cooperation with local authorities and public funding should be secured in order to ensure the sustainability of such efforts.

Lastly, Metadrasi shared good practices on alternatives to detention and recalled the importance of the role of guardianship. Metadrasi reflected on the fact that 90% of the children arriving will stay in Europe and eventually become European citizens; we cannot let them live in camps at risk of danger and trauma. Moreover, instead of focusing on punishing Member States, countries such as Portugal, who have proven to be an example of solidarity, must receive further motivation and funding in order to support their good practices.



Session 3 – Children in institutions

The Session was chaired by **Raquel Cortes Herrera,** deputy head of the disability and inclusion unit, in the Directorate General for Employment, Social Affairs and Inclusion, and co-chaired by **Jana Hainsworth**, Secretary General of Eurochild. In this session on children in institutions seven panellists shared their views on specific topics, followed by discussion with participants.

The Chair introduced the discussion by underlining that, despite progress made in the area of deinstitutionalisation, around half a million children still live in institutions in the European Union. Children are placed in institutions for various reasons, including the lack of or not enough support for families and poorly developed family and community systems of support. Ms Cortes Herrera added that more and better coordinated efforts must be taken to improve family support systems and reduce the number of children being placed in institutions. She then outlined policy documents and funding relevant to the discussion[6]:

- Commission Recommendation of 20 February 2013 Investing in children: breaking the cycle of disadvantage
- The European pillar of social rights
- European Social Fund
- European Regional and Development Fund
- Preparatory action of the European Parliament on a child guarantee, which will look among others at how to improve situation of children in institutions

The Chair invited participants to express their expectations towards the European Commission, to propose actions to take and to provide information on good practices.

The Co-chair, Ms Hainsworth underlined the important role of the European Commission and thanked the rights of the child team based in DG Justice and Consumers for organising this event.

[6] See also Forum background documents.

She further explained that Eurochild is a network of organisations from 33 European countries promoting the rights of the child. In the context of deinstitutionalisation, Eurochild is working on a campaign called Opening Doors for Europe's Children together with four other international organisations (Hope and Homes for Children, SOS Children's Villages International, International Foster Care Organisation and International Federation of Educative Communities). The campaign is focused on ending institutional care and strengthening families. She emphasised the need to work in partnership with governments at national level and with the European Commission at the European level.

The Co-chair reminded participants that children placed in institutions, even if not locked up, are deprived of their liberty. They are controlled, not allowed the full development of their autonomy and unable to grow to their full potential. She called for embedding today's topic in a children's rights perspective.

Ms Hainsworth further explained that deinstitutionalisation is understood as assisting Member States in transforming welfare and child protection systems towards more personalised, family and community-based services. That way, families with children with disabilities are supported and children can fulfil their potential and grow to become an integral part of society.

Various organisations, such as Lumos, or the European expert group on the transition from institutional to community-based care (EEG) have been involved in ending institutionalisation. The latter is composed of people and organisations working for the rights of people with disabilities, the elderly and children and has contributed to very important changes in regulations of the EU structural funds.

The Co-chair finished by reminding participants about two principles enshrined in international commitments which form the basis for the work on deinstitutionalisation:

- UN Convention on the rights of the child (UNCRC)
- UN Convention on the rights of persons with disabilities (UNCRPD)
- UN guidelines for the alternative care for children

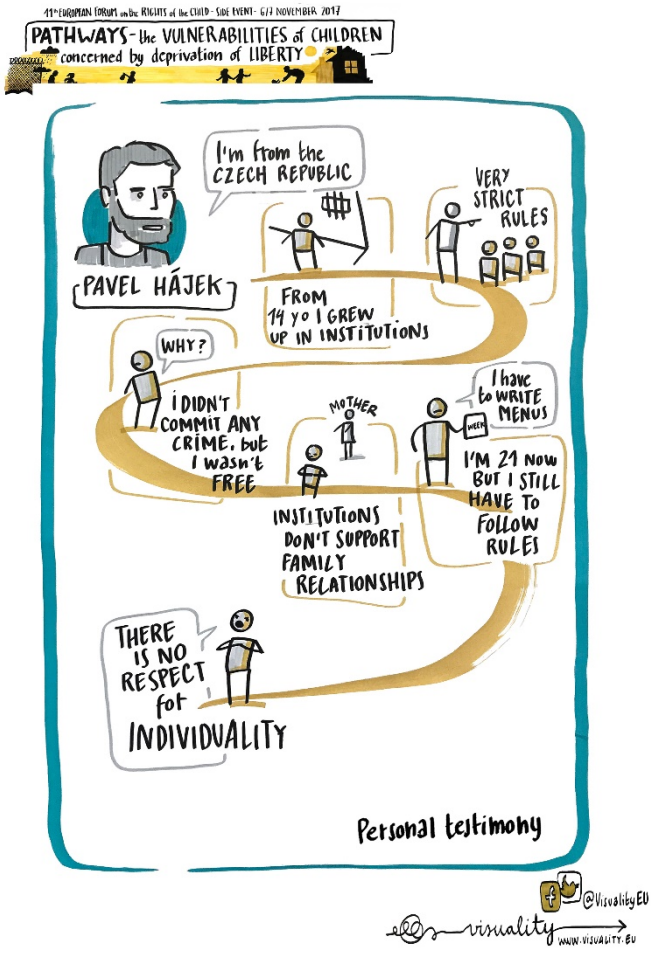
Necessity - a child should never be placed in any kind of care external to the home unless it is absolutely in the best interests of the child and necessary. That means that support for families and to parents in fulfilling their parenting role must be available whether the family struggles materially, financially, because a child has a disability or/and has particular special needs.

Suitability - there should be a very small number of children for whom care outside the family is necessary and they have to be removed from their families. According to UNCRC the best place for a child to grow up is a family environment which can provide the individualised love and nurturing that the child deserves and needs. When a child has to be placed outside her/his home, then a range of options should be available in order to ensure selection of the most suitable option for that child.

Pavel Hájek, self-advocate from the Czech Republic**,** has lived in institutions since he was 14. He was removed from his home when his mother fell sick, without being asked for his opinion. He underlined that at the age of 14 one knows what she/he wants and he should have had a right to speak. Instead, everything was decided for him.

Mr Hájek spoke about the conditions at a children's home. Firstly, there were many children divided in groups – in his home, there were eight people for one living room and one kitchen. He said "*I'm happy with the others, but the problem is that there are so many people it's noisy. I cannot concentrate on so many people all at once, and I do not have a perfect relationship with everybody.*" Secondly, there was no privacy - rooms were shared, so were showers.

Recently, he has started working with Lumos and became a member of their Youth Advisory Board (YAB). Mr Hájek presented results of the discussion the YAB had on two questions from a perspective of a small child placed in an institution, a young person and from a wider perspective of a society:



- What does it mean to be deprived of the liberty?
- What if the walls fall down and they are free?

Placing a small child in an institution is like putting somebody in a cage, intimidating, and telling her/him what to do, forbidding the expression of feeling and thoughts. After the doors are opened, children feel that it will be better, they are free and nobody can hurt them anymore.

Young people thought that it was not possible to completely deprive somebody else of her/his freedom, but that it could be greatly reduced. Deprivation of liberty means that a person is not taken seriously and that one of the highest and most valuable values of people's lives is denied. Young people mentioned that it is not easy to appreciate freedom once it is returned. Mr Hájek emphasised the need to support children and young people in understanding what the world outside the institution is about.

Young people thought that society in general knows and recognises what it means to be deprived of liberty, as some members of Czech society died fighting for freedom. Mr Hájek said"*the freedom of society reflects the value of the moral act, and the lack of liberty the quality of the society*." After the walls fall down, life is better, but also complicated. The society has an obligation to remove the walls, respect and support those who were behind them.

Mr Hájek finished his testimony showing a video produced by the Youth Advisory Board.

Georgette Mulheir, Chief Executive Officer, Lumos, presented an overview of the situation of children in institutions based on Lumos' work. Lumos is an organisation supporting children worldwide to stay in families and to return to families. Lumos also supports countries in shifting from institutions to family-based services and contributes to the development of the policy of deinstitutionalisation.[7]

Ms Mulheir thanked Mr Hájek for his testimony and the work he had done together with his colleagues in the Czech Republic. Building on his experience and the example of the Czech Republic, she pointed to the fact that EU funds were allocated to improve the institutional system in this country. Changes were made to buildings and resulted in setting up small, apartment-like institutions, which accommodated eight people (instead of hundred as before). She however underlined that deinstitutionalisation is not achieved by dividing a big building into smaller buildings, modifying and improving them, but by setting up a system in which those buildings are not needed, and children stay with their families.

She emphasised that, often, lack of empathy and imagination, results in children being taken away from their parents because of housing problems and some other difficulties. Children are not asked then what they want. Very often, institutional systems, as Mr Hájek said, put together children who have committed a criminal offence with children who have not done anything wrong. She explained that usually a child is taken to a diagnostic centre, where they are locked in. There are strict rules, very often confusing and very different from the rules of a normal family, but nobody explains anything. The child starts to wonder what they did wrong to be in such place. The reason for placing children in a diagnostic centre is to assess the child's situation and find a solution. Good intentions are implemented in the wrong way – by depriving a child of liberty. At the beginning, the child does not understand what happens, is traumatised, scared, confused and feels isolated. Then the child tries to adjust and understand the rules, in order to survive.

Ms Mulheir commented on the second issue that Mr Hájek touched upon in his testimony – what happens when the wall falls down. Young people are very often not supported or not supported enough. They were deprived of the freedom to choose, to decide about themselves and they need time and assistance to learn how to do that again and what the new rules are.

She pointed to the fact, that in normal social structures, a family and/or a group of and friends is there to guide and help during the tough years of becoming an adult, to learn (by *osmosis*)

[7] See report done together by Lumos and Hope and Homes, Putting child protection and family care at the heart of EU external action. It highlights some of the most crucial issues, and makes recommendations to the European Union on how to support child protection, care systems and deinstitutionalisation.

how to become independent. This is not available for young people leaving institutions. Even if the family is there, quite often, the institution may be 100 kilometres away from the family and relationships have broken down.

She also recognised that terrible things may happen in families, but that the response to that should be focused on the child, to see how well the child is developing, how are the parents doing, what can change and what can be improved. Instead, the child is removed from her/his natural environment and put in an institution. In the current system, institutions are being improved, not situations for families and children.

Lumos looked at what can significantly reduce the number of children entering the care system and found out that this can be achieved by strengthening health and education systems, and making them more accessible. Ms Mulheir gave an example of Moldova, which 10 years ago had the highest rates of children in institutions per capita in the whole European region. Half of the children in Moldova were placed in institutions and spent their lives in residential special schools because they were diagnosed with a disability. Inclusive education in the community did not exist. The number of children in institutions has gone down by 85 percent because inclusive education was put in place. This lesson shows that solutions can be found when looking at structural and community causes of children being taken away from their families. In situations when children absolutely cannot stay with their family, alternatives need to be based on family and community as far as possible. Ms Mulheir invited participants to consider the outcomes for Pavel if he had been placed with a family instead of in an institution. Children need to be reassured, cared for and loved rather than forced to ask themselves what they have done wrong.

