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Monitoring children's rights in Europe

**FACTSHEET ON COUNCIL OF EUROPE
MONITORING BODIES**

The Council of Europe's monitoring mechanisms¹ have played and continue to play a vital role in safeguarding the rights of the child in Europe. The strengths of the two most important mechanisms - the European Court of Human Rights and the European Committee of Social Rights - lies in their capacity to act on the basis of individual and collective complaints, respectively, and to empower the child, his/her representatives and social actors, to take an active part in the monitoring process through initiating the complaints procedure. Additionally, the freedom of initiative enjoyed by certain mechanisms, such as the Committee for the Prevention of Torture, and the Commissioner for Human Rights enabled them to undertake *ad hoc* visits without prior notification of the visited country with the objective *inter alia* to uncover and draw attention to the violations of the rights of the child.

A brief overview of the prominent work in safeguarding the rights of the child of these mechanisms is presented below.

The European Court of Human Rights

The European Convention on Human Rights secures to everyone within the member states' jurisdiction the rights and freedoms defined in Section 1 of the Convention. The definition of "everyone" also includes children. The Court's monitoring procedure is based on individual complaints. This means that individuals (including children) must lodge an application on their own behalf, but only after all domestic remedies have been exhausted. The Court's case law is related to individual cases, but it gives an indication of the interpretation of standards set by the Convention and the remedies needed to avoid future violations. Individual cases refer to specific situations, which make them more likely to be the object of media coverage, thus generating public awareness of the issues.

Focus on children's rights:

Although the Convention and its protocols make few direct references to children, the rights and freedoms it secures are applicable to "everyone", thus children cannot be excluded. Since the Convention's entry into force, many of its Articles have been used to assert the rights of the child. These include:

- Article 3: the right to be protected against torture and inhuman or degrading treatment and punishment. Case-law of the Court includes cases of children who

¹ For the purpose of this work, the terms "Council of Europe monitoring bodies" and "Council of Europe monitoring mechanisms" refer to the organisation's conventional committees and mechanisms such as the European Court of Human Rights, the European Committee of Social Rights (ECSR), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Commission against Racism and Intolerance (ECRI), the Committee of Experts of the European Charter for Regional or Minority Languages and the Committee of the Parties (ECRML), the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), the Group of Experts on Action against Trafficking in Human Beings (GRETA), the Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (T-ES), the Committee of the Parties to the Council of Europe Convention on Cybercrime (T-CY) as well as the Council of Europe Commissioner for Human Rights.

risk expulsion in violation of their Article 3 rights. The Court has also dealt with the issue of corporal punishment under Article 3, as well as that of domestic violence and the positive obligations on the State to protect children from violence, including sexual violence. Moreover, Article 3 violations can occur in respect of police ill-treatment of minors.

- Article 4: the right not to be subjected to slavery and forced labour. The Court found a violation of Article 4 in the case of a 15 year old foreign girl who was forced to work without pay or holidays.
- Article 5: the right to liberty and security. The Court has looked at the detention conditions of children following criminal conviction and the administrative detention of accompanied and unaccompanied children following asylum requests.
- Article 6: the right to a fair trial. The Court has dealt with the issue of how children are treated in the criminal justice system and their effective participation in court hearings.
- Article 8: the right to respect for family and private life. The Court has looked at cases where children are taken into local authority care, and where the domestic courts have to decide matters of contact and residence between parents, including cases of child abduction. Article 8 cases also touch on issues such as establishing paternal or maternal affiliation and personal identity. Recently, the Court has found a violation of Article 8 in relation to the protection of children on the internet.
- Article 13: right to an effective remedy. The Court has found Member States in violation of this right where no effective remedy exists in the domestic legal order after, for example, parental abuse and lack of action on the part of the social services.
- Article 1 of Protocol No.1: the protection of property. Case-law includes the right to inherit for children born out of wedlock and the importance of no discrimination based on the marital status of the parents (Article 14).
- Article 2 of Protocol No.1: the right to education. The Court often looks at the right to education in conjunction with Article 14 (freedom from discrimination), with a number of cases which have dealt with the exclusion or segregation of Roma children school classrooms.

