

CHILDREN'S RIGHTS BEHIND BARS

**Human Rights of children deprived of liberty:
Improving monitoring mechanisms.**



**A European Overview
2015**

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DEFENCE FOR CHILDREN (DCI) – BELGIUM

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Finally, we welcome the wide participation of children during the national field visits. The experiences they shared with the national researchers have enlightened the research and provided the evidence about practices that demonstrates that we absolutely must prevent, monitor, regulate and bolster with sufficient safeguards so as to avoid the violation of children's basic rights when they are deprived of liberty. Or, if such violations take place, to guarantee that the victims are effectively able to defend themselves.

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A. ACRONYMS

- CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- CPT: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- CRC: Convention on the Rights of the Child
- CRC-OP3: Third Optional Protocol to the CRC on a Communications Procedure
- ECHR: European Convention on Human Rights
- ECtHR: European Court of Human Rights
- NGO: Non-Governmental Organisation
- NPM: National Preventive Mechanism
- OPCAT: Optional Protocol to the Convention against Torture
- SPT: Subcommittee on Prevention of Torture and other Cruel or Degrading Treatment or Punishment
- UN: United Nations

B. INTRODUCTION

The common report of the European project, “*Children’s rights behind bars. Human rights of children deprived of liberty: improving monitoring mechanisms*” is designed to draw together the data from the national research that was conducted by partner States to demonstrate the different monitoring and complaint models. The data illustrates the advantages and disadvantages of the different systems, and gives indicative trends. All data included in this report is the result of the international work carried out by the following partners:

AUSTRIA – *Ludwig Boltzmann Institute of Human Rights*

BELGIUM – *Defence for Children International (DCI)*

ESTONIA – *Institute of Sociology and Social Policy. University of Tartu*

FRANCE – *Defence for Children International (DCI)*

IRELAND – *Irish Penal Reform Trust*

ITALY – *Defence for Children International (DCI)*

LATVIA – *Ombudsman’s Office of the Republic of Latvia*

LUXEMBOURG – *ANCES*

POLAND – *Helsinki Foundation for Human Rights*

REPUBLIC OF SERBIA – *Child Rights Centre*

ROMANIA – *Research Centre CICOP. West University in Timisoara*

SPAIN – *Proyecto Solidario*

THE NETHERLANDS – *Defence for Children International (DCI)*

UNITED KINGDOM – *The Howard League for Penal Reform*

The results of the research are published in the national reports available on the website of the project: www.childrensrightsbehindbars.eu.

The main aim of this report is to assist the project coordination team, to make the link between the national research and the European practical Guide by using practical information gathered through national research to feed the Guide with best practices that can be inspiring and, to identify major or recurring problems.

This common report has to be read and interpreted in the light of the core principles of the CRC, namely the best interest of the Child, his/her protection and participation without any discrimination, and in compliance with the relevant international and European legal framework¹. Moreover, it is worth highlighting that the implementation of any monitoring and complaint mechanisms needs to follow the spirit of a child-friendly justice and specifically needs to comply with the Guidelines on child-friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010.

¹ See the compendium of international & regional standards and mechanisms regarding monitoring, inspections and complaint mechanisms of places where children are deprived of liberty, available on the “Children’s Rights Behind Bars” project’s website (useful links).

Limitations

This report does not attempt to be exhaustive or universally applicable. The aim of the coordinator is to assess, as much as the national reports allow, the effectiveness of monitoring and complaint mechanisms in places of deprivation of liberty for minors in Europe. The ultimate goal of this project is to improve the respect for the human rights of children deprived of liberty. To achieve this goal, it is essential that monitoring and complaint bodies work cooperatively, with mutual trust and in a harmonised way at an international level but also at regional, national and local levels, and that they have the practical tools to do so.

The definition of deprivation of liberty has to be understood in the context of Section II. 11. b) of the “Havana Rules” which state that *“the deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.”* In this regards, the definition of “place of deprivation of liberty” for this project includes all places/institutions where children are placed/detained by virtue of a public authority and are not able to leave at will.

Constraints

The main constraint for this project was the limited time available to fulfil the national research (from mid-May to end-July). Moreover, access to certain places of deprivation of liberty was sometimes denied by the competent administrative authorities.

The research that was conducted in the fourteen partner States has limitations because it only concerns children who were subject to a (judicial) decision of placement in an institution of deprivation of liberty. However, despite this, we tried to cover the different sectors of deprivation of liberty, namely juvenile justice, social care, mental health and migration.

It is important to note that this study does not raise questions about the administration of the juvenile justice system and the reasons for placement of children in detention. Thus, whilst the very principle of the requirement for deprivation of liberty is not called into question, it remains necessary to keep the debate about the reasons for detention of children and the need to promote alternatives measures high on the agenda to improve the situation of children. Finally, we must keep in mind Article 37 and 40 of the CRC which state that the deprivation of liberty of children shall be used only as a measure of last resort and for the shortest appropriate period of time while pursuing a rehabilitative aim in order to promote the child’s reintegration and the child’s assuming a constructive role in society.

C. DESCRIPTION AND CLASSIFICATION OF THE DIFFERENT EXISTING MONITORING MECHANISMS/MODELS

1 MONITORING MECHANISMS

For the purposes of our project 'monitoring mechanisms' are the independent bodies² which are responsible for monitoring and supervising places of deprivation of liberty of children in order to improve the respect of children's rights in accordance with the CRC. It is essential that this mission is fulfilled preventively to avoid any possible violation of their rights. There are many children deprived of liberty across Europe. However, there are no (contrary to the situation for adults) guidelines to properly monitor living and detention conditions of these children. Children are not adults and have particular needs and rights. Thus, when it comes to visit places of deprivation of liberty, special criteria must be taken into account. For example, different techniques apply when interviewing children; special multidisciplinary procedures (pedagogical, psychological, etc.) must be applied in order to properly assess the situation of the child. Monitoring juvenile detention facilities also requires specialisation, with precise methodology and trained monitors. The ultimate aim of the detention is rehabilitation: one must therefore work towards the child's reintegration into society.

1.1 INTERNATIONAL LEVEL

There are a number of international bodies who monitor the situation of children deprived of their liberty and inspect places of detention. This section outlines most of these mechanisms:

a) The SPT:

The OPCAT established the Subcommittee on Prevention of Torture (hereinafter: "SPT"). The SPT has a mandate to visit the places of deprivation of liberty in the States Parties. Under the OPCAT, States parties shall establish independent national preventive mechanisms (NPM) for the prevention of torture at the domestic level.

These mechanisms also have a mandate to inspect detention facilities, and apply equally to juvenile and adult detention facilities. The SPT is competent to conduct visits on the territories of the States that ratified the OPCAT³.

² The concept of independence is a broad concept which must be interpreted according to the nature and the mission of the concerned body. The body will need to be independent either from the authority on which it depends (namely regarding human and financial resources and its power of recommendation) or independent from the monitored institution.

³ Eleven out of the fourteen partner States have ratified the OPCAT, namely Austria, Estonia, France, Italy, Luxembourg, the Netherlands, Poland, Romania, Serbia, Spain and the United Kingdom.

The relevant designated NPM, in the context of this study, are the following:

- The Austrian Ombudsman Board (Austria)
- The Office of the Chancellor of Justice (Estonia)
- The “Contrôleur Général des lieux de privation de liberté”(France)
- The National Guarantor for the rights of persons detained and deprived of their liberty (Italy)
- The Médiateur du Grand Duché de Luxembourg (Luxembourg)
- Six national inspectorate bodies comprise the Dutch NPM, and are coordinated by the Inspectorate for Implementation of Sanctions (The Netherlands)
- The Commissioner for Civil Rights Protection –Ombudsman (Poland)
- The People’s Advocate (Romania)
- The Protector of Citizens (Serbia)
- El Defensor del Pueblo (Spain)
- Twenty member bodies for the NPM United Kingdom and three for the Isle of Man, coordinated by Her Majesty’s Inspectorate for Prisons (United kingdom of Great Britain and Northern Ireland).