Ms Mulheir then discussed stigmatisation, labelling and justification for institutions that take place when children are separated from families and put in institutions. While children ask themselves "what have we done wrong, society in general says that there must be something wrong with them, or they must have done something wrong, otherwise, they would not be in an institution. This opinion is only reinforced when images or reports from an institution are published: challenging behaviours, children tied up because they are self-harming, children who are doped up on psychotropic drugs to control their behaviour, children with the stereotypical behaviours that they have because of institutionalisation, rocking back and forth, and smacking themselves in the face. This is how the victim is blamed and how locking children up is normalised. She said that when a child is put in an institution for whatever reason, that is usually a sentence for her/his entire childhood. For children with disabilities, this isoften a life sentence, because usually when they turn 18, they are moved to the adult section of the institution, or to an adult institution. Very often, they will stay there until they die.

Ms Mulheir finished her intervention by listing some of most common traits of institutionalisation/deprivation of liberty:

- institutions are very often locked facilities with locked toilets, locked doors to the kitchen, with high walls and guards – under the false pretext of protecting children from running away;
- physical restraints - cage beds, straightjackets, ties, and as well as psychotropic drugs to control behaviour;

- punishments take the form of torture such as food deprivation sleep deprivation, taking children's shoes away so that they cannot run away from the institution, punishment rooms or punishment cells;
- exploitation of labour – in many countries children work for long hours in many different ways to make money for the institution, what includes exposure to a very high risk of physical and sexual abuse, much higher in institutions than it is in families;
- force-feeding - in order to get enough food down children's mouths in a short space of time, children are force-fed;
- very high mortality rates – for example in Canadian residential schools, where one in 25 children died.

Steven Allen, Executive director of Mental Disability Advocacy Centre (MDAC)[8] presented an overview of the situation of children with mental disabilities in Central and Eastern Europe (CEE) based on MDAC's experience and outlined guidelines for monitoring institutions and about implementation of alternatives.

MDAC focuses on human rights of children and adults with mental disabilities, children with intellectual disabilities, cognitive impairments, developmental disabilities, as well as children who have complex, multiple, and profound disabilities. MDAC was established in 2002 in Budapest to tackle the segregation of people with mental disabilities, their long-term institutionalisation and their denial of access to basic public services. The main focus of MDAC is still on CEE, where despite positive developments, there are still many challenges, if not retrogression in terms of the basic protection of human rights. MDAC mainly works on:

- securing justice through strategic litigation on core aspects to advance human rights protection provided to people with mental disabilities;
- promoting inclusion through advocacy and public policy;
- building solidarity via research and public communications.

Mr Allen said that the development of largescale institutions in CEE needed to be put in a broader historical context. Before the fall of communism, persons with disabilities were not seen by the system as holders of human rights, but as either objects of care or objects that require management. Most social care institutions and child psychiatric institutions used a biomedical approach. The child was diagnosed often very early in childhood, using early diagnostic processes, so-called defectology, and then restrained with very little consideration for the child as a human rights holder. Parents were often advised to place their children in an

[8] The organisation has changed its name to Validity

institution because otherwise they would become a burden on the family and on the community. In institutions, physical, chemical, and multiple forms of restraints were extensively uses based on methods of control and coercion and the institutional nature of places.

He explained that in 2006, when the UNCRPD was adopted, a shift from these old approaches of isolating and segregating people with disabilities started to take place, towards respecting them as holders of human rights. The UNCRPD reformulated the understanding of disability by making the connection between impairments and attitudinal barriers in society. Mr Allen underlined that identifying the structural, attitudinal and environmental barriers that restrict children's ability to be included in the community is crucial. Building on that, the UNCRPD for the first time gave a very strong statement that discrimination on the basis of disability cannot be allowed in any case and it violates the inherent dignity of persons with disabilities. He noted however that this concept is still not obvious for many policy makers in CEE.

Mr Allen stated that children with disabilities placed in institutions are deprived of their liberty, denied access to education, to adequate healthcare, to rehabilitative services. Furthermore, it is clear from the evidence that a child with a disability placed in an institution at a young age is much more likely to spend the rest of her/his live in institutions.

Mr Allen moved on to present one of the MDAC projects – Access to justice for children with mental disabilities which started in 2014. Few countries make sure that the right to live in the community is implemented and there are even less opportunities for children to enforce their rights to community-based services. According to MDAC data, in 10 countries in the European Union children are particularly vulnerable due to the lack of any independent support, including legal assistance to exercise their rights. Moreover, if children with disabilities were placed in institutions on the basis of social contracts with parents or guardians, that would not be regarded as deprivation of liberty. He gave an example of a case in Hungary, where MDAC complained and demanded an investigation about the death of one child in an institution. MDAC was told that this was not a case of deprivation of liberty. This example shows an important barrier in access to justice.

The second project, Identifying and preventing abuse of children with mental disabilities in institutions was implemented by MDAC in the United Kingdom, Bulgaria, the Czech Republic and in Hungary in 2017. The project team developed a toolkit to monitor abuse and ill-treatment of children with disabilities in institutions. The toolkit looks at disability-based forms of abuse and violence, which continues to occur in institutions. One of the project's outcomes was the Topház report, which showed forms of segregation that children with mental disabilities in Hungary are facing today. MDAC staff saw children in straitjackets, tied to their beds and denied basic communication. What is more, this institution that housed 220 children and adults with disabilities was receiving European Union funding.

Mr Allen then presented a third project, which was a follow-up to the first one and identified that lawyers and judges were lacking access to knowledge and information on how to represent children with disabilities who are victims of human rights violations. Within the Innovating European lawyers to advance the rights of children with disabilities project, training materials and legal strategies were developed.

Mr Allen outlined areas where work still needs to be done:

- **Institutionalisation of very young children (under the age of three)** on the basis of their disability and their ethnicity (Roma children are overrepresented in such institutions) in the Czech Republic. There is still a huge number of such institutions - in 2010, there was about 1 800 places in institutions in Czech Republic. Today, the number is down to 1 500.

- **Trans-institutionalisation** in Bulgaria. Bulgaria was praised for its successful deinstitutionalisation strategy for children, including children with disabilities. However, it is becoming clear that instead of closing these institutions, the country has opened 150 smaller institutional services. In some cases smaller group centres were built on the same grounds, with the same staff and management, the same children were placed there, reflecting exactly the same culture, norms, rules, etc., as the previous large institutions

- **Misuse of the European Union structural and investment funds**, specifically in Hungary[9] and in Bulgaria. These funds are used to maintain, renovate and build new institutions. This is in breach, of the ex-ante conditionality under the EU funds. In the situation of Topház special home, MDAC gathered evidence of acts of ill-treatment and torture.

- **Access to justice –** MDAC will continue taking on litigation on behalf of those children and young people, so they can get out of institutions.

Andor Urmos, Policy Officer, Directorate-General for Regional and Urban Policy, **is responsible for** thematic coordination of the European Regional Development Fund (ERDF) in particular for measures supporting the growth period of the European 2020 strategy. He talked about the role of the European Union structural funds in deinstitutionalisation.

Mr Urmos began his talk with an example of a case similar to the Hungarian one brought up by Mr Allen. The Commission received worrying signals from civil society and media on the Tantava Disability Home in Romania, also refurbished with EU structural funds. The core issue in both cases was that although the buildings of both institutions were new and nice, the conditions have not changed, if not worsened.

Mr Urmos presented the conclusions from the 2007-2013 programming period and the challenges for the 2014-2020 period.

Under the former programming period, among ERDF investments, EUR17.9 billion was spent on social infrastructure (education, health, childcare and housing) and EUR5.3 billion was spent on e-inclusion (infrastructures, e-services, including e-health).

The biggest challenges under this programming period were:

- Shift to community-based care
- Sustainability of investments
- Alignment with the most important trends and needs

[9] See Topház report,

The Commission learned from the 2007-2013 financing period, that more funds were allocated by Member States to institutionalisation than for deinstitutionalisation. The reason for that was most probably that neither the Commission nor Member States included deinstitutionalisation as a specific objective in the operational programmes.

Then, there was not enough importance placed on segregation in general – including segregation of Roma children, segregation in housing and segregation of people with disabilities. The Commission has found out that in many Member States investments reinforced segregation.

A new rule was introduced in September 2017, according to which no investment can be made in energy efficiency, ICT and other areas in long-stay residential institutions. Despite clear guidelines, the EU Member States still invest in institutions. The majority of projects funded under the ERDF invest in infrastructure, buildings and equipment, and as long term investments, attract more attention. While the Commission makes efforts to promote the shift to community-based services, some investments are made to small group homes, assisted housing and accessibility measures.

Last year in the Czech Republic, measures included in the operational programme and the call for proposals were not aligned. It means that the call for proposals was not in line with the objectives of the operational programme. The Commission therefore asked the Czech authorities to suspend the call.

Concerning small group homes, there is often a misunderstanding, an assumption that this is the right approach to deinstitutionalisation. For example, in the period 2007-2013, Estonia invested in small group homes, which were very nicely equipped, but located in a remote area and isolated from any community and services.

An Annual Review Meeting with all the managing authorities will take place on 24 November 2017 in Hungary, where the suspension of payments for some projects will be discussed. Mr Urmos added that the Commission has however limited possibilities of checking all proposals submitted across the European Union.

Mr Urmos gave some examples of ERDF-funded group homes or family-like homes:

- A toilet built in the middle of a hall, with no separation for privacy (Czech Republic)
- Surveillance cameras (Bulgaria)
- Violations of human rights (Romania, Hungary)
- Technical standards focused on buildings, not on quality of life (Czech Republic)
- Funding rules which favour institutional/residential care (Slovakia)

Even if the buildings are modern and beautiful, the rules follow the institutional character of what existed before, e.g.:

- Possibility to use the phone for restricted time (10 minutes per week) and only if cleared by the occupational therapist;
- Access to television, radio, other electronic devices and furniture in a private room, only if agreed by the therapist;
- All decisions need to be discussed and approved by the therapist;
- The threat of ending a contract if a rule of the home was broken.

Some key features of the European Structural and Investment Funds 2014-2020:

- Contributing to Europe 2020 strategy and objectives for smart sustainable and inclusive growth. For the 2014-2020 period, the Commission asked the EU Member States to prepare strategies for every field they want to invest in and to show the Commission frameworks of these investments. Deinstitutionalisation, transition from institutional to community-based services or the inclusion of people with disabilities, should be included in the poverty reduction strategy.
- Concertation and integrated approach - the structural funds are designed to support structural changes, not to cover particular needs in a particular country.
- Ex-ante conditionality for effectiveness:
    - the anti-discrimination - the administrative capacity for the implementation and application of EU antidiscrimination law and policy in the field of ESI funds;
    - on disability - administrative capacity for the implementation and application of the UNCRPD in the field of ESI funds.

  These two ex-ante conditions should be applied across all investments, not only in reduction of poverty, but also in energy efficiency, ICT, transport.