There are 2 factsheets on the Court's jurisprudence on Children's Rights produced by the European Court of Human Rights' Press Unit, which are regularly updated (Child Protection and Children Rights)².

² <http://www.echr.coe.int/ECHR/EN/Header/Press/Information+sheets/Factsheets/>

The European Committee of Social Rights

The European Committee of Social Rights monitors member states' compliance with the European Social Charter. This European treaty contains an extensive catalogue of social, economic and cultural rights, some of which have a particular relevance to children. States Parties must present reports on one group of provisions by 31st October of each year. The Charter is divided into 4 thematic groups. Group No. 4 concerns children, families and migrants.

The collective complaints procedure established under the Charter enables the European Committee of Social Rights to address issues, such as child labour, access to education of children with disabilities, protection of children from violence, access to health care for children of irregular migrants and many others. Collective complaints may be lodged by social partners (trade unions, employers' organisations ETUC, UNICE, IOE) and NGOs with participative status with the CoE. There is no victim requirement and no need to exhaust domestic remedies. The procedure is adversarial and in writing but if facts cannot be established in writing, a public hearing may be held.

The European Committee of Social Rights designates a rapporteur for each provision of the Charter.

Focus on children's rights:

- Article 7 of the European Social Charter enshrines the right of children and young people to protection;
- Article 17 enshrines the right of children and young persons to social, legal and economic protection. The Committee has interpreted Article 17 as requiring a prohibition in legislation against any form of violence against children, including corporal punishment in all settings (home, school, etc.). Collective complaints relevant to corporal punishment have been lodged with the Committee;
- Other provisions relevant to children: Article 15 (rights of persons with disabilities), Article 16 (the right of the family to social, legal and economic protection), Article 19 (the right of migrant workers and their families to protection and assistance) and article E of the Revised Social Charter (non-discrimination).

The Charter is particularly relevant for the legal status of the child (the right to know his/her origin, Article 17), the right to education (access to education for all, including unlawfully present children, access to mainstream education for children with disabilities), children in public care, protection of children in case of family break up, child labour, access to health care for children of irregular migrants, the protection of children from violence/ill treatment/abuse/sexual exploitation, treatment of young offenders (the age of criminal responsibility should not be too low, child-friendly procedures, including length of pre-trial detention and prison sentence). All conclusions and decisions of the European Committee of Social Rights concerning the protection of children are available by accessing the **ESC Case-law database**.³

³ <http://hudoc.esc.coe.int/esc2008/query.asp?language=en>

Council of Europe Commissioner for Human Rights

Protecting and promoting the human rights of children continues to be one of the priorities of the Commissioner for Human Rights.

Focus on children's rights:

In the framework of his work on the impact of the economic crisis on human rights, since the beginning of his mandate in April 2012 Commissioner Muižnieks has made a specific focus on children's rights as an area especially affected. He has also addressed the persisting problem of statelessness of children, which significantly affects children belonging to minority groups, especially the Roma. Violations of the rights of Roma children, including their continuing education in segregated settings, have also been high on the Commissioner's agenda. He has furthermore focused extensive attention to the particular vulnerability of migrant children, especially, unaccompanied migrant children, to human rights violations. The Commissioner has covered these issues extensively in both his country and thematic work.

Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (T-ES)

The Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (also known as "***the Lanzarote Committee***") is the body established in September 2011 to monitor the implementation of the Convention. It is also mandated to facilitate the collection, analysis and exchange of information, experience and good practice between States to improve their capacity to prevent and combat sexual exploitation and sexual abuse of children.