The NPM implementation process and composition may be linked to political, administrative and/or constitutional considerations. For instance, in the United Kingdom which is composed of three jurisdictions – England/Wales, Scotland and Northern Ireland – it would have been difficult to implement only one NPM Body. That is the reason why the NPM is composed of 20 member bodies and that each organisation within the NPM has its own legal basis and remit, separate from OPCAT, as the bodies pre-date the NPM.

In Austria, which is a Federal State, legal competences are divided in great complexity between the federal/central government/Ministry for Family and Youth and the nine regional governments (Länder), with further devolution to political districts and municipalities implementing such services through Child and Youth Authorities (Jugendamt). The complexity of the system might explain the necessity to implement six visiting commissions. Quarterly, the Commissions decide which facilities should be visited and coordinate their plans with the AOB.

In France, which is a unitary State (thus governed by one central power), the “*Contrôleur General des Lieux de Privation de Liberté*” (CGLPL) has been designated as NPM. This independent public body is in charge of the respect of fundamental rights of persons deprived of liberty during their deprivation of liberty period as well as during their transfer. Even though the CGLPL collaborate with other monitoring bodies (as for instance through a formal collaboration under a Convention signed with the “*Défenseur Des Droits*”), it is a centralized monitoring body.

It is of note that the NPM implemented following the ratification of the OPCAT will have better guarantees of independence and broader mandates⁴. They are entitled to visit every place of deprivation of liberty under their jurisdiction. It will also lead to a strong cooperation between the SPT (which will provide NPM with guidance) and national preventive mechanisms. Moreover, the mandate and powers of the designated NPM are anchored in the provisions of the OPCAT which automatically gives legitimacy and strength to their monitoring function. Therefore, all these aspects will improve the monitoring system's effectiveness.

b) The UN Special Rapporteur Against Torture:

The United Nations Commission on Human Rights, in resolution 1985/33, appointed an expert, a special rapporteur, to examine questions relevant to torture. The mandate was extended for 3 years by Human Rights Council resolution 25/13 in March 2014.

It covers all countries, irrespective of whether a State has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The mandate comprises three main activities: transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, as well as communications on past alleged cases of torture; undertaking fact-finding country visits; and submitting annual reports on activities, the mandate and methods of work to the Human Rights Council and the General Assembly.

c) The CPT:

All our project partner States ratified the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: "CPT")⁵. The CPT, which is an emanation of the Council of Europe, has the authority to visit any place, within the jurisdiction of a signatory State, in which individuals are deprived of liberty by a public authority. Since the mentioned States ratified the Convention, the CPT has carried out several visits to the countries and submitted, during the some visits, specific recommendations regarding children deprived of liberty. Furthermore, the General Reports and new guidelines made by the CPT play a substantial role within the monitoring process by highlighting important issues related to the deprivation of liberty of minors⁶.

⁴ See the basic principles of the SPT Guidelines on national preventive mechanisms, 9 December 2010, CAT/OP/12/5.

⁵ The CPT is established by Article 1 of the European Convention against Torture and inhuman or degrading treatment or Punishment adopted by the Member States of the Council of Europe and entered into force on March 1, 2002. See the website of the CPT monitoring activities on <http://www.cpt.coe.int/en/>

⁶ For instance, the 9th General Report of the CPT (1998): standards on Juveniles deprived of their liberty, the 18th General Report: comments on draft European Rules on Juvenile Offenders and the new guidelines related to the detention of minors in the 24th General Report (2013-2014), p.55-64.

d) Other international monitoring bodies

The Committee on the rights of the Child, the Committee against Torture and the Human Rights Committee also exercise monitoring through their reporting process especially when making concluding observations about the human rights of children deprived of liberty. Their input is also substantial when it comes to deal with their general comment related to the deprivation of liberty.⁷

The Working Group on Arbitrary Detention, a UN-mandated body of independent human rights experts that investigates cases of arbitrary arrest and detention that may be in violation of international human rights law, also plays a fundamental monitoring role within the scope of this study. Finally, it is worth mentioning the mandate of the Special Representative of the Secretary-General on Violence against Children (SRSG) which is anchored in human rights standards, promoting the universal ratification and effective implementation of core international conventions. The SRSG cooperates closely with human rights bodies and mechanisms, with UN funds and programmes and specialized agencies, and with regional organisations. She also promotes cooperation with national institutions and civil society organisations, including children and young people. The SRSG makes use of mutually supportive strategies, including the contribution to strategic meetings at the international, regional and national levels, the identification of good practices and experience across regions, sectors and settings; the organisation of field missions; and the promotion of thematic studies and reports.

Finally, it is also worth emphasizing the role of the Universal Periodic Review (UPR) which is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.

⁷ Human Rights Committee, General comment n°20 (Article 7), 1992; Human Rights Committee General Comment n° 21 (Article 10), 1993; Human Rights Committee, General Comment n°35 (Article 9), 2014, Committee on the Rights of the Child General Comment n°10 (2007), CRC/C/GC/10; Committee on the Rights of the Child General Comment n°13 (2011), CRC/C/GC/13; Committee on the Rights of the Child General Comment n°8 (2006), CRC/C/GC/8.

1.2 NATIONAL LEVEL

1.2.1 Formal monitoring mechanisms

a) Ombudsperson(s):

Following the analysis of the project partners' reports, it is clear that the Ombudsperson⁸ is the main independent human rights body/institution promoting the rights and welfare of children and implemented as external complaint mechanism specific to children deprived of liberty. Even though the Ombudsperson's mandate and powers may differ from one State to another⁹, a common practice can be determined with regards to his or her missions, namely being a mediator between physical person (children) and administration in case of placement of minor in public institution; defending children's rights as a complaint mechanism (by examining and investigating complaints); initiating the procedure for control of the legality and regularity of the activities of the administrative bodies upon a complaint from children or on its own initiative. It is relevant to stress the existence of the European Network of Ombudspersons for Children (ENOC) which links forty three independent offices for children from thirty five countries in Europe and specifically aims at encouraging the fullest possible implementation of the CRC.

b) Administrative monitoring bodies

(Inspectorates, Directorates, Agencies or other bodies under the authority of Ministries or administrative Departments (Justice, Social Care, Health or Migration, part of the national government))

These bodies are generally government services which are placed under the authority of the competent Ministry depending on the type of place of deprivation of liberty. The different Ministries with responsibility are: the Ministry of Justice, the Ministry of Interior, the Ministry of Social Care, the Ministry of Public Health, or the Ministry of Migration.

Thus, the administrative monitoring bodies depend on the Executive power of the State and, by definition, have a more administrative monitoring mission.

⁸ There is an Ombudsperson in Spain ("*Defensor del Pueblo*"), in Ireland, in Latvia, in France ("*Défenseur des enfants*"), in Luxembourg, in Austria (the Federal Child and Youth Ombudsperson), in Serbia (the Protector of Citizens), in Poland (the Children Ombudsman), in The Netherlands (the Children's Ombudsman), in Estonia (The Chancellor of Justice), in Belgium the Ombudsman for Children ("*Délégue Général aux Droits de l'Enfant* of the French community" and the "*Kinderrechtencommissariaat*" of the Flemish community), the National Ombudsperson for Children and Adolescents in Italy.

⁹ Some Ombudsmen are implemented as national independent human rights institutions in accordance with the Paris principles. Their mandate might be general or exclusively focused on Children's rights. Sometimes the Children's Ombudsperson is part of the national Ombudsman's office and receives a specific mandate. In most of these States, the Ombudsman was appointed as National Preventive Mechanism following ratification of the OPCAT.

(See <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>).

c) Prison and Police Committees, Mental Health Commission, Disciplinary Commissions

These Committees and Commissions are legally established as external monitoring mechanisms. The members of these Committees are generally appointed by the Minister competent in the matter (depending of the place to monitor). The Commissions are composed of civilians and experts (judges, lawyers, medical experts, social workers...). The overall mission of these bodies is the independent control of the places (prisons or police cells) and the monitoring of the treatment of the detainees (including children).

