European Commission

11th European Forum on the rights of the child – Side event

Pathways – the vulnerabilities of children concerned by deprivation of liberty

6-7 November 2017

REPORT

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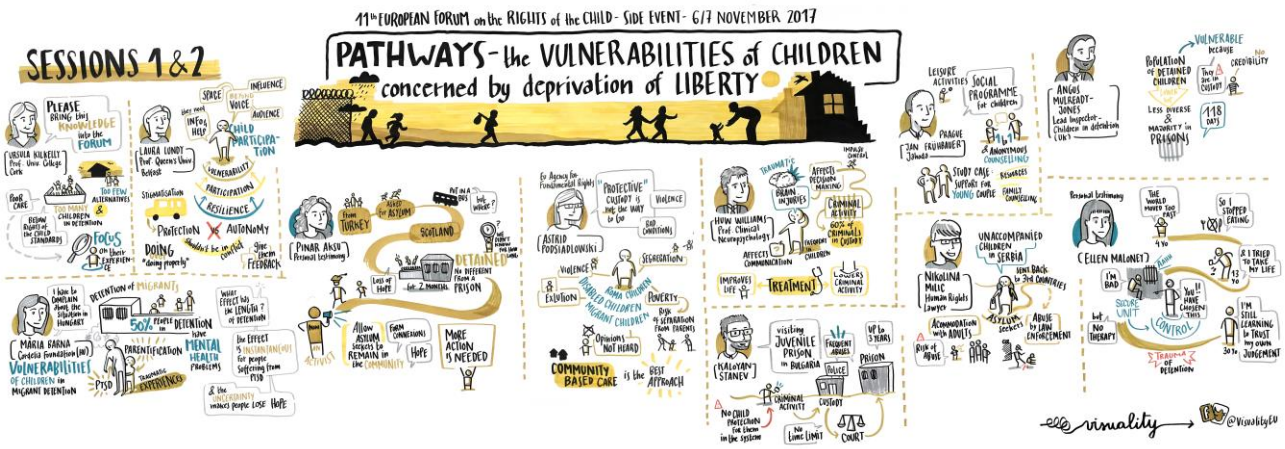
Introduction



The side event was chaired by **Margaret Tuite,** Commission Coordinator for the rights of the child, DG Justice and Consumers, and co-chaired by **Ursula Kilkelly,** Professor of Law at University College Cork, and Chair of the Board of Management at Oberstown Children Detention School, Ireland.

See and hear the discussion on Day 1(afternoon of 6 November) here and on Day 2 (morning of 7 November) here.

In her opening remarks, **Margaret Tuite** welcomed participants and thanked **Ursula Kilkelly** for accepting to co-chair the event. She drew participants' attention to the Forum General background paper and annexes (background reading, data on children deprived of their liberty, international standards on deprivation of liberty of children, and quotes and drawings by children on deprivation of liberty). She said that the aim of the side event was to raise awareness of the situation of children who are affected by deprivation of liberty and their circumstances before, during and after deprivation of liberty. The 170 side event participants could then act as envoys to the Forum and reflect the discussions in the Forum.

Ursula Kilkelly welcomed the considerable expertise and knowledge in the room and noted that this was the 11th European Forum on the rights of the child, firmly established as the leading European event on the rights of the child. She said that the Forum was an important platform where those who are in practice, academia and policy positions, NGOs and government, right across the European Union came together to talk about matters of importance relating to children's rights. The choice of topic was timely, not least because of the momentum building around this important subject internationally.

Professor Kilkelly introduced the topic and stated that children are deprived of their liberty in too high numbers, too frequently and there are too few alternatives to detention. Noting that a significant amount is already known about deprivation of liberty, she outlined some key facts. In relation to children under 18 years, children are deprived of their liberty for various reasons in the justice system as a punishment, in the care system arguably for their own protection, for health reasons including mental health difficulties, for reasons of disability and the latest ground is related to migration. Children are detained in various places and settings. They are detained in child and youth detention centres, in facilities that can provide them with specialist care or healthcare, in educational settings.

They are detained in adult facilities too, whether it is adult prison or psychiatric services. In the context of migration, children may be detained alone or with their families, but in ever increasing numbers. In some cases, clearly specialist care and therapy and education and health is available to children who are deprived of their liberty, but too frequently, the care and treatment that children receive when deprived of their liberty is poor and it falls below children's rights standards that are set out in the multiple international instruments. In the Havana Rules, in the Council of Europe Guidelines on child friendly justice, in the United Nations Convention on the rights of the child, in General comment No 10 (2007) of the UN Committee on the rights of the child on children's rights in juvenile justice and the forthcoming (*post-meeting note: published 16 November 2017*) Joint General Comments of the UN Committee on the protection of the rights of all migrant workers and their families and the UN Committee on the rights of the child No 3/22 and 4/23 on the human rights of children in the context of international migration.

