

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions

*(Adopted by the Committee of Ministers on 16 March 2005
at the 919th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its member states, *inter alia*, by promoting the adoption of common rules;

Recalling the work of the Council of Europe's programme for children and its childhood policies project, in particular the recommendations from the Conference on "Children's Rights and Childhood Policies in Europe: New Approaches?", held in Leipzig in 1996, the Parliamentary Assembly's Recommendations 1286 (1996) on a European strategy for children, 1551 (2002) on building a 21st century society with and for children: follow-up to the European strategy for children (Recommendation 1286 (1996)), and 1601 (2003) on improving the lot of abandoned children in institutions;

Reaffirming the legal texts referring to the situation of children living in residential institutions in general, and in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5); the United Nations Convention on the Rights of the Child; the European Social Charter (ETS No. 35) and the Revised European Social Charter (ETS No. 163); the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126); the European Convention on the Exercise of Children's Rights (ETS No. 160) and the Convention on Contact concerning Children (ETS No. 192);

Taking into account the Resolutions and Recommendations of the Committee of Ministers: Resolution No. R (77) 33 on the placement of children, and Recommendation No. R (79) 17 concerning the protection of children against ill-treatment, Recommendation No. R (84) 4 on parental responsibilities, Recommendation No. R (87) 6 on foster families, Recommendation No. R (87) 20 on social reactions to juvenile delinquency, Recommendation No. R (94) 14 on coherent and integrated family policies, Recommendation No. R (98) 8 on children's participation in family and social life, Recommendation Rec(2001)16 on the protection of children against sexual exploitation, Recommendation Rec(2003)19 on improving access to social rights and Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;

Bearing in mind the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Convention on the Rights of the Child according to which the placement of children should be avoided wherever feasible by means of preventive measures;

Aware that, despite preventive measures, some children will still need to be placed outside their family;

Considering that the type of placement must primarily take account of the needs and best interests of the child and, where appropriate, his or her personal views on the matter; due weight should be given to these views in accordance with the child's age and his or her degree of maturity;

Anxious that all children who are placed outside their families, and particularly those placed in institutions, should grow in dignity, in the best possible conditions, without being marginalised either during their childhood or in adulthood, and that they should experience no obstacles to becoming fully-fledged citizens in European societies,

Recommends that governments of member states:

1. adopt such legislative and other measures as may be necessary, including national guidelines and action plans, to guarantee that the principles and quality standards set out in the Appendix to this Recommendation are complied with, with a view to achieving full implementation of the rights of children living in residential institutions, irrespective of the reasons for and the nature of the placement;
2. ensure, by appropriate means and action, a wide dissemination of this Recommendation to children and other relevant persons and bodies.

Appendix to Recommendation Rec(2005)5

Basic principles

- The family is the natural environment for the growth and well-being of the child and the parents have the primary responsibility for the upbringing and development of the child;
- preventive measures of support for children and families in accordance with their special needs should be provided as far as possible;
- the placement of a child should remain the exception and have as the primary objective the best interests of the child and his or her successful social integration or re-integration as soon as possible; the placement must guarantee full enjoyment of the child's fundamental rights ;
- the placement should not be longer than necessary and should be subject to periodic review with regard to the child's best interests that should be the primary consideration during his or her placement; the parents should be supported as much as possible with a view to harmoniously reintegrating the child in the family and society;
- a child leaving care should be entitled to an assessment of his or her needs and appropriate after-care support in accordance with the aim to ensure the re-integration of the child in the family and society;
- the decision taken about the placement of a child and the placement itself should not be subject to discrimination on the basis of gender, race, colour, social, ethnic or national origin, expressed opinions, language, property, religion, disability, birth or any other status of the child and/or his or her parents;
- the procedure, organisation and individual care plan of the placement, including a periodic review of the placement, shall guarantee the rights of the child, notably the child's right to be heard; due weight should be given to these views in accordance with the child's age and his or her degree of maturity;
- any measures of control and discipline which may be used in residential institutions, including those with the aim of preventing self-inflicted harm or injury to others, should be based on public regulations and approved standards;
- the family of the child should, if possible, be involved in the planning and organisation of the child's placement;
- when the return of the child to his or her own family is not possible, other means of care or the continuation of the placement should be envisaged, taking into account the child's wishes and the continuity in his or her life path and his or her fulfilment and own needs.