Furthermore, it is worth highlighting that these mechanisms may also be implemented in specific fields as mental health services (Mental Health Commission) or Immigration and thus monitor hospitals, detention centres for immigrants, etc.

d) Juvenile judges:

Juvenile Judges have broad authority and power of visit and control. Their mandate and mission are in theory specifically defined by the legal framework in which they operate. They may conduct announced or unannounced visits. However, it has to be highlighted that such monitoring is not designed for the general monitoring of the places of detention. Indeed, delegate judges are often endorsed with a monitoring task to follow-up individual cases.

e) Ministers, Parliamentarians and other representatives

Parliamentarians can decide to conduct visits at any time, to all places of deprivation of liberty. They are allowed to visit the premises and may be able to meet detainees.

The visit is often individual, meaning that they cannot come with a third person, such as a journalist for example. During the visit, they are assisted by staff members.

However, in reality parliamentarians rarely make use of this right of access - and therefore their monitoring power. No exercise of this power was mentioned in the national reports.

f) Non-Governmental Organisations

NGOs and associations can be entrusted with a mission of inspection in some places of deprivation of liberty for children. They will receive an authorisation or accreditation from the competent authority and sometimes their mandate and missions will be defined in a legal text.

1.2.2 Informal monitoring mechanisms

a) Lawyer(s)

The role of the lawyer is indispensable when it comes to deal with the deprivation of liberty of children and the respect of their fundamental rights.

In general, he/she knows the child and his/her file, but that is not always the case. With regard to the complaint mechanism, children will frequently need to be represented by a lawyer, especially during judicial proceedings. The lawyer has the right to access to all relevant information with regard to his client's complaint.

However, in practice, the lawyer's role is often confined to his/her procedural aspect according to the children's views. This can impede the effectiveness of the lawyers' monitoring function.

b) Civil society initiatives

Informal monitoring is generally conducted by non-accredited organisations (or "citizens groups") which are de facto associations dedicated to promote and defend Human Rights values. They visit prisoners in a manner similar to family visits. The actions carried out by these associations vary from the organisation of demonstrations outside detention centres to encouraging public awareness of the situation of the detainees and carrying out different types of actions.

These non-accredited organisations are not *per se* monitoring mechanisms according to the fact that they are not mandated to control detention conditions and treatment of children deprived of their liberty.

1.2.3 Stakeholders within the monitoring process

a) Directors, staff members of the institutions

All places of deprivation of liberty have internal systems run by the management-team and the staff-team (of educators, psychologists, social workers...). We can unfortunately not conclude that these bodies have an external (and independent from the institution) monitoring function. However, it is important to note that the monitoring of the institutions would not be possible without the cooperation of these internal actors. Staff will facilitate the work of the external monitoring bodies. That is the reason why it is essential to promote a participative monitoring and to build a mutual trust relationship.

In respect of the internal monitoring, management and staff must be aware of what happens in their institution, to meet with detainees regularly, to be able to prevent any ill-treatment or any harm and to ensure the proper functioning of the institution. They have to make sure (and are the first ones to do that) that the rights of the children are fully respected on a daily basis in the place.

2 COMPLAINT MECHANISMS

There is a plethora of legal instruments and standards which highlight the paramount need to implement effective complaints mechanisms for children deprived of liberty¹⁰.

The first assessment is that there is no real culture of complaints made by children deprived of liberty, which legitimizes the need to further promote children's rights and effective remedies. Information about how to complain has to be widely disseminated (to children and to the staff-members who should be able to assist them) as a matter of prevention and to optimize the effectiveness of complaint mechanisms. It is also noteworthy to point out that the low-level of education (specially the lack of literacy) impedes the children's capacity to lodge complaints. Another major inhibitor for complaining in the places where children are deprived of liberty is the fear from reprisals, either from staff or (more often than not) from other children. This leads to a situation where complaining does not improve the situation but worsens it. Indeed, according to the project's partners and experts, there is a tendency of retaliation after visits.

Moreover, based on the information that was gathered, we can assert that children prefer resorting to informal complaint mechanisms.

Another important point is that complaints have to be distinguished from requests. Indeed, in practice children resort to communication processes to ask for information and do not automatically seek to complain against a violation of their fundamental rights. Therefore, it is important to bear in mind that everything should not be put at the same level.

Finally the partners unanimously stressed the fact that a definition of a child-sensitive complaint mechanism should be set up in order to really comply with children's needs and best interest.

¹⁰ Among many others can be mentioned: the Committee on the Rights of the Child (2007) General Comment n°10, § 89; the UN 1990 Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), §§75-76; the 2008 European Rules for juvenile offenders subject to sanctions and measures (the European Rules), §121; the 9th General Report (1998) on the CPT's activities covering the period 1 January to 31 December 1998, §36.

2.1 INTERNATIONAL COMPLAINT MECHANISMS

In the same spirit as the previous section on monitoring mechanisms, this section outlines most of the international complaint mechanisms:

a) The Individual Complaint Mechanism under CAT

The Convention against Torture includes an individual complaint mechanism for the cases in which one of the provisions of the Convention has been violated. If necessary, the Committee may take temporary measures to prevent a violation. Later on, the Committee, based on the information received from the individual and from the State concerned, adopts a decision on the complaint.

b) The third Optional Protocol to the Convention on the Rights of the Child (CRC-OPIC)¹¹

A child (or his/her representative) may lodge a complaint before the CRC once all available domestic remedies have been exhausted and if his/her request is admissible; however, Article 7 § 5 of the Protocol states that: *"this shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief"*. Considering the length of the proceedings before the domestic jurisdictions and the minor's legal capacity, it is legitimate to expect certain flexibility on behalf of the Committee in this respect¹².

c) The European Court of Human Rights

According to Article 34 of the European Convention on Human Rights, any individual (including minors) may lodge a complaint before the ECHR to report a violation of his/her fundamental rights as stated in the convention thereof. Nevertheless, it is worth pointing out the length of the proceedings and the admissibility criteria among which the exhaustion of domestic remedies that may prove to be an obstacle to the accessibility of justice for minors (especially when it comes to deal with their legal incapacity). Even though the Convention may be invoked in front of the domestic courts in most of the States, and that the exhaustion of domestic remedies is not always automatically applicable¹³, this does not overcome the legal incapacity of the minor which will not always be efficiently represented.

¹¹ Three out of the fourteen States partners ratified the CRC-OP3 namely, Belgium, Spain and Ireland.

¹² See the Rules of Procedure under the Optional Protocol to the Convention on the Rights of the Child on communications procedures, CRC/C/62/3, 16 April 2013.

¹³ See ECHR, *Akdivar and Others v. Turkey*, 16/09/1996, application n° 21893/93, § 69. The Court recognized that *"the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case"*.

2.2 NATIONAL COMPLAINT MECHANISMS

There are different types of complaint mechanisms at the domestic level. Formal complaint mechanisms have to be distinguished from informal ones. The distinction also has to be made between internal and external complaint mechanisms.

2.2.1 Informal complaint mechanisms

a) Directors, staff members of institutions

In most of the countries where the research has been conducted, directors' mandate to treat complaints is provided by texts (generally the institutions' internal rules). The Director's predominant role as a complaint mechanism is evidenced by the children's inclination to resort to informal mechanisms.

The evidence demonstrates that the majority of complaints are addressed to the socio-medical staff, educators during informal interviews.

2.2.2 Formal complaint mechanisms

a) Ombudsperson(s)

Children who want to report a violation of their fundamental rights or request any information about their rights can contact the competent Ombudsperson through many ways (mail, letter, website, telephone...).

The Ombudsperson may have different mandate from one State to another (i.e. National Reports). It is an external complaint mechanism.

b) Prison Committees, Mental Health Commissions, Disciplinary Commissions, Complaints Commission

The function of a prison Committee is generally to assist the prison in the organisation of prison work, including assistance in resolving issues related to the lodging of complaints by the prisoners, study, work and nutrition of prisoners, provision of medical services to prisoners, supervision of prisoners and other issues related to the execution of penalties.