Focus on children's rights:

- All provisions of the Convention concern children.
- Safeguarding the best interest of children - be they victims of violence or young offenders – is the red thread through the Lanzarote Convention, which requires that children's opinions, needs and concerns are consistently taken into account.
- The Lanzarote Convention provides that States Parties (in Europe and beyond) establish specific legislation, structures and measures to:
 - prevent sexual violence against children;
 - protect child victims;
 - prosecute perpetrators, even when the crime is committed abroad;
 - promote international cooperation to fight against sexual violence against children.
- The Lanzarote Convention requires that all sexual offences against minors are specifically criminalised, including sexual abuse, child prostitution, pedopornography, grooming and corruption of children through exposure to sexual content and activities. It covers sexual abuse within the victim's family or

close social surroundings and sexual exploitation committed for commercial or profit-making purposes.

- The Lanzarote Convention calls on State Parties to establish common criteria to ensure that an effective, proportionate and dissuasive punitive system is put in place.
- The 1st monitoring round of the Lanzarote Convention (on-going) focuses on “**sexual abuse of children in the circle of trust**”.

The Group of Experts on Action against Trafficking in Human Beings (GRETA)

GRETA evaluates the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. The country reports drawn up by GRETA contain an analysis of the situation and suggestions concerning the way in which the country may strengthen the implementation of the Convention.

Focus on children’s rights:

- Article 5(5) of the Convention: “Each Party shall take specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them”.
- Article 6 of the Convention: “To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures, including. (d) preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.”
- Article 10(4) of the Convention: “As soon as an unaccompanied child is identified as a victim, each Party shall: provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child; take the necessary steps to establish his/her identity and nationality; make every effort to locate his/her family when this is in the best interest of the child”.
- In its country reports, GRETA assesses the identification and assistance procedures for child victims of human trafficking.

The European Committee for the Prevention of Torture

The European Committee for the Prevention of Torture (CPT) is responsible for organising visits to places of detention, in order to assess how persons deprived of their liberty are treated. It acts as a non-judicial preventive body to protect persons deprived of their liberty against torture and inhuman or degrading treatment or punishment. It carries out two types of visits: *periodic* (approximately every 4 years) and *ad hoc* (whenever the circumstances so require). After each visit, the CPT sends

a detailed report to the State concerned with recommendations to improve the situation based upon the Committee's findings.

Focus on children's rights:

- The CPT conducts regular visits to juvenile justice facilities (police stations, prisons, juvenile detention centres) and other places (e.g. social care homes, centres for immigration detainees, psychiatric wards) , in which young persons may be deprived of their liberty by a public authority (i.e. by a judicial or administrative order);
- Most "General Reports" on the CPT's activities mention specific issues relating to children / juveniles, covering topics such as "the maximum period of solitary confinement in respect of juveniles" (2011), "safeguards for irregular migrants deprived of their liberty: Additional safeguards for children" (2009) and "comments on the draft European Rules for juvenile offenders" (2008). In the 1998 annual report, the CPT laid out its general thinking on "Juveniles deprived of their liberty"
- Thematic work on systematic issues, including children's issues, e.g.in 2012, the Children's Rights Division prepared, together with the Secretariat of the Committee for the Prevention of Torture (CPT), a report on Children's Rights and the CPT. This report examines the work of the CPT in promoting the rights of children deprived of their liberty drawing on examples from various Council of Europe Member States. The analysis highlights the important focus the CPT has given to promoting the rights of children in detention, including through adopting clear standards and safeguards. Having examined the report, the CPT now intends to build on several of its recommendations.
- A specific training session for CPT members on interviewing children deprived of their liberty was organised in 2013 and consideration is being given to reviewing the CPT's standards in relation to children in detention. To this end, a working group has been set up within the Committee and it is envisaged that these standards will be included in the CPT annual report for 2013 or 2014.

The European Commission against Racism and Intolerance

The European Commission against Racism and Intolerance is entrusted with the task of combating racism, racial discrimination, xenophobia, antisemitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law. Its objectives are: to review member states' legislation, policies and other measures, to propose further action at local, national and European level, to formulate general policy recommendations to member states, to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

ECRI has a five-year reporting cycle, covering 9-10 countries per year. The 4th round (2008-2012) focused on the implementation and evaluation of recommendations from previous report. Country by country monitoring (which also includes country

visits) is complemented by a thematic work (adoption of general policy recommendations addressed to member states governments and collection / dissemination of good practices). ECRI may set up working groups on specific topics.

