

European Network of Ombudspersons for Children (ENOC)

Position Statement on “Ending detention of children for immigration purposes”

Adopted by the 23rd ENOC General Assembly, 27 September 2019, Belfast

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“Immigration detention of children should be prohibited and never take place, not even as a last resort!”

The European Network of Ombudspersons for Children (ENOC) has repeatedly and explicitly expressed its firm opposition to any form of detention of children based on their immigration status¹, as it constitutes a violation of various children’s rights protected by international law (in particular UNCRC Art. 2, 3, and 37 and the European Convention on Human Rights Art. 3 and 5). Current EU legislation² allows detention “*only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Unaccompanied minors shall be detained only in exceptional circumstances*”. The “last resort” principle, concerning immigration detention of children, has also been included in international legal texts and declarations, like the UN “New York Declaration for Refugees and Immigrants”³. However, practice has shown that despite the provision for an “exceptional” use of detention, migrant⁴ children are placed in detention in many states as a routine, while this is claimed to be a last resort measure. As it has been noted by many international human rights bodies, such as the Parliamentary Assembly of the Council of Europe⁵, that has launched a campaign to end immigration detention of children, “*tens of thousands of migrant children still end up in detention every year. The practice is contrary to the best interests of the child and a clear and unequivocal child rights violation*».

The language of ‘last resort’ makes it look as though governments that continue to lock up children due to their immigration status have exhausted all other alternative options. Furthermore, it implies that child immigration detention is an acceptable practice, despite available, affordable, effective and humane alternatives. The use of the words ‘last resort’, in practice, enables governments to use immigration detention as a first resort as part of a border management policy.

¹ ENOC Recommendations on «Safeguarding and protecting the rights of children on the move: The challenge of social inclusion», 2017, « Children on the Move: Children First.», 2013, “Statement on EU Return Directive”, 2008, “State Obligations for the Treatment of Unaccompanied Children», 2006. The term «immigration detention» is used to refer to any form of deprivation of liberty imposed to children in connection to their immigration status.

² Directive 2013/33/EU of the European Parliament and of the European Council

³ Resolution adopted by the UN General Assembly on 19.9.2016

⁴ The term « migrant children» is used here to refer to all children moving from one country to another, accompanied by members of their families or not, seeking international protection or not.

⁵ Parliamentary Assembly of the Council of Europe Resolution 2020 (2014) “The alternatives to immigration detention of children”

We, members of ENOC, express our severe concern about the still widely implemented practice of detaining children because of their immigration status, using the excuse of “last resort”. Therefore,

A. Recalling international Human Rights Institutions stating that immigration detention of children always contravenes to the best interest of the child (as enshrined in UNCRC Art. 3), is arbitrary and constitutes a violation of the child’s human rights. In particular:

- The Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child, on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, stating that: «.. *The possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile criminal justice, is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development* » and « *Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice* »;
- The Resolution 2020 of the Council of Europe Parliamentary Assembly (PACE, 2014), calling member States: “... *to acknowledge that it is never in the best interests of a child to be detained on the basis of their or their parent’s immigration status; to introduce the prohibition of the detention of children for immigration reasons into this legislation, if it has not yet been done, and ensure its full implementation in practice; to refrain from placing unaccompanied or separated children in administrative detention....*”;
- The European Court of Human Rights judgements⁶⁶, in which the Court, after considering the conditions of detention of migrant children in particular cases, has expressed the opinion that the best interest of the child had not been considered and the detention constituted inhuman and degrading treatment and/or violation of the children’s right to liberty and security and, consequently, was contrary to the European Convention of Human Rights;
- The UNHRC Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment⁷, stating that: “... *the deprivation of liberty of children based on their or their parents’ migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children*”.

⁶⁶ Summarised in ECtHR factsheets on unaccompanied migrant minors, 2019 and on accompanied minors, 2018 https://www.echr.coe.int/Documents/FS_Unaccompanied_migrant_minors_detention_ENG.pdf
https://www.echr.coe.int/Documents/FS_Accompanied_migrant_minors_detention_ENG.pdf

⁷ UN General Assembly Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, 5 March 2013 para 80.

B. Stressing the fact that according to international research⁸, detention can have very severe short and long-term consequences in children's health and development. In particular:

- The adverse impact of detention on the health (both mental and physical), development and well-being of children has been demonstrated on numerous occasions, even in cases where detention is very limited in time and takes place in relatively human conditions;
- Migrant children in detention have a greater risk and actually more often suffer from stress, tension, depression and anxiety, and often have symptoms similar to post-traumatic stress syndrome (PTSD), such as insomnia, nightmares and enuresis. Children may express feelings of hopelessness and frustration through violence towards others and themselves. Research has also shown that these children are at greater risk of suicide, attempts to suicide, self-harm, mental illness and developmental problems, such as attachment problems;
- Detention also has a significant impact on children's education. In many countries children don't receive education during detention, or the education they receive is not mainstreamed or is insufficient. Very little attention is paid to their cultural and recreational activities;
- Access to health care and health specialists is also problematic in many cases.

C. Considering that there are several alternative options to provide proper accommodation and support migrant children, during their first arrival, or when they are identified by the authorities without the required documents, or just as being unaccompanied, or -in the case of returns- during the period before their departure, that can enable governments to meet national and/or regional security interests and provide for the best interests of the child, as required under international law.

This has been emphatically demonstrated by PACE report "The Alternatives to immigration detention of children" (2014) and research commissioned by the International Detention Coalition, showing that cost-effective and reliable alternatives to detention, where children are not separated from their parents and where unaccompanied minors are provided with secure social environments, are currently used in a variety of settings and have been found to benefit a range of stakeholders affected by this area of policy⁹.

We, ENOC members¹⁰, urge the European states' governments to introduce into their legislation the total prohibition of detention of children for immigration reasons, to fully eliminate in practice the imposing of deprivation of liberty measures to migrant children, to strengthen relevant monitoring mechanisms, as well as to widely promote and support child friendly and appropriate measures alternative to detention.

⁸ See « A study of immigration detention practices and the use of alternatives to immigration detention of children » including bibliography, PACE Committee on Migration, Refugees and Displaced Persons, 2017,

⁹ « There are Alternatives », A handbook for preventing unnecessary immigration detention, International Detention Coalition, 2011

¹⁰ This statement was developed in full consultation with all ENOC members and with expert advice from George Moschos, former Children's Ombudsman of Greece, for which we are very grateful.