The Mental Health Commission is particularly concerned with the treatment of individuals involuntarily admitted to approved centres for psychiatric treatment. A specific Commission in this respect is significant in order to comply with the special needs of children with psychiatric disorders and to deal with mental health specific matters (physical constraint, medication policy...)

c) Juvenile judges

Children deprived of their liberty may lodge a complaint directly to their delegate judge(s) (juvenile/ administrative judge). Children can complain verbally or in a written form. In most of the countries, they will receive an answer which will be written if their request is in written form. If they do not agree with the solution taken following the investigations they can take the complaint further. The complaints generally deal with the daily life in the institution, conflicts and violence in the group, and the possibility to be released earlier. In most of the partners States juvenile judges have jurisdiction to control the lawfulness of sentence execution and deprivation of liberty measures. They have jurisdiction to deal with detainees' complaints alleging a violation of their fundamental rights or any other appeal against the enforcement of penalties, custodial educational measures and disciplinary sanctions application.

It is worth stressing that, just as lawyers, juvenile judges might be confined to their procedural function. Children tend to exclusively associate the magistrate as the person who took the decision to deprive them of their liberty. It is thus legitimate to carefully qualify the magistrate's input in the complaint process. In practise, the research conducted evidenced a lack of effectiveness, mainly because children tend to favourite informal complaint mechanisms.

D. IMPLEMENTATION IN THE SEVERAL COUNTRIES (EXAMPLES)

There is clear evidence of the need to set up monitoring and complaint mechanisms based on a child-focused approach. The child participation and his/her best interest shall always be a primary consideration.

Child participation

Austria – An encouraging practice is the establishment in October 2014 of an “inmates Parliament” in Gerasdorf Prison which should improve feedback and discussions with staff, but also serve as a tool to motivate positive engagement of inmates for common interests.

Belgium - An interesting practice in the hospitals J. Titeca and Geel consists of a round table conversation (once a week) during the daily meeting where young people are encouraged to discuss a problem that affects the living conditions in the unit.

I. Ombudsperson(s)

It is important to keep in mind that in most of the partner States the Ombudsperson is mandated as monitoring and complaint mechanism at the same time. Complaint processing and monitoring are two very different roles that should be separated and ideally fulfilled by different bodies. Indeed, it seems inappropriate and irrelevant that an organ monitors its own way to deal with complaints. Moreover, having two different and identifiable bodies is a guarantee of effectiveness and efficiency. In practice, the roles get amalgamated often because both roles are endorsed by the same person. Separating both functions is also important because the monitoring team should be able to work with the staff to establish a constructive and trustful relationship. This process becomes complicated when it comes to deal with complaint mechanisms.

a) Inspiring practices

The mandate, independence and resources of the Ombudsperson(s)

Italy - A NPM was recently established in the form of regional Ombudsperson together with a recently established National Ombudsman who is specially appointed for persons deprived of liberty.

Luxembourg – The new health Ombudsperson, SNIMS (“*service national d’information et de médiation dans le domaine de la santé*”), provides an interesting model with a central ombuds-institution as well as with a complaint manager inside big institutions like hospitals.



Latvia - The Latvian Ombudsman has a very broad mandate and significant human resources. He has the right at any time and without a special permit to visit closed-type institutions, to move freely within the territory of the institutions, to visit all premises and to meet in private the persons held in closed-type institutions.

Austria - There is a comprehensive legal framework that endorses the NPM with a monitoring mandate. The NPM is made up of 6 Commissions within the Ombudsman office. It has a large budget of more than one million euros per year.

Poland - The Ombudsman is appointed by the Sejm (lower house) with the consent of the Senate for a term of office of 5 years (one re-election is possible). He is thus only accountable to the Parliament.

The Netherlands - The National Ombudsman is an independent body with a constitutional legal basis. The National Ombudsman is appointed by the Parliament for a period of six years and it is supported by an Institution comprising about 170 staff members. The Children's Ombudsman office is part of the National Ombudsman's office.;

Spain - The Ombudsman has a status of independence, which is favoured by: the procedure for appointment (favourable agreement of 3/5 of the parliamentarians) supported by a majority agreement by the various political groups; the establishment of a different specific mandate extending beyond the expected for the parliamentary term (5 years); the inviolability of persons in positions and the incompatibility regimen about political or trade union affiliation, prosecutor or judgment function, or anyone administrative, functional, public or private professional labour.

Cooperation

Romania - The Ombudsman and UNICEF Romania signed a Memorandum of understanding for the period 2014-2017, in order to contribute to the expansion and strengthening of the child rights in Romania. Through this Memorandum, UNICEF will support the growth of the Ombudsman institution ability in order to function as an effective mechanism for independent monitoring of child rights, namely to identify, analyse and report violations of these rights, and to follow the steps that are taken in this regard.

Luxembourg - The CELPL (NPM) requires to be informed of each solitary confinement issued by the CSEE (socio-educational centres, disciplinary home and school) within 24h; the CSEE shall provide the aforementioned information: name, reason of the disciplinary measure, the penalty, etc. In this case, the Ombudsman can send a control team and interview the minor at any moment.

Accessibility

Belgium - The Community Ombudsmen for Children (DGDE and KRC) are often contacted to treat complaints. They can be contacted through many ways (letter, mail, phone...free of charges). Most of the time they conduct visits because they were alerted through complaints about non-respect of the rights of the child in any particular place.

France - Complaints can be referred to the DDD (*Défenseur des droits*) through direct referral by the person concerned including minors, but also by the legal beneficiaries of a person whose rights and freedoms have been infringed upon, by members of the National Assembly and the Senate, as well as elected French representatives at the European Parliament; by the European Mediator; by foreign counterparts of the Defender of Rights, and, in certain cases, particularly for children, by associations. The DDD may also decide to intervene on his own initiative, through its self-referral powers. Children can directly refer their case to the DDD, without having to go through an intermediary; legal representatives and competent authorities will be informed of this referral, except in the case it's not the best interests of the child.

Estonia - Children at school have in principle many opportunities to complain. First, the child ombudsman office persons inform children about this opportunity. Also the teacher of civics studies (in Estonian: kodanikuõpetus) informs children about human rights: this means children should know about their rights. However, they are sometimes not aware that they are not satisfied.

Safety

Luxembourg - The anonymity for children who complain to the ombudsperson has significantly improved, the amount of time children can use the phone has increased, now they have time to speak to the ombudsman's office additionally to the time they have to speak with their parents.

Follow-up

Estonia - After OPCAT monitoring when the report was published, the ombudsman's advisors came back to school and gave personal feedback to pupils and staff members. The only problem is that this kind of OPCAT monitoring happen only once in three years. It would be necessary to have personal contact between the ombudsman office advisors and children in closed institutions.

Spain - There is full transparency, reporting the work done annually both to Parliament and to the public, through the publication of annual reports as well as punctual and specific reports on the subjects of study in the performance of its functions. Access to this information is free and public. In addition, the Ombudsman appears annually in ordinary session in Parliament for the reading of the annual report summary of their work.

Belgium – The Ombudsman of the French-speaking Community and his Flemish counterpart published several reports related to the respect of the fundamental rights of children deprived of liberty (the 2012 “Report on the solitary confinement of children”; “youth and law enforcement recommendations for an appeasement”; “What does the future hold for juveniles who were transferred to an adult jurisdiction” ...). Moreover, the Ombudspersons’ activity reports are generally presented to the parliamentarians and subject to debates.

Latvia – The Latvian Ombudsman make recommendations that are issued to the competent institutions following multiple visits of similar closed-type facilities. He works with the competent institutions on the introduction of amendments to the normative regulations.

b) Main obstacles/ Difficulties

Mandate, independence and resources of the Ombudsperson(s)

Austria - There is a lack of formal status of the Ombudsman’s independence.

Ireland - The Irish partners pointed out that a potential lack of independence within the complaint mechanisms and the impact that even a perceived lack of independence may have on a young person’s ability and willingness to lodge a complaint if necessary is an undeniable obstacle to the effectiveness of complaint mechanisms.

Belgium – The current system does not yet fully guarantee the appearance of independence of the DGDE who is nominated by the executive branch of the French-speaking Community and can therefore be subject to political pressure.