    - The policy framework for poverty reduction, is a thematic ex-ante conditionality for social inclusion, combating poverty and discrimination, and depending on needs, should include measures for the shift from institutional to community-based care.
- Result orientation
- Alignment with country specific recommendations

In all investments, the UNCPRD and the Charter of Fundamental Rights must be taken into account, when it comes to anti-discrimination. The UNCRPD was ratified by the European Union and all Member States. The most relevant articles of the two documents mentioned above, under for the ESI funds are:

- Article 19 of the UNCRPD on independent living and being included in the community
- Article 26 of the Charter of Fundamental Rights on non-discrimination and on the integration of persons with disabilities

The thematic guidelines on deinstitutionalisation for the 2014–2020 period provide for:

- Development of high-quality, individualised, community-based services, including those aimed at preventing institutionalisation and the transfer of resources from institutions to new services,

- Planned closure of long-stay residential institutions. Improvements in existing institutions can only be financed in restricted cases based on individual needs assessment. Building or renovating long-stay institutions is excluded, regardless of their size,
- Making mainstream services accessible and available.

To finalise, he formulated challenges for the new programming period:

- The lack of sufficient data on institutionalisation of children, people with disabilities and the elderly
- For 2014 programmes, needs assessments are missing
- There is still too much focus on the size of the institutions
- Very weak links are made to labour market integration
- Conditions for independent living are not met

Ms Hainsworth summarised the morning's presentations and drew attention to some remaining questions:

- Trans-institutionalisation – which happens when money is used to close big buildings, and to build small infrastructures without any shift in terms of mentality and culture?
- Accountability - how to hold people responsible account? How to report on and how to monitor the big number of projects implemented with EU funds? What is the role of civil society in engaging with governments and holding them to account?
- Voices of people - how to enable people in institutions to have their voices heard to inform reforms, planning and transition?

She also highlighted that although there were many examples from Central and Eastern Europe, there is no country that has achieved a perfect child welfare and protection system. There are still many issues to be addressed and every country has challenges.

Gwen Vernimmen, Member of the Board of Directors, MyAssist[10]

MyAssist is a Flemish organisation, which supports children and young people with disabilities via the personal budget granted by the Flemish Government. The aim of the programme is to provide tailormade support that enables children to stay with their family and attend school. The programme is designed for people who were diagnosed with a disability before the age of 65 living in Flanders.

The programme has two dimensions:

- Assistive Devices - for communication or mobility. Thanks to this type of help, a child stays at home because parents have appropriate equipment to take good care of the child.
- Personal Assistance Budget (PAB) – which aims to promote autonomy and the quality of life of people with disabilities in all areas.

The objective of the Flemish Government is to assign money to people rather than to institutions. Beneficiaries can choose how to organise their care, e.g. they can pay for a

[10] https://www.myassist.be/

personal assistant to stay at home. At the beginning, a needs assessment is done to identify needs and assign a budget. The amount of money allocated depends on the severity of the disability and the extent of support granted. The budget is calculated annually based on an annual budget. The minimum amount is €9,788 and the maximum €45,000.

Within the programme, it is possible to:

- hire a personal assistant to help with everyday tasks,
- buy service cheques and pay for household tasks, what can, for example, allow parents to spend more time with a child,
- cover costs of residential care, in case of emergency or a crisis, e.g. in case parents are sick.

This programme does not finance house or car adaptations, psychotherapy or, physiotherapy, which are covered by other agencies.

MyAssist is also funded by the Flemish Government and helps people in organising the type of help they need, choose relevant programmes, work with assistants and healthcare providers.

Ms Vernimmen, presented a case study of an 11-year old girl who was diagnosed with a meconium aspiration syndrome, with multiple disabilities. She has motor congestion combined with severe cognitive problems and high care needs. The child stays at home with her parents, but they both would like to keep their job and they need to take care of other children at home. The girl could attend school, as there are schools for children with special education needs, but she needs someone to be there with her.

The Flemish Agency for persons with disabilities granted the girl a maximum budget of €45,000 a year. MyAssist helped the family to decide and choose the best care options, which allowed the girl to attend school and stay at home with her family. An assistant was hired to be with the girl at school, covering the journey to and from school and during classes. At home, the assistant helps her to get dressed, play games and assists in everything she needs. The girl is well assisted and cared for, she can go to school and she lives with her family. Her parents know that she is safe and well taken care of and they can continue to work. The teacher at school is supported and can give attention to all other children in her class.

Marion Macleod, Policy manager at Children in Scotland[11]

Children in Scotland is an NGO advocating for the interests of all children, in particular promoting equal opportunities and access to support services. Ms Macleod presented the summary of findings of the **Alternative Future project,** co-funded under the EU Rights, Equality and Citizenship Programme (REC). She defined key issues and gave

[11] https://childreninscotland.org.uk/alternative-future/

recommendations on how the current practices and care system could be redesigned to better support young people.

Ms Macleod started by explaining that residential care in Scotland is based on foster care placements and small residential care units. A child can be locked up in Scotland only if she/he poses a risk to herself/himself or others and for an initial period of six weeks, which is then reviewed and can be extended in three-month blocks thereafter. The fact of committing an offence or not, does not play any role in decision about being placed in a secure care.

The Alternative Future project was based on interviews carried out with young people in secure care on their perception of violence and interviews with staff on how they were supported and trained to deal with issues arising from experience of violence. The project was implemented in six European countries: Spain, Bulgaria, Scotland, Italy, Germany and Austria.

The key themes that emerged from the interviews were:

- early adversity
- attachment disorder
- disruption and unstable relationships
- experience of violence of various types
- trauma
- repeated admissions to care

The life experiences of young people indicated a high risk of poor emotional wellbeing and mental health. They had severe, enduring, and complex difficulties and needed specific therapeutic support. Most of them were not young people who were at risk to others, but young people who were at risk to themselves. They should not be regarded as troublesome young people, but rather as troubled young people.

Results of interviews with staff showed their dedication, commitment, and professionalism. They pointed to the lack of systematic support or specialised therapeutic interventions for young people. Sometimes, for example, mental health support is provided not by the local authority, but by the health service. There could be very long waiting lists and difficulties in accessing that service.

The interviews exposed the financial truth about closed facilities, which are very costly and paid from public money. It also turned out that many of the young people received

interventions at significant public cost which had actually made things worse. We should never have young people faced with a probability of having worse outcomes when they are finished with the care system than they did before they entered in the first place.

In some situations, people end up in prisons and other institutional settings because they have not been able to cope outside that kind of establishment. Whatever problems they had had in their families had been compounded by multiple placements.

Ms Macleod finished by presenting recommendations from the Alternative Future project:

- Need to address financial stresses of families that generate ineffective parenting and to provide support to avoid problems. She said that if you had a leak in your plumbing you would not leave it till it became a flood that had your ceiling coming down before you called a plumber.
- Need to acknowledge what families themselves see as a problem. Positive change is far more likely to happen when people feel they are being listened to, responded to, and respected.
- Need to ensure a bigger work force and to train people working in this sector on rights of the child and on prevention. Social workers need support to be able to establish stable and consistent relationships with young people.
- Need to support services that specifically address the needs, risks, and vulnerabilities of young people who have had traumatic life experiences and not by depriving them of liberty to make them easier for us to manage. She recalled that responding to children in this situation is our problem, not theirs, and we should not forget this.

Alison Gough, secure care national adviser, Centre for Youth and Criminal Justice (CYCJ)[12], University of Strathclyde in Glasgow, talked about the organisation and review of secure care in Scotland which was based on a fact-finding programme with young people, secure care practitioners and many others, a qualitative study which included in-depth interviews with social work officers and conversations with 60 secure care experienced young people and young adults.

CYCJ is an organisation that supports professionals working with children and young people who are offenders or at risk of becoming offenders. It is funded mainly by the Scottish Government, but it works independently on policy, practice development and research. CYCJ cooperates with local authorities, social workers, and with a range of agencies, in the community, in different areas of Scotland and international organisations.

Secure care is defined and regulated in Scotland as a resource for keeping young people safe and meeting the needs of the most vulnerable young people who are at very high risk of significant harm. Scotland puts in place robust rights-based approaches and legal tests that have to be met before a child or a young person is placed in secure care. Currently, 84 persons are placed in five secure care centres in Scotland. Within that figure, 90 percent of the children were put in secure care in Scotland on care and protection grounds through the children's hearing system.

[12] http://www.cycj.org.uk/

Scotland makes efforts and focuses on:

- early intervention
- shifting the balance of care and support towards families within their own communities,
- supporting children in family placements, rather than in residential care

Nevertheless, young people (16-18 years old) are still placed in secure care on offence grounds (remanded or sentenced through the courts) and 43 children in the same age span are in Young Offenders institution.

Within the Getting it Right for Every Child (GIRFEC) policy framework, the Scottish Government had commissioned the Secure Care National Project to undertake an independent review of secure care in Scotland. The vision of the Scottish Government is that Scotland will become the best place in the world for children to grow up.

The secure care national project was focused on exploring the impact and experience of secure care, not young offenders institutions. The project was implemented over a year and was based on consultations with stakeholders and interviews with 60 young people, the majority of whom were in secure care at the moment of the interview. Results were presented in the report *Secure care in Scotland: looking ahead* in June 2016. In reaction to findings, the Scottish Government established a strategic board to further look at alternatives to secure care and to transform the system.

Ms Gough outlined the main findings from the project:

- There have been significant improvements in secure care - the physical environment, the range of facilities for self-expression, and the quality of education, which has to be fully compliant with the mainstream curriculum.
- There are still challenges in specialist therapeutic and psychological interventions, in general wellbeing and outcome-focused approaches.

She summarised what young people said about secure care and how they arrived there:

- Young people in secure care are not a homogenous group.
- They did not have a collective view on whether it is correct in terms of the protection of rights, to actually be caring for young people who have committed serious offences or violence towards others alongside those who may be extremely vulnerable to further abuse and harm.
- Young adults, who had previous experience of secure care and were reflecting back, wanted decision-makers to hear that they should be more consistent and compassionate and there should be a focus on psychological continuity of care throughout the care system.
- The needs of all children should be addressed and they should be helped with making sense of what they have experienced. Close support and more intensive care are needed for foster families to help children, and that that should be available to all children in Scotland.
- They said in particular that professionals are too often focused on the impact of children's behaviours and actions, and not enough on the underlying reasons or drivers for those behaviours which are difficult for others to live with or pose risks of harm.

- They described a lack of early identification of problems, which meant that trauma and early abusive experience they had lived through were invisible and left untreated. As a consequence, when this trauma became apparent during adolescence, the focus was on the young person as a problem, the young person's challenging and risk-taking behaviour, not on the underlying needs of the young person.
- Many children and young people had not had their rights explained to them. For some young people, they had not even been told that they were going to be placed in a secure unit. For example, one young person was told he was going on a day trip, whereas in fact he was going to be transported to a secure unit.
- Young people were positive about the educational opportunities that they had, but for some of them, there was not enough therapeutic input from within the centre.
- A majority of young people talked about the culture differences within the centres. There was a clear variation in terms of how empowered young people felt outside, and how disempowered when locked in a secure care centre.
- Young people felt they have not been listened to. Or if they have been listened to, they have not been heard. If they have been heard, then their calls for action have not been acted upon.

Ms Gough said that according to CYCJ there is growing evidence of the impact of adverse childhood experiences (ACEs). Young people who become involved in serious and violent offending are nearly always children who have experienced multiple adverse childhood experiences. Not all children who have experienced multiple adverse experiences will be involved in serious offending. Adversity is a predictor, it is not a correlation.