Focus on children's rights:

- As far as children's rights are concerned, ECRI has mainly focused on combating racism in and through school education, with a special emphasis on Roma and migrant's children. In addition, unaccompanied minors and undocumented children are also of particular concern to ECRI.
- To date, ECRI has adopted 14 General Policy Recommendations (GPR), including GPR No. 3 on "Combating racism and intolerance against Roma/Gypsies" and GPR No. 13 on "Combating anti-Gypsyism and discrimination against Roma" whereas GPR No.10 deals with "Combating racism and racial discrimination in and through school education". ECRI interacts with civil society by organising round tables in member states to facilitate dialogue between state and non-state actors on issues related to the fight against racism and intolerance, as well as by meeting relevant NGOs during its contact visit in the country in preparation of its monitoring reports.

The Advisory Committee on the Framework Convention for the Protection of National Minorities

The Advisory Committee on the Framework Convention for the Protection of National Minorities assists the Committee of Ministers in the monitoring of the implementation of the Framework Convention. Based on member states' periodic reports and a variety of other sources of information, including country visits where the Advisory Committee meets minority and NGO representatives as well as central and local authorities, it adopts independent country-specific Opinions containing detailed findings and concrete recommendations to the government on how to improve minority rights protection.

Focus on children's rights:

- 2006 Thematic Commentary on Education under the Framework Convention
- 2012 Thematic Commentary on the Language Rights of Persons belonging to National Minorities includes multiple references to the particular needs of children belonging to minorities
- Segregation, social exclusion and unequal access to education and other social rights of children belonging to some minorities, in particular Roma, is criticised in a significant number of first, second, and third cycle Opinions
- Discrimination against migrant children is regularly addressed by the Committee
- The best interest of the child is referred to as benchmark by the Advisory Committee when specific rights, such as effective participation or the expression of religious belief, of children belonging to national minorities are concerned.

Cooperation Programme on Cybercrime

The technical cooperation programme on cybercrime supports countries worldwide in the implementation of the Budapest Convention on Cybercrime and related standards. This programme is closely related to the Cybercrime Convention Committee (T-CY), that is, the Committee of the Parties to this treaty.

Focus on children's rights:

- Online sexual violence against children is a major threat. The Budapest Convention on Cybercrime addresses this through Article 9 (child pornography) as well as the procedural law and international cooperation provisions.
- The cooperation projects of the Council of Europe are not only aimed at strengthening capacities in line with the Budapest Convention but also with the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. These projects have a global reach and they thus facilitate criminal justice action to rescue child victims and prosecute offenders beyond Europe.
- Under these projects, the Council of Europe is furthermore analysing compliance of States with the criminal law benchmarks of the Budapest and Lanzarote Conventions. Such analyses facilitate monitoring.

Group of experts on action against violence against women and domestic violence (GREVIO)

In 2014, a new monitoring mechanism will be set up to evaluate the implementation of the Council of Europe *Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention). It addresses various forms of violence against women, including violence typically directed against girls, such as female genital mutilation and forced marriage. It also addresses domestic violence as intimate-partner violence and its effects on children. In as far as domestic violence against children (child abuse) is concerned, the Convention makes it optional for States Parties to apply its provisions accordingly. Monitoring the implementation of the Istanbul Convention will bring to light invaluable information on measures taken at national level to protect children from abuse. The potential of using the Istanbul Convention to improve the legislative, policy and service response in member states to specific forms of violence affecting children, in particular girls, is being explored in a roundtable on "Violence against girls and young women under 18" at the conference on the implementation of the CoE Strategy for the Rights of the Child 2012-2015, Growing with Children's Rights, Dubrovnik 27-28 March, with the participation of high-level experts from international organisations, national children's rights authorities, and civil society.