Safety

The United Kingdom - The perceived inadequacy and lack of confidence in the prison and probation Ombudsman (PPO) is an obstacle that prevents children from complaining.

Accessibility of the complaint mechanism

Romania - It is also important to note that the complaint mechanisms for children who serve their term in prison or are on remand in prison or in an arrest house, do not differ from the possibilities available for the adults. While adults have more skills of writing complaints and share such experiences with each other, and help each other to write the complaints, children do not have such peer support. Therefore complaints filed by children are rather rare.

Luxembourg – The possibility to complain to the ORK and/or to CELPL/ombudsperson was unknown to the staff. According to the head of the CELPL, children are not informed through written document about the possibility to complain and the existence of formal and informal complaint mechanisms.

Effectiveness of the complaint treatment

Estonia - As we learned from the expert interviews, children seldom file complaints to the Ombudsman. The head of Children's Rights Department of the Ombudsman office confirmed that they do not receive complaints from prison that could be investigated. The ombudsman office receives 8-10 complaint letters yearly, but very rarely from prison.

II. Juvenile judges

a) Inspiring practices

As above mentioned the juvenile judges have a monitoring role in most of the partner States. This function will be exercised in different ways (including a power to respond to complaints).

Mandate/competences

Italy - The surveillance judge of the Juvenile Court is a specialized judge whose relevant functions are: to monitor the execution of the criminal and security measures in order to guarantee the legality of the execution of any form of custody; to supervise the organisation of the juvenile detention centre (IPM) with regard to custody and treatment programs; and to issue provisions addressed at eliminating possible violations of children's rights in detention.

Serbia - In addition to the NPM, and in relation to children deprived of liberty within juvenile justice system, the supervision over enforcement and inspection of enforcement of educational measure is exercised by the Juvenile judge of the Court adjudicating in the first instance. The Juvenile judge and Juvenile Public Prosecutor shall, at least once a year, undertake direct supervision and inspection of enforcement of educational measures.

France - The Sentence Enforcement Judge checks the conditions in which convicted detainees serve their sentence. If needed, he addresses his observations to the competent authorities. He also has an obligation to address to the Department of Justice an annual report on the terms and conditions of sentences.

The Children's Judge, in his criminal prerogatives, also acts as a Sentence Enforcement Judge as well as an Investigating Judge over children in his jurisdiction. In this framework, he has the power to meet with accused children as well as to check the conditions of detention of children. After his visit, he gives his observations to the competent authorities if it appears necessary.

Detainees may request an audience with a magistrate entitled with visiting powers, at which Staff members shall not be present. Magistrates thus hold both visiting and complaint powers. Magistrate's visits may give detainees the occasion to ask for an individual audience with the judge; court hearings may also offer the opportunity to report illegal conditions of detention and if need be initiate a visit. In practice however, visiting powers from magistrates are only scarcely used, due to lack of time and means allocated compelling them to focus on their core competencies.



Italy - According to DPR 448/88 the Surveillance Magistrate should maintain frequent contact with the concerned children and exchanges with the team in charge of them, as well as to ensure his presence in the centres on a regular basis.

Cooperation

Poland - To improve the family judges supervision over facilities for minors, the president of the Circuit Court is obliged to organize once a year a meeting with all supervisors, facilities' directors and their managing bodies.

Luxembourg – Lawyers proposed to organise the following complaint procedure: complaints regarding loss of liberty or other issues like living conditions in closed institutions should be sent to CELPL (NPM) or ORK (Children Ombudsperson). If a minor sends a letter to the judge, he should then transfer the complaint to one of those two bodies. CELPL and ORK should – at a certain stage – launch a monitoring exercise in order to clarify the questions in a neutral way and to protect the anonymity of the plaintiff.

Follow-up

Poland - Family judge's monitoring visits do not have to be announced. After each of them the judge shall draw up a report describing the visit and post-audit recommendations. Facility's director has 14 days to comment on the recommendations. Post – audit meeting can also be arranged. After the deadline to implement recommendations the facility director should report on actions taken.



Spain - Minors have the right to appeal against any decision that has been imposed on them during the execution of the sentence. The appeal shall be presented in writing to the competent juvenile judge or to the director of the institution where they are fulfilling the sentence, who in turn is obliged to communicate it to the judge within one business day. They can also appeal orally directly to the juvenile judge or through the director of the institution who will transfer it within one business day to juvenile judge. The judge shall immediately transfer it to the public prosecutor and, where appropriate, the minor's attorney -if he has not been made aware of the facts-, and resolve it within a maximum period of two days by reasoned order. The minor may appeal the sentence before the higher authority level in court. To decide on the appeal, unless otherwise reasoned judgment by the court, a public hearing will be held, giving direct participation to the minor.

Estonia - Every legal act or procedure of the prison can be subject to complaint procedures, through the challenge procedure (in Estonian: *vaidemenetlus*) and/or the administrative court procedure (in Estonian: *halduskohtumenetlus*). In addition the prisoners can claim moral and non-moral damage under the State Responsibility Act (in Estonian: *riigivastutusmenetlus*). This practice is highly relevant within the scope of a child-friendly justice given that children need to see the outcomes of their complaint and shall be able to get compensation in case of proven violation of his fundamental rights.

Romania - The decision taken by the judge is stronger compared to decisions taken by the director or the disciplinary Commission. Children can lodge a complaint to the judge in charge of the supervision of deprivation of liberty against the measures taken regarding the exercise of rights by the prison administration. If dissatisfied with the solution, he/she may submit a complaint to the local court, whose decision is final. Finally the judge in charge of the supervision of deprivation of liberty has wide jurisdiction, he/she shall: resolve the complaints of the detainees concerning the exercise of the rights provided by the law; about establishing and changing the regimes of enforcement of custodial sentences and educational measures involving deprivation of liberty; concerning disciplinary sanctions. It is also interesting to learn that the delegate judge will register (during his work in institution 1-2 days/week) all the complaints in special book where he will also shortly mention the decisions taken on the complaint. This process is an efficient way to monitor the situation of children's rights in every institution and to implement an effective follow-up of the decisions.

To conclude, the binding power of the judge's decision is an effective safeguard against ill-treatment and children's rights infringement.

b) Main obstacles/ difficulties

The national reports evidenced the fact the juvenile judges' presence in places of deprivation of liberty for minors is neither frequent nor regular and completely depends on their own willingness and commitment. In addition, once on-site, visits are usually carried out upon a specific incident and will only concern one or a specific group of children. The magistrates will not have discussions with all the children. They often focus on a specific case without paying attention to the general detention conditions and regime. This means that they probably will not dwell on other specific details during the visit.

Moreover, it turns out that, most of the time, the increased workload of judges makes their inspection activity more difficult.

Another factor to consider is the institutional nature of this figure which may hinder their required independence to develop such a monitoring function.

Poland - The Report by Helsinki Committee for Human Rights indicates the problem arising from the fact that supervisory bodies spend insufficient time in their visits, particularly judges in institutions, as well as the problem of a lack of specific knowledge of professionals for evaluating all aspects significant for exercising rights of children deprived of liberty in the institutions during inspection visits.

Italy - The Surveillance Magistrate as a monitoring body can be considered not to be extremely successful. It is worth highlighting that besides the control and monitoring role, the magistrate has also judicial administrative competences. As noted by several experts the main factors explaining the weakness of its control activities are first of all the fact that the presence of the magistrate in the institutes is always less frequent and completely depends on his own willingness and commitment. Moreover, given the recent increasing of workload, the inspection activity tends to be left behind. Finally the Surveillance Magistrate is increasingly receiving tasks in the field of alternative measures, what conducts him to directly decide on the detainees' lives, which makes the attribution of the role of rights' guarantor to this figure problematic.



Romania - According to the field research it is necessary to emphasize the fear and lack of confidence among children for making complaints. This is due to the uncomfortable consequences which can come from other juvenile inmates (fear of reprisals) and the possibility to acquire a report on incident following the complaint. The report on incident will bring some disadvantages or punishments for the child. Furthermore, in each institution there are specific/cultural ways of complaining, different of those advertised by the internal regulations. This, coupled with the fact that when judges, prosecutors and lawyers are made aware of the allegations it has been too long since the time of the commission of the offence and children have the tendency to forget past events, which leads to most of the complaints getting filed.