Ms Gough talked at the end about the impact that arriving and admission to secure care services has on a person. She underlined that, no matter how compassionate and caring the receiving staff were, a stay in secure care has a very, very heavy impact. In addition, some methods used to discipline young people are clearly abusive, for example, the practice of young people being sent to their bedrooms for time out, which is actually single separation.

The strategic board set up by the Scottish Government hopes to engage young people in influencing and shaping policy. The young people's evidence is just as valid as the expert research.

Finally, Ms Gough quoted a young person who said: "*Look at what we've achieved despite everything we've been through*". Ms Gough added that we need to recognise that young people who have experienced the level of trauma that leads them to be detained in care for their own safety, are young people who have incredible resilience, who have incredible capacity, incredible potential, and we should actually be celebrating that, and we should be promoting that by involving them and shaping the future of secure care in Scotland.

Dainius Puras, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health[13] **and Professor of Child Psychiatry and Public**

[13] https://www.ohchr.org/EN/Issues/Health/Pages/SRRightHealthIndex.aspx

Mental Health at Vilnius University, talked about children in institutions, in particularly about challenges of transforming services in Central and Eastern Europe. Mr Puras said that despite different political regimes, Europe has still the highest rate of institutionalised children and adults. He pointed out that a joint effort at many levels is needed, including in general the public, decision makers and human rights experts.

Mr Puras focused his presentation on mental health issues, starting from the fact that **terminology** in this field is very complicated and confusing, e.g. care homes for children are called in certain countries 'homes for children with developmental disabilities'.

Mr Puras pointed out that **medicalisation** in Central and Eastern Europe is heavier than in other countries. If there are no well-established and organised family support services, a healthy child may be placed in an institution because of family problems, medicalised and immediately labelled as a child with disabilities. Because of medicalisation, separation from family and placement in an institution, the child may then present different behavioural and emotional problems.

Another issue that Mr Puras touched upon is the overuse of **psychiatric hospitals** in situations when other community- and family-based services could be better placed to provide assistance. He gave an example of a child with a severe intellectual disability and autism who attended school. At some point, a teacher asked her or his parents not to bring their child to school anymore because of challenging behaviour. The teacher insisted that the child should be taken to a doctor. Parents quickly found out that the problem was a pebble in the child's shoe.

Mr Puras called attention to so-called institutionalisation at home. It happens when, for various reasons, a child stays with family, but does not attend any school and has no or very restricted contact with the outside world.

In conclusion, Mr Puras said that in his annual reports, he recommended to sensitise the medical sector, paediatricians and child and adolescent psychiatrists and other mental health practitioners to implement a child rights approach.

Discussion points:

In the discussion that followed, participants shared information and good practices from their countries, brought forth challenges and recommendations on deinstitutionalisation and asked questions.

- **Serbia and accession countries**: in the accession negotiations, deinstitutionalisation is discussed under Chapter 19, which is on social policy and employment. Why is it not under chapter 23 (Justice and fundamental rights)? The participant pointed to the fact that it is clear that institutionalisation directly and indirectly violates most fundamental rights, but since it is classified under social policy, the argument of breaching human rights is not obvious anymore. He added that there is a strong focus

on the human rights based approach in some chapters (such as 23), but it perceived as less important in other chapters (such as 19).

Mr Urmos replied to this question saying that the European Commission requires the EU Member States applying for structural funds to focus on both the human rights perspective (relates to anti-discrimination and disability ex ante conditionality) and poverty reduction (refers to policy measures to address poverty reduction). The human rights angle is stronger than the policy angle, as it is ensured by two very important legal instruments: the Charter of fundamental rights and the UNCRPD. Serbia should follow the same approach when applying for pre-accession funds. He added that regardless of the accession negotiations and rules for EU funding, countries which have ratified the UNCRPD have a responsibility to implement it and report on that to the United Nations.

- **Good practice in Italy**: a shift from deinstitutionalisation to the prevention of institutionalisation was made in Italy. Institutionalisation is forbidden by law in Italy and institutions were replaced by foster care and family- and community-based services. Poverty is a reason behind more than 30 percent of removals from family. There are steps taken to set up a system of very intensive and well defined in-time interventions and support for families with the overall aim to bring social services to the family and not the family to the social services. The piloting programme – P.I.P.P.I (co-funded by the European Commission) is implemented in more than 1 000 families and children.

- **EU funding in Greece**: in the previous programming period, structural funds were misused in Greece, e.g. for the restructuring of shelters for independent living. This institution then changed its name to Shelter for independent living I, Shelter for independent living II and III. Despite several negotiation attempts, it is clear that the Greek Government does not have any clear strategy on how to move forward from such investments. Concerning the EU structural funds, a participant asked what the specific mechanisms and steps to take are in order to improve transparency to all levels of stakeholders and hold beneficiaries accountable.

  In reply to this, Mr Urmos said that the European Commission approached the Greek Government via bilateral discussions, seminars and other fora. There is, however, to date, no clear deinstitutionalisation strategy in Greece. The European Commission is waiting for the government to prepare a strategy to be able to use the structural funds. Independently from the EU funds and its requirements, Greece must report on the implementation of the UNCRPD.

- **Data collection in the Netherlands:** the number of children in closed youth care facilities has increased in the Netherlands and more episodes of using violence and isolation in closed centres are reported. Institutions are either not monitored or the official reports are limited in their content, e.g. there is no obligation to report incidents of isolation or other types of punishments. There is a general lack of data. Responsibility for children deprived of their liberty in different settings is very often

fragmented over various services. A participant asked which one could take on a duty of overseeing the situation and collecting data and if ombudspersons are well positioned in the EU Member States to play such a role.

In reply to this question, Ms Mulheir emphasised the importance of the UN Global Study on Children Deprived of Liberty. She said the study is needed and there should be much more done to ensure it happens. She reminded participants that the UN Study on Violence against Children had a very significant impact on global programming.

- **On how transfer from big residential institutions to community- and family-based settings should be managed,** Ms Mulheir said that Lumos developed a five-day training programme on how to make such a transition. She added that it takes more or less 10 years for a real transition to happen, as it needs to go beyond the term of one government. There are three main components of successful transition: 1) political will at local and national level, 2) funding for the transition – there are many analyses showing that family- and community-based services, including those for children with disabilities, are cheaper that institutions. The transition period requires some additional funds and additional personnel, but the EU structural funds are available for that[14], and 3) professional capacity. She added that the transition is not about investing in new buildings, but in people to manage the transition and in professionals working with children, e.g. children with disabilities.
- The need for investing in **professionals** working with children was emphasised by a representative of the European anti-poverty network. Ms Macleod said that the skill level and capacities of people providing support is very important. People working with children should have the best interests of the child at heart and should be able to protect the principle in a consistent way, including supporting families. The vast majority of children placed in institutions were affected by poverty. Poverty has a direct effect on health, well-being, stress level and other difficulties.

In her closing remarks, Ms Hainsworth focused on follow-up and on recommendations on how to help the process:

- There are various groups working on deinstitutionalisation, including the European Expert Group on the Transition from Institutional to Community-based Care (EEG)

[14] See a Toolkit on the use of European Union funds for the transition from institutional to community based care

- Information exchange – between national and European levels can be done via the EEG
- Human rights based approach - we cannot achieve economic prosperity, success in employment, and all of those top-level objectives, if we do not take a human rights approach.

Ms Hainsworth closed the session by underlining the need to gather more political will for deinstitutionalisation. She said that if we get it right for the most vulnerable in our societies, we will get it right for society as a whole.

Session 4: Children of parents in prison

The session was chaired by **Chiara Adamo**, Head of the Fundamental rights policy unit, Directorate-General for Justice and Consumers, European Commission, and co-chaired by

Nancy Loucks, Chief Executive of the Scottish NGO Families Outside and Secretary General of the board of the Children of Prisoners Europe (COPE) network. The panel was focused on child protection measures and practices aimed to mitigate the impact on children of the incarceration of their parents. Six panellists made presentations about good practices and initiatives in several EU Member States.

The Chair introduced the session, highlighting that while the topic is in the remit of the Member States and the EU competences are limited, the Commission could facilitate exchange of good practices, and, by supporting networks and programmes, help the realisation in practice of the Charter of Fundamental Rights and the UN Convention on the Rights of the Child (UNCRC). The Chair also stressed the need for more data and statistics in this area. The Council of Europe's Council for Penological Co-operation is working on a recommendation on children with parents in prisons which is deemed to be adopted in 2018 *(post-Forum note: adopted in April 2018; see Recommendation*[15] *and Explanatory memorandum)*: the panel discussions are therefore timely to feed into this ongoing work as well as into the activities carried out as part of the UN Global Study.

The Co-chair briefly introduced the work of Families Outside, a national Scottish charity that works specifically for children and families affected by imprisonment, through direct support, training of professionals, policy work and data collection. She also introduced the COPE Network. COPE is a member network based in Paris which works exclusively to promote child focused practices on the protection of children with a parent in prison. It can be estimated that 2.1 million children in the Council of Europe area are affected by the imprisonment of a parent on any given day. 800 000 of those are within EU countries. However, more detailed information is needed to inform policies and practices. It is important to refer to Article 9 of the UNCRC, about the right for children to maintain the contact with their parents. General Comment No. 14 further highlighted that the best interests of the child should be taken into account in all decisions relating to the detention of someone with child caring responsibilities. However, there is no specific legislation or measure at EU level on the protection of children with a parent in prison: the rights and protection needed by children exposed to parents imprisonment are often forgotten, absorbed into other pieces of legislation. Interesting research conducted by Dr Minson (University of Oxford) showed that whereas in family law and decisions on

[15] https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807b3175

child custody after divorce the focus is almost entirely on the child and his/her rights, in criminal justice and proceedings affecting adults, the child and his/her needs are often absent.

Madelein Kattel, Director of Operations at BUFFF[16]. BUFFF is located in 10 different areas in Sweden, and provides direct support to children affected by parental imprisonment through both individual and group work. Children are active subjects, need to know they are unique individuals with their own rights, and at the same time are entitled to adults' care and protection. Children need be informed, heard and involved. Children need to participate: BUFFF invites children they take care of to become part of the NGO board. It provides indirect support to children by helping caregivers, during the whole legal process starting from arrest until release. BUFFF also works to increase awareness of imprisoned parents on their parental role (focus groups) and operates a national helpline which provides for direct help. Almost 30 000 children in Sweden are affected by parental imprisonment. The imprisonment of the parent and family member generates stigmatisation (or fear of it), shame, and often is experienced in secrecy. It affects also financial stability of families, with negative consequences on children's support. The focus of support activities should be extended also to cases where siblings, and not only parents, are incarcerated.

"*If someone dies, you get support from your neighbours, your network, and people are maybe baking you a cake and coming to you, and you can talk about it. But when it's an ambiguous loss, because it's so shameful to have a parent in prison, and you're secret about it, you don't really get any support*."

Children with parents in prison have some basic needs: concrete and age sensitive information about their situation; availability of an open space for communication; a good contact with a detained parent, when this is in the child's best interests; and a supportive parent/caregiver, who should have the ability to take care of the child despite the situation, possible conflicts with the parent in prison, etc. Civil society organisations and authorities have to offer a respectful response to these needs, a non-judgmental treatment from adequately trained professionals (including teachers) and prison staff. Linnea's story is a good example of a case where all these needs were adequately addressed.