Specific rights for children living in residential institutions

To ensure the respect for these basic principles and fundamental rights of the child, the following specific rights of children living in residential institutions should be recognised:

- the right to be placed only to meet needs that have been established as imperative on the basis of a multidisciplinary assessment, and to have the placement periodically reviewed; in such reviews, alternatives should be sought and the child's views taken into account;

- the right to maintain regular contact with the child's family and other significant people; such contact may be restricted or excluded only where necessary in the best interests of the child;
- the right for siblings, whenever possible, to stay together or maintain regular contact;
- the right to an identity;
- the right to respect of the child's ethnic, religious, cultural, social and linguistic background;
- the right to privacy, including access to a person they trust and a competent body for confidential advice on their rights;
- the right to good quality health care adapted to the needs and well-being of the individual child;
- the right to respect for the child's human dignity and physical integrity; in particular, the right to conditions of human and non-degrading treatment and a non-violent upbringing, including the protection against corporal punishment and all forms of abuse;
- the right to equal opportunities;
- the right to have access to all types of education, vocational guidance and training, under the same conditions as for all other children;
- the right to be prepared for active and responsible citizenship through play, sport, cultural activity, informal education and increasing responsibilities;
- the right to participate in decision-making processes concerning the child and the living conditions in the institution;
- the right to be informed about children's rights and the rules of the residential institution in a child-friendly way;
- the right to make complaints to an identifiable, impartial and independent body in order to assert children's fundamental rights.

Guidelines and quality standards

To ensure the implementation of these principles and rights, the following guidelines and standards should be taken into account:

- when circumstances allow, a placement should be selected which is as close as possible to the child's environment and organised to allow parents to exercise their responsibilities and to maintain parent-child contact on a regular basis;
- a small family-style living unit should be provided;
- priority should be given to the physical and mental health of the child and his or her full, harmonious development as the essential conditions for the success of the care plan;
- an individual care plan should be drawn up which is based on both the development of the child's capacities and abilities and respect for his or her autonomy, as well as on maintaining contacts with the outside world and preparation for living outside the institution in the future;
- conditions that allow continuity of the educational and proper emotional relationship between staff and the children, notably through the stability of the staff (continuous presence, avoiding staff transfers) are preferable;

- an internal organisation of the institution should be foreseen, based on:
 - the quality and stability of living units;
 - mixed living units, when this is in the best interests of the child;
 - high professional standards of the staff, benefiting from in-service training;
 - adequate salaries for the staff;
 - stability of staff and a sufficient number of staff members;
 - diversified staff, particularly in terms of gender;
 - multidisciplinary teamwork and other means of support, including supervision;
 - effective child-centred use of available resources;
 - means and specific training to develop appropriate cooperation with the child's parents;
 - codes of ethics, describing the standards of practice that should be consistent with the United Nations Convention on the Rights of the Child;
- all residential institutions should be accredited and registered with the competent public authorities on the basis of regulations and national minimum standards of care;
- on the basis of these standards, an efficient system of monitoring and external control of residential institutions should be ensured;
- relevant statistical data should be collected and analysed, and research for the purposes of efficient monitoring should be supported;
- any infringements of the rights of children living in residential institution should be sanctioned in conformity with appropriate and effective procedures;
- it should be recognised that apart from public institutions, non-governmental organisations (NGOs), religious organisations and other private bodies may play an important role concerning children living in residential institutions; this role should be defined by member states' governments. Involving non-governmental bodies should not release member states from their obligations towards children in residential institutions that have been enshrined in this Recommendation, concerning in particular the establishment of appropriate standards, systems of accreditation and inspection by competent bodies.