III. Administrative monitoring bodies

(Inspectorates, Directorates, Agencies or other bodies under the authority of Ministries or administrative Departments - Justice, Social Care, Health or Migration, part of the national government)

a) Inspiring practices

Mandate

As above mentioned, these bodies depend on the executive power of the State and, by definition, have a more administrative monitoring mission and are not formally independent.

Estonia - The Estonian Health Board exercises supervision over treatment in psychiatric hospitals and, in the case of communicable diseases, over involuntary treatment. The Board also reviews and resolves applications and requests of patients and other persons.

Independence

The independence of the administrative monitoring body is sometimes provided by a legal basis.

Ireland – The independence of the Irish Inspector of Prisons is guaranteed under the Prison Act 2007. In 2008, the Inspector of Prisons set out a number of principles, standards and working arrangements he intended to adopt for the inspection of prisons.

Information about the possibility to lodge a complaint

Latvia - Detained persons placed in the investigation prison shall be promptly notified by the administration of investigation prison of their rights and obligations in a language they understand (with participation of an interpreter, where appropriate) and inform about the officials available for application with complaints and petitions. The detained person confirms with his/her signature that he/she has familiarized with the above-mentioned information.

In the Cēsis Educational Facility for Juveniles, the internal regulations and other documents are available for minors at their residential block. The facility also provides access to the portal www.likumi.lv where the legal acts of Latvia are available.

Visits

Depending on the regulations establishing the mechanism and its mission, visits may be conducted with or without authorisation and thus carried out by being announced or unannounced.

Italy - The Italian Public Administration may conduct unannounced visits to private residential care facilities in order to verify the conditions of children.

The Netherlands - The Dutch Inspectorate for Youth Care has large powers of investigation and is also free to make unannounced visits.

Belgium - the Directorate for the Coordination of IPPJs carries out *inspections on its own initiative* with regard to general aspects and *spontaneous inspections* in response to a complaint in more specific and targeted areas

On the one hand, some bodies will be required to conduct inspections focusing on the application of the regulations in the visited place to contribute to the improvement of the quality of the services. On the other hand, other bodies will have a more specific mission to check and monitor that the detention and living conditions of the placed children are met.

There are also several types of visits depending on the kind of research that should be conducted (screening, subject-specific /incident-based and follow-up visits). Regardless of its mission, the body will be on-site in the institution to visit – on a regular basis– and will apply a service specific frame of reference in order to carry out its tasks. Most of these bodies have the power to interview directly children and staff members of the visited place.

France - In France the Prison Inspectorate and the Inspectorate of the Judicial Youth protection are working with a list of standardized points of control.

Ireland - The Irish Health Information and Quality Authority is competent to visit, monitor and inspect Children Detention School and Special Care Units. Those inspections are done at least every 12 months (on a regular basis). It can lead to private interviews with the child, with his/her consent, or staff-member.



Follow-up of the visit

A post-visit report will then be prepared. This report will contain recommendations in connection with the visit conducted and will be communicated both to the hierarchical authority of the body and to the management-team of the visited institution that must respond within a reasonable time. The adversarial procedure rules apply here.

France - The adversarial procedure rules is applied in France by the Inspectorate of the Judicial Youth Protection when editing its post-visit reports.

Follow-up visits are generally organized by the monitoring body and dedicated to monitor how recommendations formulated on a previous visit have been implemented. The inspections lead to reflection and the recommendations are taken seriously by the visited places. Improvements based on these recommendations often take place.

France - A follow-up procedure is organized six months later by the Prison Inspectorate with the director of the place concerned and the interregional direction, through an exchange of correspondence.

Serbia - The Serbian Directorate for Execution of Criminal Sanctions has a satisfying method, the follow-up inspection also takes place six months after.

Cooperation

Informal or formal cooperation between the bodies promotes the harmonization of practices. These common missions encourage the pooling of powers and sharing of respective expertise.

France – There are common inspection missions organized with different bodies, whether planned in the annual program of visits or organized on an ad hoc basis.

b) Main obstacles/difficulties

The main and most frequently encountered obstacle is the lack of independence of those bodies. The question of the definition of the concept of independence should be at the heart of this debate.

Does the body lack independence in relation to the management of the visited institution or towards its hierarchical authority? The evidence demonstrates that there is a lack of independence when it has been proven that there is a direct link between the monitoring body and the monitored facility.

As stated above, these bodies depend on the Executive power at the national level or local level. Their financing, their powers and freedom of action are therefore limited by the instructions received from above and the framework to respect. They are not free to establish their own agenda. Furthermore, the standards and methodologies used are often old and outdated and not completely adapted to a young audience.

Finally, the reports' publication is more restrictive than the public dissemination of the NPM's reports. It is generally limited to the institution's management-team and to the hierarchy (or, upon request, to a larger public). The value of these reports and recommendations could be diminished because of this.

Effectiveness of the treatment of complaints

Some of these bodies also endorse a role of complaint mechanism. The national reports highlighted the difficulties linked to the effectiveness in the complaints' treatment.

Belgium – Regarding the Complaint Commission and the Permanent Secretariat (in the field of Migration), the Belgium research evidenced the fact that the Secretariat is not obliged to organize hotlines within immigrant detention centres. Currently, its multiple missions -administrative tasks, examination of the admissibility, conciliation procedure, compiling of a file and possible transmission of the file to the Commission- are performed by a single person. Moreover, practice shows that the effectiveness of the right to lodge a complaint leaves much to be desired. Indeed, the high threshold with regards to the admissibility criteria and the length of the procedure make this complaint mechanism completely ineffective and inefficient.

Lack of accessibility and confidentiality of the complaint mechanism

Latvia – In the Social Correctional Education Institution (Naukšēni) the administration has established no mechanism for filing anonymous complaints with the institutions responsible for protection of the rights of children. Telephone calls from the establishment are restricted, and the wards are not allowed to keep cell phones. The child has to specify the telephone number before making a call, so he or she can make no calls to the rights of children protection authority without notifying the administration of SKII “Naukšēni”. Restricted access to the Internet is a form of disciplining.

Follow-up/registration of complaints

Latvia - Complaints of children in case of closed-type facilities may be left without registration or handling. The practice shows that most of oral complaints are not registered and executed in writing, in breach of the Administrative Procedure Law.

IV. Prison and Police Committees, Mental Health Commission, Disciplinary Commissions

a) Inspiring practices

The function of the prison visiting Committees is to visit, at frequent intervals, at any time and without prior permission, the prison to which they are appointed and hear any complaints which any prisoner may have. They report to the competent Minister on any abuses observed or found by them in the prison and any repairs which they think may be urgently needed.

Mandate

Ireland – a Prison Visiting Committee is appointed to each prison, including places where children are detained, under the Prisons (Visiting Committees) Act 1925.115 This Committee visits the facility on a regular basis, and reports any abuses or urgent repairs needed to the Minister. They are also empowered under s.3 of the legislation to hear complaints from prisoners.

Estonia - The function of an Estonian prison Committee is to assist the prison in the organisation of prison work, including assistance in resolving issues related to the lodging, study, work and alimentation of prisoners, provision of medical services to prisoners, supervision of prisoners and other issues related to the execution of penalties.

Accessibility of information

Ireland - The Mental Health Commission has outlined the complaints procedure specifically for young people in a child-friendly way, through a Toolkit provided at www.headspaceireland.ie.

Visits

The visiting Committee generally has free access, either collectively or individually, to every part of the prison. During the inspections, the visiting Committees focus on issues such as the quality of accommodation and the catering, medical, educational and welfare services as well as recreational facilities.

Italy - The Italian National Commission for the promotion and protection of human rights and the territorial guarantors for the Rights of Persons Deprived of Personal Liberty can conduct visits, without a need for authorisation or warning and in security conditions, to penitentiary institutions, judiciary psychiatric hospitals, penal institutions, communities for minors and institutions that are part of the Ministry of Justice for the execution of privative measures of personal liberty, guaranteeing in any case the privacy of the interview.