Linnéa's testimony

"I am 14 years old. I come from Sweden. One day when I was nine years old and my little brother was six, my mom came and picked us up from school. I thought it was a normal day in our family and that dad was at work.

My mom told us that we were going to visit our grandfather to have some afternoon tea with him. She told us that she needed to tell us something important. She told us directly and honestly that dad had been sent to jail because he did something he wasn't allowed to. He was going to be gone for a little while, but we were going to visit him.

[16] http://bufff.nu/

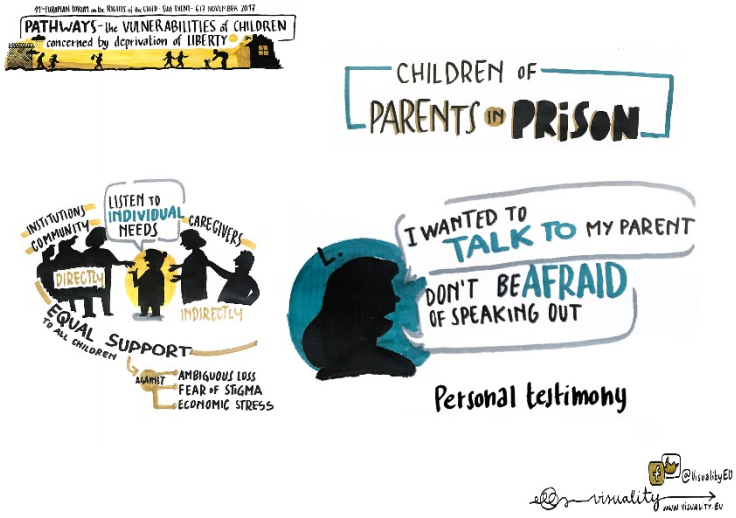
After I got to know what had happened to my father, I didn't dare to tell anybody about it. It was a shock. I barely knew or understood what had happened. Some days after, the shock turned into sadness.

Every time I'd come home from school, this house felt very empty without my dad. I had a lot of questions and thoughts, but I decided that I wanted to wait and make those questions directly to my father when I was able to see him. I didn't want to get stuck on images, and I had pictures of jail based on what I had seen on TV.

I didn't want to focus on the questions like, "Is my dad OK? Is he walking around with a big rope around his foot? Does he have orange and white clothes with stripes?" I chose to try to hide my negative feelings, bury them deep inside of me, and try to focus on the positive things like school and my friends.

After two long weeks, I finally got the chance to visit my dad in jail and to ask him all the questions I had. It felt really good to see him. Two weeks felt like a very long time apart from him. It was a little scary to go and visit jail for the first time. As soon as I saw him, saw that they were taking care of him, and the jail did not look like in TV, I felt a very big relief.

Shortly after the first time visiting our dad, we started to go to Bufff. There, we got support and the opportunity to meet other children that had their father or mother in jail. That made me feel like I wasn't the only one.



I learned a lot and stopped having negative thoughts about jail or people that were in jail. Not all of them are dangerous. They might have done things that are not OK, but that doesn't make them dangerous.

I also learned that I don't have to be afraid of speaking out about my father's situation. I decided to tell my friends. I was very honest with them, and they understood everything. They were very supportive and didn't have any questions.

My father was in jail for two years. We used to visit him once a week. After, he had an electronic tag for a while. I didn't know what an electronic tag was. The only thing I had in mind was that my father was finally coming home.

The only thing I felt was hard was that some of my friends' parents were hesitating to let my friends over as they didn't know who my father was. They only thought that he must have been bad as he had been in prison.

Our relationship at home is like it has always been. I think that it is even better now. Our relationship would have been very different if this hadn't happened. This has brought us closer together.

We see everything like something that belongs to the past and don't feel like talking about it. I always try to stay positive, but I obviously remember those years. It just doesn't affect me anymore.

Nowadays, I continue to go to Buff. In the future, I would like to help others in similar situations."

Supporting children with incarcerated parents is not only beneficial for the affected child, it brings larger societal benefits, it reduces crimes and mitigates the risks of mental illness and psycho-social diseases. A key challenge to ensure larger societal benefits is to raise awareness and prepare the local communities. These children are not in prison, they live with us, in our schools, and local communities and professionals should thus be adequately prepared to include and support them.

Many times it happened that when children tell a teacher or someone in their school environment that they have a parent in prison, the first question they get is, "What did he do?" instead of, "How did that feel for you?" or "Can I do anything for you?".

A handbook and e-learning on child perspective and child rights for social workers was elaborated by the Swedish correctional system, BUFFF and the Ombudsman for children.

Iuliana-Elena Carbunaru, Probation Inspector at the National Probation Directorate in the Ministry of Justice in Romania. In 2014, Romania succeeded to implement a significant legislative reform of the criminal legal framework: seven new laws entered into force at the same time, modifying the criminal code, i.a. reforming probation for both custodial and non-custodial sanctions. These reforms responded to the heavy overcrowding of penitentiary centres and to the need to create efficient alternatives to deprivation of liberty.

Probation was started in Romania in 2001. In 2002, there were approximately 50 000 people in prison and potentially several thousands of children influenced by this situation. As from 2015, after the reform, probation has exceeded the volume of prison sentences. This means more people exercising their competence as fathers and mothers, preserving their roles as employees, neighbours, and less children, hopefully, affected by the incarceration of their parents. Romanian prison administration and the child protection authority, which belongs to a different ministry, established a close partnership which brought important results in terms of fostering communication between children and parents. Prison facilities now have child-friendly visiting places and implemented several programmes to encourage the relation between children and parents while in detention. On the other hand, the child protection local units' efforts are focused on children's counselling and on initiatives to foster child-parent bonds.

Cooperation between public authorities and civil society has also been strengthened. In Romania, the SVASTA Foundation through the "Alone Tower School" project offered until now 293 study grants to children with parents in prison in order to support them in their schooling. Another successful project developed with the NGO Alternative Sociale, in the eastern part of Romania, aimed to improve child friendly visiting spaces in two prisons and to train the prison staff on how to address children's vulnerabilities.

A number of interviews were carried out with sentenced parents to assess the effects of probation on child-parent relations. In three cases, parents experienced pre-trial arrest and in

two of these, children found out about the arrest of their parents from the local media. This shows the importance of awareness raising and broad societal education, including of media operators, to better protect children. In one of the cases of pre-trial arrest, the affected child was not told the truth about his/her parent being in jail, and this caused serious difficulties in the relationship between them after release. All the stories collected through the survey seem to indicate that probation sanctions influenced positively the parental role, and fostered communication with children and emotional support (also from the child to the parent). Probation has helped in supporting family infrastructures and stronger family bonds may prevent the replication of criminal acts.

"[Showing a photo of what from behind seems to be a teddy bear in front of prison bars.] *(…) this picture, when I saw it for the first time, I was thinking, "How cute we have a teddy bear". Second thought was, "These are bars. Is this inside or outside of the prison bars?" but in the end, I realised it was a hippo. Reality is always surprising according to the perspective that you're looking at.*"

Metella Romana Pasquini, Department of the Penitentiary Administration of the Italian Ministry of Justice. In Italy a law of 2011 established two new types of structures which offer alternative forms of detention for parents with children (mothers, in particular): the protected family homes and the special establishments ("mitigated custody") for mothers, the so called ICAM.

Protected family homes are structures located just outside the prisons and they are intended for the reception of persons with children up to 10 years. Local authorities are responsible for their establishment. In Rome, last May, the first protected family home was built in a property confiscated from the mafia. ICAM are instead facilities intended for the detention of imprisoned pregnant women, for parents in pre-trial custody with children up to six years, and parents waiting for home detention with children up to 10 years. Since 2008, the city of Milan has jointly with other local authorities an ICAM structure which creates an environment similar to a foster home, where there are no gates, no staff in uniform, with ordinary house furniture, working opportunities are offered to prisoners, as well as education and entertainment activities for children. ICAMs are present in Turin, Venice, Senorbi, Lauro, while others are being established in Florence, Rome, and in Sicily. So far, there are 31 women in ICAM with 39 children with them. Special kindergartens have been established in 20 prisons in Italy, 19 women are in prison with their small children over the Italian territory.

In Italy, a wide network of volunteering associations provides fundamental support, e.g. accompanying children and their imprisoned mothers outside the prison, to nursery schools and kindergartens in the neighbourhood, as well as carrying out recreational/educational activities. Rehabilitation and programmes to support the parenting role were developed in several prisons under the initiatives of the Department of Penitentiary Administration.

In a month, about 37 000 children go to prison to visit their parents and data prove that if parenting is fostered, recidivism diminishes after release. 60 children have been admitted to domestic juvenile prisons to visit their young parents detained.

A key action by the Ministry of Justice was the agreement in 2014 of a Memorandum of Understanding on children with imprisoned parents with the national Ombudsperson for Childhood and Adolescence, and the NGO Bambinisenzasbarre Onlus.

Thanks to the Memorandum, various initiatives were undertaken in many Italian prisons, e.g. for providing child friendly areas for the visits ("Yellow Spaces") and outdoor areas/playgrounds ("Green Areas") where prisoners and their children can even have a meal together. Also, it is now often given the opportunity to visit inmates in the afternoons and in holidays in order not to interfere with school attendance.

Lia Sacerdote, President of Bambinisenzasbarre Onlus[17]. The intervention started with a video about children visiting parents in prison.

Ms Sacerdote highlighted some key points relating to the Memorandum:

- It is signed by the Ombudsperson for children and not e.g. by the ombudsperson for prisoners, this is very important because it proves the centrality of child protection in the initiative. The Ombudsperson for children in Italy has also contributed to raise awareness on this initiative through the European network of ombudspersons for children (ENOC);
- It highlights the importance of the child parent bonds and the need to creating conditions for a dedicated physical contact between parents in detention and their children;
- It has transformed children's needs into their rights;
- It has helped prison staff to become aware of children's presence and needs, it drove a cultural change (also beyond the prison administration) including by raising awareness on the social burden for a child of the incarceration of their parents;
- It recognises and fosters the key role of civil society organisations in this area of work.

As such, the Memorandum could and should be replicated at European level.

In a nutshell the Memorandum of understanding is structured as follows. Article 1 deals with the alternative measures of the imprisoned parents. Article 2 establishes the importance of welcoming visit spaces. Article 3 sets other ways to maintain the child/parent bond. Article 4 is focused on training of penitentiary administration staff. Article 5 deals with information to children: children should be told the truth, by prison staff, by parents, by the family at large. Article 6 is about collecting data. Article 7 deals with children who stay in prison with imprisoned mothers. Finally, for children it is absolutely important to have their parents attending special occasions of their life, e.g. the first school day, birthdays, religious feast days, graduations. These are all occasions where the absence of a parent exposes the child to risks of stigmatisation.

Attila Juhász, former Prison governor of Heves County Penitentiary Institute in Hungary, spoke in his double function of former prison governor and his current work at the Council of

[17] http://www.bambinisenzasbarre.org/

Europe's Council for Penological Cooperation on drafting the recommendation on children with parents in prison.

