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The rights of children in institutions : follow-up to Recommendation 1601 (2003) of the Parliamentary Assembly

Recommendation 1698 (2005)

Reply from the Committee of Ministers

adopted at the 953rd meeting of the Ministers' Deputies (18-19 January 2006)

1. The Committee of Ministers shares the concern of the Parliamentary Assembly that the rights of children in institutions should be protected and defended. The Assembly's suggestions are extensively addressed in Recommendation Rec(2005)5 on the rights of children living in residential institutions, adopted by the Committee of Ministers on 16 March 2005. The appendix to this recommendation contains an overview of the rights of these children, as well as guidelines and standards that should be taken into account by member states with respect to placements, institutions and monitoring of institutions and practices. Moreover, as to the exercise of children's rights, the Committee of Ministers recalls the European Convention on the exercise of children's rights (ETS No. 160), which provides for measures which aim to promote the rights of the children, in particular in family proceedings before judicial authorities, but also to family proceedings of special interest for children such as residence.

2. Moreover, the Heads of State and Government of the Council of Europe member states, at their Third Summit in Warsaw on 16 and 17 May 2005, gave the utmost priority to social issues in general by their determination to "build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable social groups". At the same time they gave very specific focus in the Summit Action Plan to "Building a Europe for children". In particular, the Heads of State committed themselves to implementing a child rights perspective in all the activities of the Council of Europe, and to taking specific action to eradicate all forms of violence against children.

3. The Assembly's recommendation mentions the fact that the abandonment and placement of children in institutions concerns particularly those children with disabilities. The Third Summit Action Plan also provides for the consolidation of the Council of Europe's work on disability issues, and supports the adoption and implementation of a ten-year action plan for ensuring equal rights for people with disabilities, including children.

4. The appended opinion of the Committee on the Rehabilitation and Integration of People with disabilities (CD-P-RR) on Recommendation 1698 (2005) describes the Organisation's present and future work programme with regard to disability. The issue of protecting disabled children against violence and abuse has been addressed in Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse and its Explanatory Report. Furthermore, the CD-P-RR has developed a draft Disability Action Plan in the framework of the follow-up to the Summit, designed, *inter alia*, to contribute to enabling children to "reach their maximum potential within family and society". Impetus was also given to the work of the CD-P-RR by the November 2004 conference on "Human rights – Disability – Children", which led to the creation of an Ad hoc Group of Experts on community living (deinstitutionalisation) of children with disabilities.

5. The remaining recommendations of the Assembly in paragraphs iii., iv. and v. of Recommendation 1698 (2005) find responses in the above-mentioned Committee of Ministers' Recommendation Rec(2005)5, which urges governments to adopt national guidelines and action plans for the implementation of the principles and standards described at length in its appendix, including, for example, assistance in integration into society for young adults leaving institutions (paragraph iii.). The supervision and advice recommended in paragraph iv. are also foreseen by the Committee in the appendix to its recommendation. With regard to the involvement of civil society called for by the Assembly (paragraph v.), the Committee of Ministers also states in Recommendation Rec(2005)5 that member states should define themselves the role of NGOs and private

bodies in the area of children in institutions: at the same time, it warns against any avoidance of the responsibilities of national authorities with regard to these institutions and their functioning, and above all of the well-being and human rights of the children concerned.

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Appendix I to the reply

Opinion of the CCDH on Parliamentary Assembly Recommendations 1698 (2005) on the rights of children in institutions and 1703 (2005) on the protection and assistance for separated children seeking asylum

(Adopted at its 60th meeting (14-17 June 2005))

1. The Steering Committee for Human Rights (CDDH) notes with interest the Recommendations of the Parliamentary Assembly 1698 (2005) on the rights of children in institutions and 1703 (2005) on the protection and assistance for separated children seeking asylum.
2. The CDDH notes with interest the approach taken in these two texts and stresses the fact that in the procedures evoked in both recommendations, the respect for human dignity is essential. The European Court of Human Rights has already developed in its case law a number of elements which states should take into account when examining in particular asylum requests.
3. The CDDH does not consider it necessary to add further elements from the human rights perspective.

Appendix II to the reply

Opinion of the Committee on the Rehabilitation and Integration of People with disabilities (CD-P-RR) on Recommendation 1698 (2005) of the Parliamentary Assembly on the rights of children in institutions: follow up to Recommendation 1601 (2003) of the Parliamentary Assembly

(Prepared by the Bureau of the CD-P-RR at its 10th meeting in Paris (23-24 June 2005), and adopted by the CD-P-RR by correspondence on 26 September 2005)

I. Introduction

1. Recommendation 1698 (2005) on the rights of children in institutions: follow up to Recommendation 1601 (2003) was adopted by the Parliamentary Assembly of the Council of Europe on 25 April 2005. It was subsequently examined by the Ministers' Deputies at their 926th meeting (11 May 2005), who agreed to communicate it to the Committee on the Rehabilitation and Integration of People with disabilities (Partial Agreement) (CD-P-RR) for information and possible comments by 30 September 2005 (Decision No. CM/Del/Dec(2005)925/3.1).
2. The Committee on the Rehabilitation and Integration of People with disabilities (Partial Agreement) (CD-P-RR) has read with great interest Recommendation 1698 (2005) of the Parliamentary Assembly on the rights of children in institutions: follow up to Recommendation 1601 (2003). It has taken note of the fact that particular reference has been made to the situation of disabled children in institutions, for whom the violation of human rights and the impact of growing up in institutions without a family or another consistent caregiver can cause irreversible developmental delays. The CD-P-RR hopes that the Committee of Ministers will encourage member states to take an active part in Council of Europe activities devoted to children with disabilities.