The visits are conducted on a regular basis (e.g. In Belgium once a month). They have a monitoring and advisory role. This is the main reason why commissioners have direct contact with the detainees.

Follow-up of the visit

These bodies have a reporting authority. Besides their periodic reports, they have the opportunity to publish reports on the results of their inspections. The institutions usually respond constructively to the visits of these bodies. They are starting to be seen as a figure of help to resolve deficiencies and possible problems. The exercise of their tasks contributes to improve the functioning of the institutions. The members of the Committees always do their best to try and bring about a solution to important incidents, in consultation with management, headquarters and the administrative authority.

The Committees also submit annual reports to the Minister which are available to the general public, except for certain restrictions on the release of information of a personal nature.

A child-friendly complaint procedure

The Netherlands – In Closed institution for youth care, the special complaints procedure provides that if a child is not able to file a complaint in the Dutch language, the chairman of the complaints committee is responsible for the appointment of an interpreter. The child is allowed access to a confidant (vertrouwenspersoon). The complaint is handled by the complaints committee which – at minimum - consists of the following persons: a lawyer, a qualified behavioural scientist and a doctor. None of the persons in the complaints committee are or have been working at the closed institution for youth care. The complaints committee is required to take a decision on the complaint as soon as possible, but at least within a period of four weeks. The decision of this committee is binding and might be subject of appeal. The complaint committee may also reward compensation.



The United Kingdom – In Youth Offender Institution (YOI) the complaint board is to respond to any complaint made by a child within 5 or ten working days. If the child is not satisfied with the outcome, the child may appeal to a more senior person within the prison's management structure. All children should be provided with a written response to their complaint.

b) Obstacles / Difficulties

Certain legal provisions may be in conflict and may negatively influence the effectiveness and the independent nature of these bodies. The bodies also significantly lack the human, financial and material resources necessary for their operations (no budget for supplies, absence of compensation and the costs that would be linked to training.) This also has a huge impact on the turnover of the consultants and commissioners.

These obstacles do not facilitate the cooperation/coordination of these bodies with other monitoring bodies.

Moreover, the lack of independence of such bodies might dissuade detainees from lodging a complaint.

Lack of independence

Latvia - If a police officer has acted in bad faith or otherwise infringed a person's rights, a complaint regarding the action or behavior of a police officer may be filed with the Internal Security Office of the State Police. The Internal Security Office is entrusted with the key task of strengthening the official discipline and legitimacy in the structural units of the State Police. The Office is currently subordinated directly to the Chief of the State Police. From 01.11.2015 onwards, the Office shall be a governmental authority supervised by the Minister of Justice.

The Netherlands - The independence of border detention centres' complaints committee is not explicitly guaranteed in the applicable legislation. The complaints committee established for children involuntarily residing in a psychiatric centre also lacks independence guarantees. Indeed, even though the complaints committee does have an independent chairman, the remaining members (the committee must have at least three members) are not necessarily independent.

V. Non-Governmental Organisations

a) Inspiring practices

Mandate

It can be assessed from the research conducted by the partners on the ground that some NGOs have a broad mandate.

Estonia - The Prison Committees always have representatives of NGOs among their members, providing possibility for different NGOs working with children to visit prisons on regular basis, for example is Estonian Union of Child Welfare.

Italy – The association Antigone is authorized to visit all the places of detention for minors.

There is clear evidence that NGOs can play a substantial role in the complaint process.

Italy - Complaints can be presented by minors own accord *motu proprio* by direct referral to the Ombudsman, or through their lawyer or director of the Centre where the minor is serving his/her sentence, or even through an NGO.

Visits

Another important issue is the outcome of such visits. Indeed, NGOs and associations play the role of observer and bring transparency to the monitoring process. They use their privileged position, internally, to give information, guide, advise and even play the role of conciliator.

Italy - As a result of the NGO Antigone's visit, a first report on the conditions of all the Italian juvenile detention centres was published in 2011 and a second one in 2013. The association has also designed a tool with specific criteria on how to conduct visits including juvenile detention centres. This working methodology is useful not only for national and local actors that safeguard the rights of people deprived of personal liberty such as the guarantors, but also for transnational organisations. After the visit, the visiting team elaborates a reporting sheet of the institute that is published in the website of the association.

Cooperation/coordination

Furthermore, it is worth highlighting the need for NGOs to coordinate their action. Indeed, the overlap of visits and the lack of information sharing may impede the monitoring effectiveness. Coordination of NGOs mission should be encouraged.

Belgium - A group of accredited NGOs is mandated by the Immigration Office (under the authority of the Minister of Interior Affairs) to visit the closed centres for immigrants. These NGOs have the mission to ensure that the detainees in closed centres can avail themselves of legal aid (make sure that the person is represented by a lawyer, work on the possibilities of appeal against a decision or against detention) and that their rights are respected (conditions of detention, medical care, disciplinary regime). The TRANSIT group coordinates the activities of these NGOs via the exchange of information and cooperation.

b) Main obstacles/Difficulties

The main findings about the NGOs work as monitoring mechanism is that their mandate is not always provided by law.

Estonia - There are some NGOs that have opportunity to visit special schools or health care institutions, but they have no legal basis and mandate to get in without preliminary permission by the head of the institution. The head of Children's Department of Ombudsman's Office was rather pessimistic about possibility to giving separate mandate to a non-profit organisation for monitoring prisons.

Belgium - NGOs will also be limited in their fields of action because they can only meet with persons whose name is reported on a well-defined prior list.

A concerning assessment is also that the accreditations are given on a discretionary ground which narrows the NGOs monitoring's spectrum. Indeed, it is common to find that the monitored establishment decides by which organisation it might be controlled.

Belgium – It is up to the “*Office des Etrangers*” to deliver accreditation to the NGOs that would like to visit an immigrant detention centre.

Finally, it appears that their monitoring mission is often hampered by the fear from seeing their accreditation withdrawn. That is to say that NGOs are not always able to openly report all their findings following the visits.

VI. Lawyer(s)

a) Inspiring practices

Mandate

The right to legal representation of the child provides important safeguards. The lawyer is required to assist the child at all stages of the juvenile justice procedure and also ensure the proper implementation of the deprivation of liberty, to which his/her client has been sentenced. To this extent, the lawyer has a role of external monitoring body.

Visits

The legal representative has the right to conduct visits in all places of deprivation of liberty within the limits of the timetable that will be imposed by each institution. However, the child has the right to contact his/her lawyer at any time. Lawyers can gain access to the information to implement this control. When alerted of certain facts, the lawyer can contact the appropriate body on behalf of his/her client (directors of the institution, competent authority, juvenile judge, prosecutors, police...).

b) Obstacles/ Difficulties

Unfortunately, often the lawyer may not be available. In cases involving minors, the lawyer will often be representing the child free of charge. If they are not adequately paid they may not spend the necessary time to ensure the respect of the rights of their clients, deprived of liberty, especially if they are placed in a remote place.

Almost all of the minors involved in this consultation maintained that they do not turn to their lawyer in case of infringement of their rights during their stay in places of deprivation of liberty. To them, a lawyer holds a purely procedural role; he is hardly ever reachable and/or rather unavailable to his/her clients (on the phone or on site - "few move and come out") except for scheduled hearings and their preparation. For some children *"this would be pointless to contact the lawyer."* Therefore, while they should act on behalf of the child who has been deprived of liberty and they could perform monitoring tasks within the framework of their clients' deprivation of liberty, they often fail, for the reasons outlined to play a key role in the observance of children's rights.

E. EFFECTIVENESS OF THE MECHANISMS

1 GENERAL CRITERIA

The main criteria we identified through this study for assessing the effectiveness of the mechanisms of monitoring and complaint within the partner States are:

1.1 INDEPENDENCE

The concept of independence is a broad concept which must be interpreted according to the nature and the mission of the concerned body. The body will need to be independent either from the authority on which it depends (namely regarding human and financial resources, the process of election, its composition, the power of its recommendations and the control it has over the publication of its reports) or independent from the monitored institution.