"*I was lucky enough to find a brave girl [*with a parent in prison*] in Hungary, and she had a 10 minutes, very short, speech to introduce her situation to my staff. It was a shocking experience for many of my colleagues, very tough, I saw big security officers who started to cry towards the end of the presentation, because they had never thought of these things. Personal testimonials of young children can make a change."*

It is very difficult to estimate the magnitude of the phenomenon. In the Heves prison it was estimated that the ratio was approximately two to three children per each inmate: if projected on the 18 000 inmates in Hungary, that would mean that 40 000 children are directly affected by parental incarceration, without considering siblings, other family members, etc. A survey conducted in Heves showed that about half of the prisoners met their children once a month, while the other half meets less frequently. Thirty percent meet with them every three months. With such a low frequency how can a mother in prison know e.g. about the child's school results? Only six percent of respondents could give the exact address of the school attended by their children. And only about thirty percent of respondents said they know about their children's problems, preoccupations, about their friends.

Two interesting projects, called Storybook Dads and Storybook Moms were started in Heves as from 2010. A volunteer came to the prison every week, teaching inmates how to tell stories, and to associate stories to their meaning, to pass messages from parents to children. The storytelling has also been expanded to enable prisoners to tell stories in centres for disabled children. Thanks to the support of an NGO as from 2012 mothers were allowed to leave the prisons for 10-day summer camps with their children. This initiative received considerable media attention and helped to raise public awareness on these themes.

Another important aspect relates to preparing both the inmates and the families for the release. In Heves, in collaboration with an NGO and therapists, family days have been organised prior to release, to foster inclusion. The same NGO was also working with the local community where the family lives to prepare reintegration. 15 families and over 70 children were involved in these programmes. The prison financially supported family visits, in particular targeting families which cannot afford regular visit due to the distance of the prison from home.

The impact on recidivism was also monitored: over the last seven years, out of 100 prisoners involved in programmes for strengthening child-parent relation, only two repeated offences until now. It also impacted positively on behaviours of inmates in the prison, so it helped to reduce stress levels and to improve security in the prisons.

In the context of the Council of Europe, a recommendation concerning children with imprisoned parents is in preparation *(post-Forum note: adopted in 2018; see links above)*. The focal points of the recommendation are: the best interests of the child to be a primary

consideration in detention decisions for parents; the need for continued relationship with imprisoned parents; the importance of countering stigma and discrimination; and finally the need to raise public awareness.

Bernardica Franjić-Nađ, Head of Service of General Treatment, Programmes for Prisoners and Juveniles, Ministry of Justice in Croatia. About 12 000 children are on a yearly basis affected by the incarceration of their parents in Croatia. Children are given a right to speak and have a physical contact with their parent, and many prisons are providing child-friendly, not intimidating visiting rooms.

"*The child has a right not to be judged, blamed, or labelled because his or her parents are incarcerated. (The Croatian NGO) RODA created a small notebook. It has a label on it and it says, "Labels are for notebooks, not for people"*.

Prison staff is trained to recognise needs and concerns of children affected by parental incarceration. It is essential that the enforcement of a sentence is inspired by the principle of rehabilitation. Fostering good relations with children and families is very helpful as part of the rehabilitation path and is helpful also to prepare release. In principle, children are entitled to visit incarcerated parent every week and during holidays for at least one hour. However, data tell that over half of the mothers do not receive visits from their children while they are in prison. Thirty-one percent of mothers do not want their children to visit, either to protect them or because they both may suffer from separation. In 13% of cases, children do not even know that their mothers are serving a prison sentence.

Financial constraints and distance between homes and prisons are the main constraints to more frequent visits of children to their parents. Interestingly, during the period 2014 and 2015 the number of visits has increased and has been above the average of previous years. This corresponds with a partnership with an NGO which was (also financially) supporting children's visits. In 2016, the NGO project ended and visits went down again.

Prison administration in Croatia has redirected its focus on children and on child-parent relations. Work is ongoing in close cooperation with NGOs to design child friendly visiting spaces and to train prison staff and judicial police officers. Information leaflets have been produced to inform children on how a prison looks like, what inmates do during the day, leisure activities in the prisons, to enable children to be relieved by their possible negative imagination about a prison.

With the support of NGOs, the Croatian prison administration organises several activities during the holidays including family days and puppet shows. Awareness raising activities are also carried out, through workshops, symposia, involving other sectors of civil society and stakeholders. Croatia is also working on a Memorandum of Understanding between the

children ombudsperson, the prison administration and the NGO RODA (Parents in Action), inspired by the Italian experience. Currently, there are around ten NGOs included in various programmes supporting parents both during incarceration and after release (some examples of projects are "Restart", "Parents Included", "Choose Your Parenting Battles", and "Mama/Madres").

Lucija Božikov, Head of Treatment Division, Prison Administration, Ministry of Justice in Slovenia, mentioned first of all the important work carried out by EuroPris which has established a special expert group on family relations. This has been instrumental to enable an exchange of good practices and expertise amongst the members.

The child and his/her best interests should be at the heart of action. In Slovenia, this principle is enshrined in the new 2017-2020 strategy of the prison administration. There are currently 1 300 prisoners and according to national statistics 1 765 children are separated from imprisoned fathers and 65 from imprisoned mothers. Statistics show that 70% of female prisoners are mothers. Almost all of them reported receiving visits from their children. New prisons will be built close to Ljubljana and special criteria will be used to design child-friendly areas. According to Slovenian law, imprisoned persons have a right to receive visits of close family members and other social contacts twice a week. Telephone contacts are also possible twice a week (although in practice prisons could enable daily phone contacts).

It is very important to nourish the relations of inmates with family and wider social environment, in particular with a view to a successful integration into regular life, after serving the sentence. Recently a programme called "The Rainbow Day" was started in a women's prison, with the aim to enable women prisoners to spend quality time with their children. One key finding of the work carried out until now, is that the acceptance of the condition of parent's incarceration by children is much higher if contacts are regular and adapted to each child. This is why individual assessments of children's needs, in particular in relation to the definition of modes and frequency of contacts with their incarcerated parent, are of crucial importance. Each child is different, each age is different. For this purpose, considerable work needs to be done in particular on training of prison staff regarding children's needs when visiting prisons. Questions such as how to communicate to a child when he/she comes to visit a parent might sound simple but they are not for officials who have not been adequately prepared and trained.

Key messages from the panel discussion:

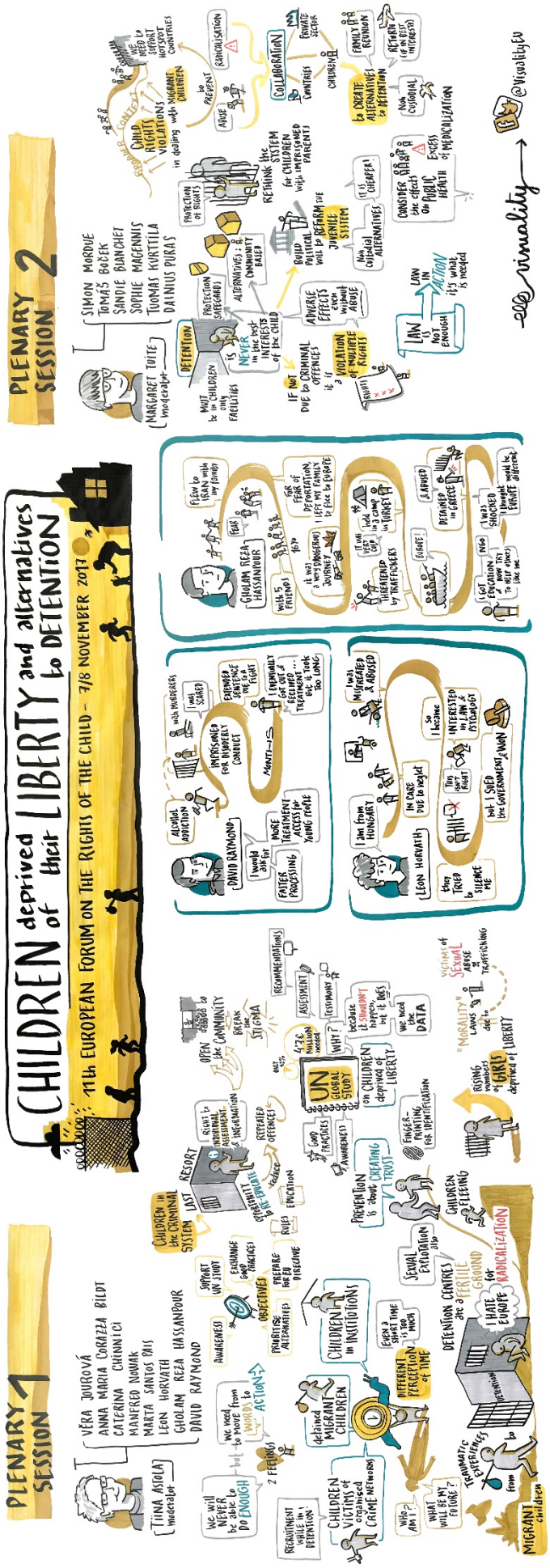
- Results can be achieved only through a multi-agency approach, through systemic collaborations between NGOs, prison administration, social workers, schools and professionals.
- There is an urgent need to raise public awareness on children of incarcerated parents; this should happen through cooperation with civil society organisations and associations who can engage local communities, but also by targeting society at large,

via journalists and media, who should play a role to combat stereotypes and should be mindful about children when writing or talking about their parents involved in legal proceedings and crimes;

- Work has to be done also to raise awareness of judges on the importance of taking into account the need of children and their best interests when sentencing their fathers and mothers, and to prioritise and extend alternative types of sentences for parents, where possible and available (e.g. probation). Best interests of the child have to be carefully assessed in particular when dealing with parents' sentencing or pre-trial detention, being aware of how these could be complex to establish; support to children should however start from arrest and pre-trial detention, it cannot begin upon sentencing only.
- Surveys such as the one conducted in Romania or in Hungary on experiences of parent-child relations in the context of detention are a good practice as they contribute to improve the evidence base on the added value of e.g. alternatives forms of detention for the parents, of enhanced child-parent contacts, etc.;
- Schools are also crucial because it is where children may find support and comfort outside the problems experienced at home after parental incarceration. Good practices have to be promoted to support and train teachers, such as the "Twilight Sessions" by Families Outside in Scotland, which bring teachers inside a prison, so they can become aware of and feel the impact of a child's visit, of the identification procedures and the security controls.
- There is a need to ensure the protection of children whose parents are imprisoned abroad. The Italian initiative on family homes is a good practice as it is open to foreign national mothers. The Swedish NGO BUFFF in these cases establishes a direct contact with local NGOs or any other local counterparts who can help in supporting the child even from a distance, or by favouring cross-country visits. Yet, big gaps remain and it is unclear who bears the responsibility on the protection of the children in such circumstances;
- Some speakers suggested to include a focus on the detention of siblings as part of the discussion on children with imprisoned family members; others argued that by adding an additional level of complexity this may also backfire on the achievement of basic protections related to child-parent/caregivers relations;
- A survey conducted by Lumos in the Czech Republic revealed that nearly seven percent of children in institutions had a parent in prison. These interconnections need to be further explored, in particular because these may be children which are not in contact with any parent, and remain outside of the radar and protection by specialised NGOs working with children and families of prisoners;
- The EU can contribute in a crucial way through funding. Many of the good practices presented or the networks (COPE, EuroPris) have been supported by EU funds. It is therefore important to define priorities and urgencies (one of them could be on data collection) to orient future funding. Exchanges among NGOs to raise awareness about the diverse funding possibilities have to be fostered. NGOs are often creative fundraisers: one example was mentioned in Croatia where an NGO received funds to work on children visits to prisons through employment-related funding. The application referred to added value of improved parent-child relations for job-seeking after release of inmates.
- Child friendly spaces in prisons were often mentioned as a key point of attention, where considerable work has to be done and resources should be made available to the penitentiary systems. In addition, these spaces should be adapted to the various age

groups of children. They often target smaller children but young teenagers should also have protected areas which fit their needs.