II. Opinion

3. The CD-P-RR cannot but endorse the Parliamentary Assembly's proposals concerning children in institutions. It is now widely recognised that even children with severe disabilities will benefit more from a family life and can thrive in the community, thus improving their life chances and preparing them to lead an independent life as adults. In that context, it wishes to draw attention to the Political Declaration "Progressing towards full participation as citizens" of the 2nd European Conference of Ministers Responsible for Integration Policies for People with Disabilities (Malaga, Spain, 8 May 2003) "Improving the quality of people with disabilities: enhancing a coherent policy for and through full participation" urging member states not only to promote policies aiming at full citizenship and participation of people with disabilities in general, but, in particular, asking member states to ensure that the needs of families of children with disabilities are carefully assessed so that support measures are provided to enable children with disabilities to grow up within their families.

4. Behind closed doors of orphanages or other institutions, children with disabilities will always be at a high risk of being exposed to violence and degrading treatment. Reference should also be made to Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse adopted by the Committee of Ministers on 2 February 2005, which urges member states of the Partial Agreement in the Social and Public Health Field to draw up and implement national action plans on safeguarding adults and children with disabilities against abuse applying in their policy, legislation and practice. These action plans could cover children in institutions, as well as those living in smaller community-based alternatives or within the family against any form of neglect, harm, violence or abuse, including sexual abuse with special attention to disabled girls. The resolution is complemented by a report of the same title, which provides a practical tool to professionals by helping them to appropriately respond to the issue. The recommendations include measures to prevent abuse from happening at all, to encourage prompt recognition, referral and investigation, to prevent recurrence of abuse, and to provide treatment for those who have been abused.
5. The CD-P-RR has developed a draft Council of Europe Disability Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe (2006-2015) (P-SG(2005)15) politically supported by the Council of Europe Action Plan adopted at the Warsaw Summit, 17 May 2005 (chapter III, section 1). The forthcoming Disability Action Plan will contribute to consolidating the work on disability issues and supporting the adoption and implementation of national policies for making decisive progress in building knowledge and capacity for planning, decisions and change of practices across a wide spectrum of policy areas, including areas that will strengthen the right to life and development of children with disabilities, enabling them to reach their maximum potential within family and society.
6. Furthermore, the CD-P-RR refers to the Conference “Human rights – Disability – Children: towards international instruments for disability rights – the special case of disabled children” (Strasbourg, 8-9 November 2004) which was one of the priorities of the Norwegian Chairmanship of the Committee of Ministers of the Council of Europe. The Conference, highlighting the need for a multi-disciplinary and human rights based approach, clearly showed that too many children with disabilities still live in institutions and that more inclusive policies promoting community and family living must be stepped up. Taking these issues forward, the conference was convened to strengthen the impact of current legal and political instruments and to work towards a “roadmap” for deinstitutionalisation, particularly of children with disabilities.
7. As a follow-up to the conference, an interdisciplinary Ad hoc Group of Experts on community living (deinstitutionalisation) of children with disabilities has been set up to draft recommendations and establish guidelines promoting the policy of community living and supporting families who care for their disabled children at home. The Group will also, within the framework of the forthcoming Council of Europe Disability Action Plan, elaborate guidelines for the revision of policies, legislation and practice to promote deinstitutionalisation and community living. It will thus help to defend the interests of people with disabilities and to create a system of provision that allows for movement from institutions to living in the community. To avoid duplication of scarce resources and ensure a co-ordinated approach across multiple sectors when taking forward and implementing a joint strategy for change, emphasis has to be put on agreeing on a specific timetable, developing clarity and understanding about of one another’s different roles and responsibilities, as well as to being able to measure if progress is achieved.
8. There are also particular challenges presented to children with autism and the Council of Europe member states will be at different stages in their recognition of the need for a shift in policy away from providing care and treatment, often in segregated institutions, towards enhancing the provision of community-based support and high-quality education within mainstream schools. In this regard the CD-P-RR refers to its decision taken at its 26th session (Strasbourg, 7-10 October 2003) to set up a Committee of Experts on the Education and Integration of Children with Autism (P-RR-AUT). The Committee is currently examining the services provided to children with autism, exchanging experience on the implementation of a coherent policy for this particular group, compiling a collection of examples of good practice, and will draw up recommendations to further the education and integration of children with autism.
9. Finally, if a clear mandate is given and adequate financial and human resources were made available, assistance could be provided to Council of Europe member states, upon request, to develop the measures outlined in the Council of Europe Disability Action Plan regarding community living and children with disabilities and to implement the forthcoming recommendations of the Ad hoc Group of Experts on community living (deinstitutionalisation) of children with disabilities. The CD-P-RR would offer its longstanding multidisciplinary expertise in disability standard setting and policy development to oversee such a possible assistance programme and ensure necessary exchange of information, as well as identifying opportunities for co-ordination with other Council of Europe bodies.