It is worth ensuring the independence¹⁴ of the mechanism in its election, its composition (qualified and multidisciplinary team), its resources, its powers and with regards to the places it may visit. It is further necessary to guarantee such independence through legal status. Finally, the partners' reports highlighted the fact that it is better to place the complaint or monitoring body/team under the authority of the Parliament rather than under the authority of the administrative or executive body, while looking for autonomy and impartiality.

1.2 INFORMATION

The dissemination of information has to be the cornerstone of the children's rights protection system. Children should be informed about the existence of their rights and the remedies available to them. To do so, it is relevant and necessary to create a quality oriented process that is managed with transparency and to develop a more child sensitive approach in the administration of the juvenile justice. Key actors should be in regular and frequent contact with minors deprived of their liberty in order to provide such information as well as for maintaining a constructive dialogue with the staff-team in every institution. It is fundamental to spread a culture of the rights of the child in order to prevent any abuse and/or infringement of children's rights.

Detailed information about the institution's internal rules, the existence of monitoring mechanisms and functioning of complaint mechanisms has to be communicated (by written and orally explained) to every child during the intake procedure. It should be provided in a child-friendly language (clear and accessible). Every child should have access to legal assistance and be supported in a child-specific way.

¹⁴ In compliance with the Paris principles.

1.3 TRAINING

The monitoring of places of deprivation of liberty for minors requires constant training and awareness of children's rights realities in order to better lead the supervision in the different institutions and to collect complaints addressed by children in a child-friendly way.

Moreover, the partners unanimously recommended training to improve the knowledge of professionals employed in the institution about the necessity to conduct visits and supervision of conditions and regime of detention. Every actors working in contact with children deprived of liberty should receive proper multidisciplinary training about the rights of the child, in order to be able to better understand the child's best interest and his/her specific needs.

2 MONITORING

2.1 PREPARATION OF THE VISIT

It is fundamental that the monitoring team take into account all up-dated standards and guidelines to conduct the visit. However, also raising awareness of the mechanism among children and making information about the body available in all child and youth institutions appears to be essential.

All partners and experts pointed out the importance of improving the child's participation in the monitoring process. To do so, it is essential to gain children's consent to interview them in private (or focus group) during the visit. It is also important to design a tool with specific criteria on how to conduct visits in a child-friendly way (i.e., ethical Guide etc.).

It is essential to apply the same methodology of monitoring in all the places visited taking into account the specificities of each institution. Establishing rules (regulations) in order to clarify the role of each stakeholder during the visits carried out by independent bodies is also a crucial pre-requisite to obtain effectiveness of the monitoring process.

2.2 VISIT

The various partners noted good practice where the visits were conducted on a frequent and regular basis and when the monitoring team spend time on-site during the visit and give priority to private interviews (or focus group) with children. Some of the partners think that unannounced visits can better contribute to a more truthful representation of the situation. However, other key actors consider that announced visits constitute a better way to maintain trust-building between the monitoring organs and the staff-teams.

Moreover, the findings are that a constant effort needs to be done to effectively involve children as stakeholders in the monitoring process. It is important to maintain a real and constructive dialogue with the staff during the whole monitoring process and ask for more relevant information if needed.

2.3 FOLLOW-UP OF THE VISIT

Clear, readable and accessible reports should be addressed to the institution's director and staff with post-audit recommendations after the visits. Post-audit meetings to evaluate and explain the report if needed also seem to be a good option. Assessing the implementation of the recommendations through the actions taken by the institution is an efficient way to improve the monitoring effectiveness. Finally, it is necessary to refer back to recommendations made in previous reports to be able to assess the effectiveness of the measures implemented in order to better respect the fundamental rights of children deprived of their liberty.

It is vitally important that the reports are widely accessible and published and disseminated where appropriate

Regarding the child participation, the monitoring team should give the children a specific feedback and explanation of the recommendations made.

A good initiative is the creation of a database and tools to assess findings in order to better identify good practices and structural issues and facilitate the cooperation with other institutions (and actors from the civil society).

3 COMPLAINT

3.1 ACCESSIBILITY

Promoting a child-sensitive approach, transparency and facilitating access to justice and law in an accessible (clear and understandable) language to children is the most important factor. A number of international bodies (through their recommendations and/or reports), experts and partners highlighted the need to set up complaint mechanisms from a child-focused approach taking into account children's opinion by effectively implementing the principle of participation (for example, inmates' parliament).

It is important to give children all the tools to facilitate the filing of complaints. A sufficient number of envelopes and stamps shall be provided to children in order to give them the possibility to lodge written complaints at any time. The procedure of complaints has to incorporate the informal processes wherever possible (phone, letter, mail, orally...) and the procedure has to be totally free of charge.

Some children in detention centres have limited writing abilities (especially in health care institutions); therefore, it is necessary to develop mechanisms that give children the opportunity to make oral complaints or using other sign systems (e.g. gesture language, drawings, etc.). All this requires more direct contact with the child. It is essential to ensure that children have access to the addresses and facilities for internal and external complaints.

The surveillance magistrate should maintain frequent contact with detained children and exchanges with the staff in charge of them. The magistrate should also ensure his/her presence in the detention centres on a regular basis to be able to receive complaints.

Finally, more efforts should be made in strengthening informal, easy access mechanisms for complaint and feedback, especially through building trust between staff and children in those institutions.

3.2 SAFETY/TRUST

The confidentiality of complaints (specifically through a confidential postal system) shall be respected without any possible derogation. It is thus obvious that the correspondence with complaint mechanism bodies, juvenile judges and lawyers should not be controlled by the institution before being sent or received by the minor. Reviewing the internal complaint mechanisms with regards to record, confidentiality and transparency is a basic requirement.

Having a clearly identifiable person attached to a complaint mechanism would be useful in encouraging children to complain and to restore their faith in justice.

Another assessment is that efforts have to be made in order to promote children/staff trust. Staff should be trained to support children in structuring their complaints, to assist children during the complaint process and to develop their social skills and capacity to talk about conflicts.

Finally, the need to see clear outcomes when children lodge complaints justifies the necessity to implement automatic notification to the complainant about the following-up of the complaint.

It goes without saying that measures should be automatically implemented to protect children from any form of reprisals or retaliation.

3.3 EFFECTIVENESS

A systematic and ongoing in-service and pre-service training programme on human rights, especially children's rights, for all professional groups working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers and health personnel) is a pre-requisite to prevent children's rights' violations and/or facilitating the fulfilment of a child's right to complain.

The partners' reports also stressed the causal link between the lack of effectiveness of remedies available to children deprived of liberty and the admissibility criteria for lodging a complaint. The main reason for the underreporting of complaints or incidents is often due to the perceived lack of effectiveness of the system. That is the reason why reducing the period of time within which a complaint is to be handled as well as allowing sufficient time for a complaint to be submitted appear to be effective ways to deal with this lack of effectiveness. A lower threshold with regards to admissibility criteria could therefore pave the way to a better access to justice for children (indeed, the fact that a child can only lodge a complaint by writing is in itself an obstacle).

Finally, decisions/resolutions should have more binding power. A potential solution would be to implement a registry for complaints handled by the directors of various institutions and to require directors to report on the registry to the Administration at regular intervals.

F. CONCLUSION

Regardless of the country and the institution where a child may be deprived of his/her freedom, the monitoring of places of deprivation of liberty is an essential and significant mechanism to ensure respect of Children's fundamental rights.

Although there is a plethora of monitoring and complaint bodies, which makes it difficult to compare or to exhaustively list them, this study allows us to highlight indicators of the effectiveness of these mechanisms. Mechanisms work differently and, as mentioned, we cannot compare them; however it is possible to assess that certain working methods and practices are more inspiring than others, as demonstrated throughout this report. Therefore, this report helps us to make the link to the drafting of the practical Guide, as the main outcome of the project.

To conclude, it is hoped that the European Guide will provide professionals with the essential tools needed to carry out their work of monitoring Children's rights behind bars.

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