- Since resources of prison administrations are structurally scarce, creative solutions to achieve results at low cost should be explored: in a Greek prison in Grevena, a playroom was constructed without any public money. The prisoners painted it and the furniture was donated by the residents and toys were provided by the prison staff.
- New communication technologies should be made available to enable contacts with parents in prison, through video conference tools for example. This is helpful to reduce the stress and obstacles related to long travelling, which often require missing school or leisure activities. The impact of visits procedures on children's lives should be minimised. However, virtual communication should not replace physical meetings and should not be used as a solution to reduce the resources allocated to them.
- It is important that children can speak in their own language during the visits. This is not always allowed because prison officers have to be able to listen and understand the communications of prisoners with the outside world – particularly during pre-trial detention. But children and parents have only one language of communicating emotions and feelings and this should be prioritised.
- It is the responsibility of adults to find ways to listen to children. Children could be asked at the end of each visit to give a feedback on how it was, how the procedures and infrastructures could be improved, if they have any suggestion on how to make it better. Sometimes children may prefer not to have visits. On the other hand, it is important also to respect the silence of children, as well as to investigate and accompany their emotions through professional support.
- It is recommended to bring the issue of protecting children with imprisoned parents to the attention to the European Council, for example in the working group dealing with fundamental rights and rights of the child. The issue should definitely be made known to a broader audience.


PLENARY SESSION 1
PLENARY SESSION 2
CHILDREN deprived of their LIBERTY and alternatives to DETENTION
11th EUROPEAN FORUM ON THE RIGHTS OF THE CHILD – 7/8 NOVEMBER 2017
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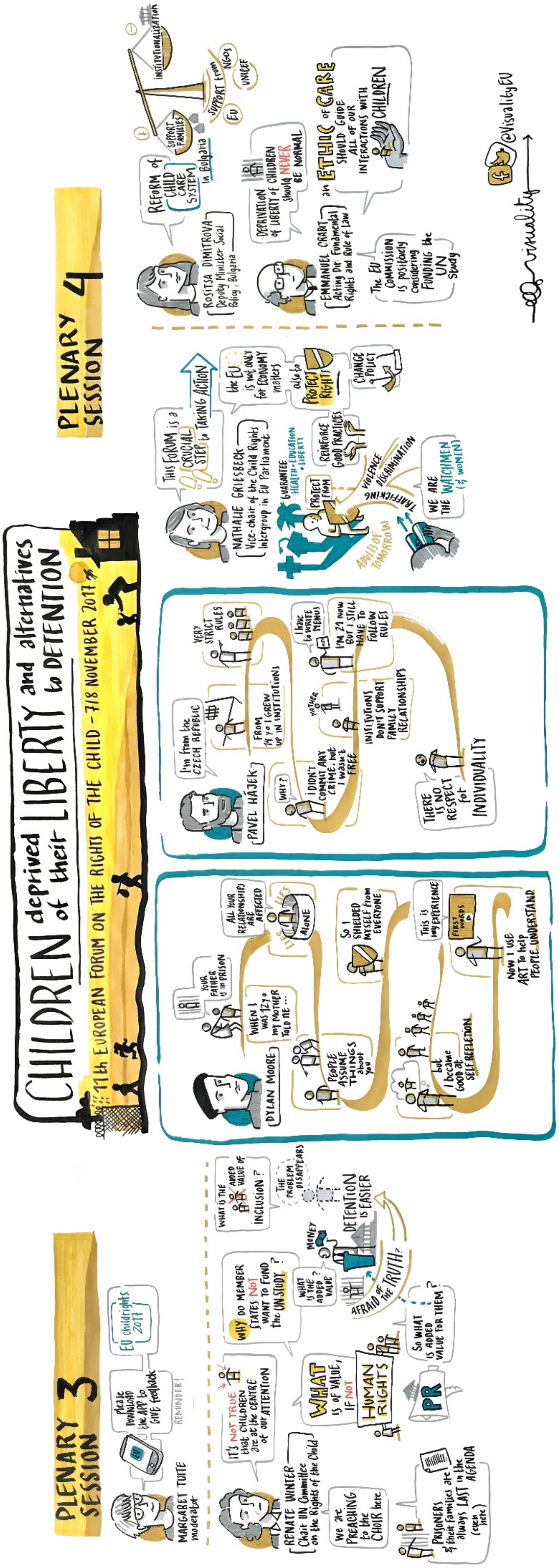
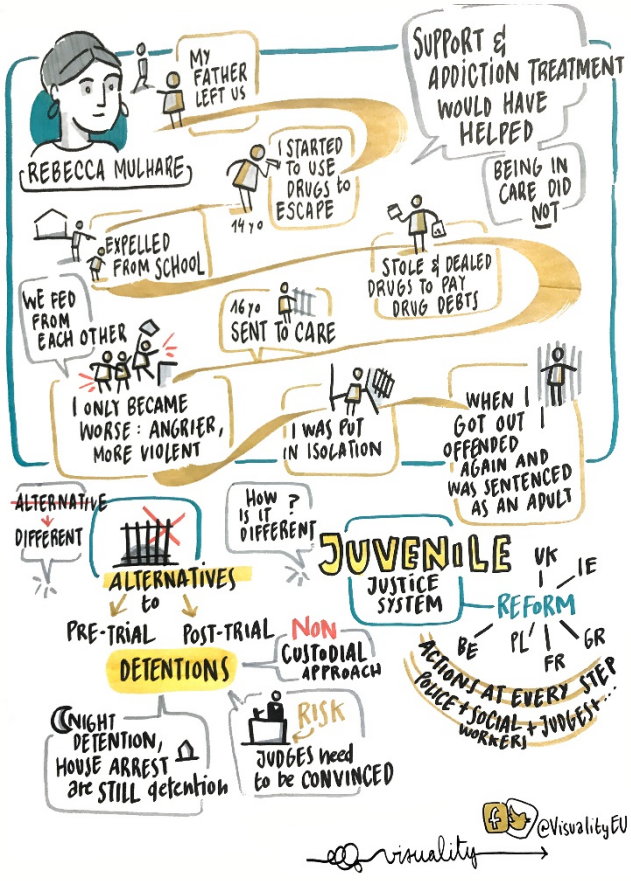
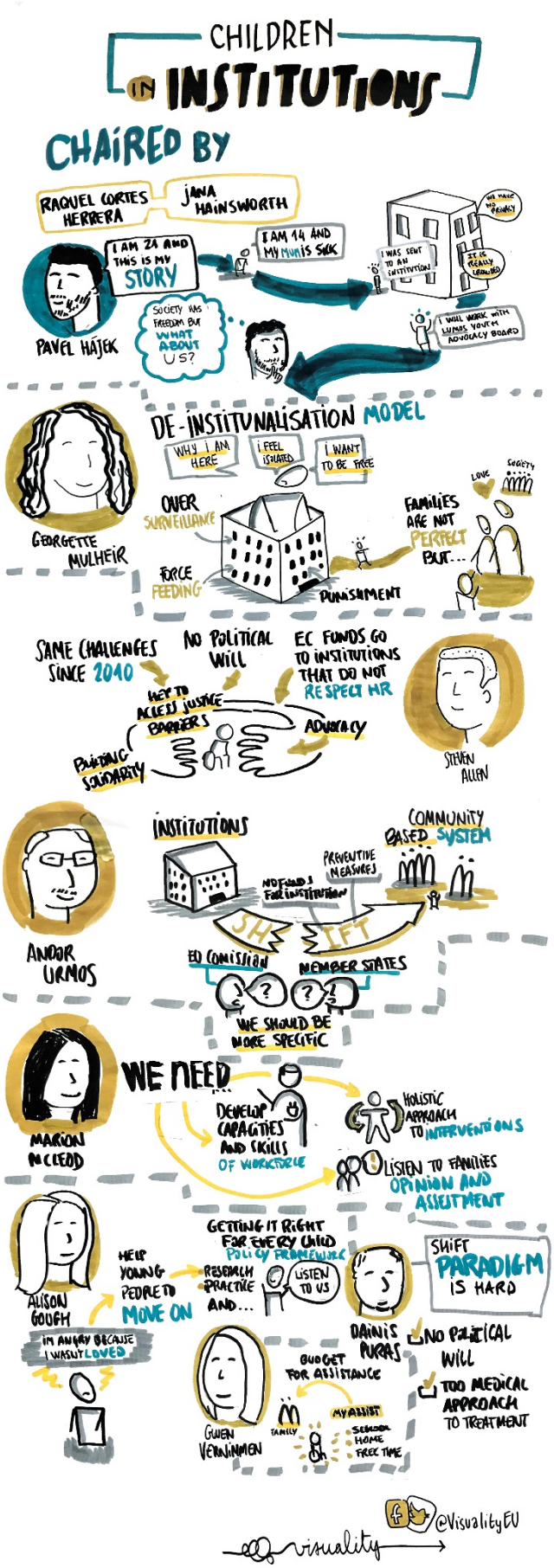

CHILDREN deprived of their LIBERTY and alternatives to DETENTION
11th EUROPEAN FORUM ON THE RIGHTS OF THE CHILD - 7/8 NOVEMBER 2017
PLENARY SESSION 3
PLENARY SESSION 4
MARGARET TUITE moderator
RENATE WINTER Chair UN Committee on the Rights of the Child
DYLAN MOORE
PAVEL HÁJEK
NATHALIE GRIESBECK Vice-chair of the Child Rights Intergroup in EU Parliament
ROSITSA DIMITROVA Deputy Minister Social Policy, Bulgaria
EMMANUEL CRABIT Acting Dir. Fundamental Rights and Rule of Law
THERE IS NO RESPECT for INDIVIDUALITY
Now I use ART to help PEOPLE UNDERSTAND
WE ARE THE WATCHMEN (& WOMEN)
@VisualityEU


ISABELLE PÉRIGNON
BENOIT VAN KEIRSBILCK
YANNICK VAN DER BRINCK
ANGUS MULREADY-JONES
CHILDREN IN CONFLICT WITH THE LAW
LAËTITIA DHERVILLY
EVA KOGIANNAKI
KELVIN DOHERTY
MARCIN WOLNY
SOPHIE LOUIS
LAWYERS
STATES
FOR
MANUAL
1 MILLION
CHILDREN/year
in EU
RIGHTS?
LAW?
they DON'T EASILY UNDERSTAND THE SYSTEM
FACE the CRIMINAL SYSTEM
JUSTICE
WHAT ABOUT RESTORATIVE JUSTICE?
PROCEDURAL RIGHTS
EU
for
DIRECTIVE
JUN 2019
CHILDREN
What can a CHILD? AGREE to
FOR EDUCATION
PUNITIVE reasons
RIGHT TO INFO
WHAT ABOUT CARE & CORRECTION MEASURES?
INDIVIDUAL ASSESSMENT
SAFEGUARDS
only LAST RESORT
SHORTEST TIME
IF SENTENCED TO DETENTION
PRIVACY
ASSISTANCE BY FAMILY
PROJECT
CRIMINAL LAWYERS trained in CHILD PSYCHOLOGY
RIGHT TO ASSIST LAWYER
No TRUST
REDUCE NUMBER OF CENTRES
EASY SOLUTION
GENDER SPECIFIC APPROACH?
We CANNOT TRUST CHOSEN LAWYERS
TRAFFICKED CHILDREN


REBECCA MULHARE
MY FATHER LEFT US
I STARTED TO USE DRUGS to ESCAPE
14 yo
SUPPORT & ADDICTION TREATMENT WOULD HAVE HELPED
BEING IN CARE DID NOT
EXPELLED FROM SCHOOL
STOLE & DEALED DRUGS TO PAY DRUG DEBTS
WE FED FROM EACH OTHER
16 yo SENT TO CARE
I ONLY BECAME WORSE: ANGRIER, MORE VIOLENT
I WAS PUT IN ISOLATION
WHEN I GOT OUT I OFFENDED AGAIN AND WAS SENTENCED AS AN ADULT
ALTERNATIVE
DIFFERENT
How? IS IT DIFFERENT
JUVENILE JUSTICE SYSTEM
UK
IE
REFORM
BE
PL
GR
FR
ACTIONS AT EVERY STEP POLICE + SOCIAL WORKERS + JUDGES...
ALTERNATIVES to
PRE-TRIAL
POST-TRIAL
DETENTIONS
NON CUSTODIAL APPROACH
NIGHT DETENTION, HOUSE ARREST are STILL detention
RISK
JUDGES need to be CONVINCED
@VisualityEU
visuality


DETENTION OF CHILDREN in the CONTEXT OF MIGRATION
CHAIRED BY
STEPHEN RYAN
MELANIE TEFF
ELIŠKA HODYJOVÁ
IMMIGRATION DETENTION OF CHILDREN: COMING TO A CLOSE ?
EXPERT CONFERENCE
DMC PRAGUE 2017.JUSTICE.CZ
DETENTION IS A REALITY
NEVER IN BEST INTERSTS
IMPACT ON CHILDREN
ALTERNATIVES ARE ALREADY IN PRACTICE
PINAR AKSU
AT 8 YEARS MOVED TO THE UK
FAMILY SENT TO SCOTLAND
LOOKING FOR ASYLUM
NO CHILD SHOULD BE DETAINED:
EDUCATE AND CONNECT
NO IDEA WHERE WE WERE GOING...
LEFT CENTRE
WE WERE ONE OF THE LUCKY ONES.
DETAINED 2 TIMES
DETENTION CENTRE
DEHUMANISING
GEERT VERBANWHEDE
IN BELGIUM
WE GO TO THE FAMILIES AND COACH THEM AT HOME
RETURN OFFICERS (COACHES) ASSIST WITH THE RETURN
(LOGISTICS, LEGAL, ...)
DOCUMENTARY OF THE RETURN COACH' WWW.HUMAN.NL
NOT ENOUGH STAFF
OR
FAMILY UNITS
• EQUIPPED + FURNISHED
• MEDICAL SUPPORT
• LEISURE
• SCHOOL
OR
DETENTION CENTRE
ONLY AS A LAST RESORT, MAX 2WEEKS
NICLAS AXELSSON
IN SWEDEN
APPLY FOR ASYLUM
GET RECEPTION OFFICER
WHO ALSO GUIDES THE RETURN PROCESS
STAKEHOLDERS WITH DIFFERENT RESPONSIBILITIES
MUNIPALICITIES
GUARDIAN
PUBLIC COUNSEL
KATARZYNA SŁUBIK
IN POLAND
SIP
LEGAL ADVICE
INFORMATION
MONITORING VISITS
ADVOCACY
EUROPEAN ATD-NETWORK
AIM
REDUCE IMMIGRATION DETENTION
NOT ONLY TALKING BUT DOING!
NO DETENTION NECESSARY PROJECT
FOCUS ON FAMILIES WITH CHILDREN
PROMOTING ALTERNATIVES
+
LEGAL ASSISTANCE
PSYCHOLOGICAL SUPPORT
RADOSTINA PAVLOVA
IN BULGARIA
PRO-BONO LEGAL AID
AND PROMOTE RIGHTS OF ASYLUM SEEKERS, REFUGEES & MIGRANTS IN BULGARIA
NEW
BUT NOT IMPLEMENTED YET
"SHORT-TERM" IMMIGRATION DETENTION
PILOT PROJECT WITH HOLISTIC APPROACH
ADVOCACY
LEGAL AID
COMMUNICATION
GOAL: DECREASE DETENTION OF MIGRANTS
RESULT
NO ABSCONDING
NO RE-DETENTION
NO DEPORTATION
POPI GKLIVA
IN GREECE
CHILDREN HAVE KNOWN INHUMANE DIFFICULTIES IN THEIR COUNTRIES
DETENTION IS DAMAGING THE CHILD
NO COPING MECHANISM
FEEL CHILD AGAIN
PSYCHOLOGICAL SUPPORT & EVERYDAY GUIDANCE
SHELTER
LEARNS TO TRUST AND WORK ON LIFE SKILLS
VS.
DETENTION CAMP
NO SUPPORT
CREATE FACILITIES THAT SUPPORT:
• QUALITY CARE
• CAPACITY
• COOPERATE WITH LOCAL AUTHORITIES
@VisualityEU
visuality


CHILDREN IN INSTITUTIONS
CHAIRED BY
RAQUEL CORTES HERRERA
JANA HAINSWORTH
I AM 24 AND THIS IS MY STORY
I AM 14 AND MY MUM IS SICK
I WAS SENT TO AN INSTITUTION
PAVEL HÁJEK
SOCIETY HAS FREEDOM BUT WHAT ABOUT US?
I WILL WORK WITH LUMOS YOUTH ADVOCACY BOARD
DE-INSTITUNALISATION MODEL
WHY I AM HERE
I FEEL ISOLATED
I WANT TO BE FREE
GEORGETTE MULHEIR
OVER SURVEILLANCE
FORCE FEEDING
PUNISHMENT
FAMILIES ARE NOT PERFECT BUT...
LOVE
SOCIETY
SAME CHALLENGES SINCE 2010
NO POLITICAL WILL
EC FUNDS GO TO INSTITUTIONS THAT DO NOT RESPECT HR
HELP TO ACCESS JUSTICE
BARRIERS
ADVOCACY
BUILDING SOLIDARITY
STEVEN ALLEN
INSTITUTIONS
COMMUNITY BASED SYSTEM
PREVENTIVE MEASURES
NO FUND 2 FOR INSTITUTIONS
SHIFT
ANDOR URMOS
EU COMISSION
MEMBER STATES
WE SHOULD BE MORE SPECIFIC
WE NEED...
MARION NCLEOD
DEVELOP CAPACITIES AND SKILLS OF WORKFORCE
HOLISTIC APPROACH TO INTERVENTIONS
LISTEN TO FAMILIES OPINION AND ASSESTMENT
GETTING IT RIGHT FOR EVERY CHILD POLICY FRAMEWORK
HELP YOUNG PEOPLE TO MOVE ON
RESEARCH PRACTICE AND...
LISTEN TO US
ALISON GOUGH
I'M ANGRY BECAUSE I WASN'T LOVED
SHIFT PARADIGM IS HARD
DAINIS PURAS
NO POLITICAL WILL
TOO MEDICAL APPROACH TO TREATMENT
BUDGET FOR ASSISTANCE
MY ASSIST
SCHOOL
HOME
FREE TIME
FAMILY
GWEN VERDONMEN
@VisualityEU
visuality


CHILDREN OF PARENTS IN PRISON
CHAIRED BY
CHIARA ADAMO
NANCY LOUCKS
EU LACKS DATA & REGULATIONS
I WANTED TO TALK TO MY PARENT
DON'T BE AFRAID OF SPEAKING OUT
INSTITUTIONS
COMMUNITY
LISTEN TO INDIVIDUAL NEEDS
CAREGIVERS
DIRECTLY
INDIRECTLY
SWEDEN
BUFFF
CHILDREN ARE ACTORS & CO-OPERATORS
EQUAL SUPPORT TO ALL CHILDREN
MADELEIN KATTEL
INFORMATION
COMMUNICATION
CARE
AGAINST
AMBIGUOUS LOSS
FEAR OF STIGMA
ECONOMIC STRESS
FAMILY IS NOT ONLY PARENTS
ROMANIA
LEGISLATION: ALTERNATIVES TO PRISON
PROBATION & EDUCATION
MANTAIN RELATIONS
CHILD-FRIENDLY VISITING ROOMS
TELLING THE TRUTH IS HARD
FAMILIES ARE FRAGILE
IULIANA-ELENA CARBUNARU
ITALY
NETELLA ROMANA PASQUINI
LIA SACERDOTE
MEMORANDUM MoU
LOW SECURITY PRISONS
NO GATES
NO UNIFORMS
ORDINARY FURNITURE
INVOLVE PARENT IN DAILY LIFE OF THEIR CHILDREN
SAFE HOUSES
NEEDS ARE HUMAN RIGHTS
WELCOMING SPACES
PRESERVE RELATIONS
MEMORANDUM OF UNDERSTANDING
TRANSLATED TO ENGLISH
WHO TAKES CARE OF INTERNATIONAL SITUATIONS?
MONEY IS AN ISSUE FOR INFRA-STRUCTURES
HUNGARY
ATTILA JUHASZ
MAJORITY OF PARENTS MEET THEIR CHILD ONCE A MONTH OR LESS
STRESS
WHAT CAN A PRISON DO?
PARTNERSHIP WITH NGOs
SUMMER CAMPS
STORYBOOK MUMS
WORK ON EXPECTATIONS
MOVING FORWARD ON CoE RECOMMENDATION
RAISE PUBLIC AWARENESS
SHARE STORIES TO DEFEAT STEREOTYPES
PREPARE SOCIETY & INMATES FOR RE-INTEGRATION
GET TO THE NEWS
JOURNALISTS LOVE DATA
SHOW THE FACTS
CROATIA
RIGHT TO
SPEAK WITH
SEE
TOUCH
THEIR PARENT
BERNARDICA FRANJIC-NAD
BUT OVER 50% MOTHERS NEVER SEE THEIR CHILDREN IN PRISON
IMPROVE VISITING CONDITIONS
TRAIN STAFF
NOT BE LABELED
GIVE INFORMATION
DEVELOP NETWORK OF SUPPORT
GIVE ACCESS TO BETTER PARENTING SKILLS
SLOVENIJA
LUCIJA BOLIKOV
UNSUPERVISED MEETING SPACES FOR FAMILY MEMBERS
CONTACT IS ALSO
ACCORDING TO THEIR AGE
DIGITAL
ACTIVITIES TOGETHER
QUALITY TIME
RESPECT CHILD'S NEEDS
LISTEN
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