She said that children also struggle to have their **voices heard**, to have any visibility and also struggle to have accountability for their poor treatment. The difficulties with the protection of children, and respect for children's rights in detention, is at least part of the reason why, under the Convention on the rights of the child, detention is a measure of last resort. Given the challenges in ensuring and promoting child rights-compliant deprivation of liberty, detention must be a measure of last resort. It really must be limited to those cases where there is simply no other alternative. Even if we do it well, protecting children's rights in detention will only really ever take us so far and that 'last resort' concept is really crucial. In that context, the focus of the event is on alternatives to detention or alternative care, prevention and early intervention. This focus on alternatives is hugely important, as is the focus on broader issues of poverty and disadvantage, and, also critically, the recognition that it is through discrimination and disadvantage that many young people end up being deprived of their liberty.

It is only with that **holistic focus on children's backgrounds and supportive measures** that we can help to reduce both the extent of the detention of children and the poor treatment they receive in detention. In terms of the focus of the side event, the important thing is that we try as much as possible to focus on the perspectives and experiences and particular circumstances of children deprived of their liberty, for example acknowledging that the young people we are talking about are often extremely poor, they often come with poor health and poor educational backgrounds. They have often experienced loss, they have often experienced violence, and they have very often acute and complex needs which are worthy of state attention. Discrimination is often a factor, whether in relation to disability or minority Roma, black and Asian children.

Professor Kilkelly said that this is a challenging subject, and while we know a significant amount about it, we do not know all there is to know and it is in that context that the United Nations took a decision

in 2014 to request an indepth global study on the rights of children deprived of their liberty, and significantly Professor Manfred Nowak (who was also present at the side event and spoke at the Forum) was appointed as the independent expert to lead the study in 2016. It is important to document the number of children and young people deprived of their liberty and to record the conditions and the circumstances in which children are deprived of their liberty. Professor Kilkelly noted the lack of political and financial support for the study to date, with only two EU Member States having made donations for the study. She remarked that while the study has a global estimated budget of about $4.5m, this is relatively modest if we consider the amount of money spent on depriving children of their liberty. She urged participants to encourage national governments and the European Union, in particular the European Commission which has the means to support the global study, to do so and to not lose sight of this issue during the Forum. She encouraged participants to share their knowledge and expertise, and to talk to each other about how best to put to practical use all the expertise and knowledge that we have. She underlined that the sessions should not be comfortable sessions, they should challenge all of us, both in terms of our understanding of the issues and our disagreements perhaps about how best to put them into practice. Finally, she said that the fact that everyone present was committed to ensuring that the rights of children are protected both in custody, in detention in all forms and that alternatives be a priority, was a good starting point for discussions.

Session 1

Laura Lundy, Professor, School of Social Sciences, Education and Social Work, Queen's Laura Lundy, Professor, School of Social Sciences, Education and Social Work, Queen's University of Belfast, made a presentation on **child participation in the context of vulnerability**. She underlined the importance of discussing child participation upfront when discussing vulnerability, as there is a tendency to forget about participation. Discussion of vulnerability should not eclipse agency, the child's capacity for autonomy, and the child's capacity for self-determination. Professor Lundy noted that all of us are vulnerable at different times in our lives and so are children. All of us have capacity for vulnerability, and everyone who is vulnerable has the capacity for resilience, and can be resilient, and needs to be resilient during vulnerability. She said that the concepts of vulnerability and resilience are connected, and suggested that one of the ways in which they are connected is through participation, through self-determination. She noted that when children who are deprived of their liberty express their views about their situation, that is actually a manifestation of resilience. Even when it manifests itself as resistance, as anger, as frustration, that is still important; that manifestation of self-determination needs to be encouraged since it is also a pathway towards resilience. It is only by listening to children that we work out what they need, what they themselves bring to that, how they can be resilient.

Sometimes this is presented as a tension. We hear all the time about protection versus autonomy, and best interests versus the child's views, and that manifests itself in the supposed tension between Article 3 and Article 12. She said that this tension is not in fact a tension at all. This so-called tension is actually contrived as we cannot decide what is in a child's best interests without talking to them, without hearing their views. How would we know? We absolutely have to get these things running in parallel. The reason we want to do that is because children have unique perspectives on what is happening in their lives, perspectives that we, as the adults in their lives, just cannot have. Professor Lundy pointed to one of the very useful background documents for the Forum - a collection of various views and artwork from children and young people and said she was really struck by how often their capacity for self-expression, their rights to autonomy, to self-determination, was limited in the interests of safety. This was often in terms of who they communicate with, who they got to communicate with in terms of their family, their siblings, their friends. She suggested that there is a more general problem in terms of using best interests to limit autonomy in that way, because of "protection", that it is always a good excuse.

Professor Lundy said that 14 years ago, when she understood less about child participation than now, she did a study for the first children's commissioner in Northern Ireland with Ursula Kilkelly, and they listened to a lot of children's views on their lives, and a yellow bus became very symbolic for her in her journey. The yellow bus, (shown on a slide), was drawn by a young person with learning difficulties who attended a special school in Northern Ireland. What the young people said was that they hated this bus. They called it the banana bus, the custard bus - and they said, "We're really embarrassed on that bus". "We hide under the seats, because no other bus going to school is yellow, only the bus with the children with learning difficulties." Of course, when adults were asked why the bus was yellow, it was identified as a warning beacon to let adults know that children with learning difficulties were on the bus, and that they might get off the bus and run across the road. This is a completely disproportionate use of something to stigmatise and marginalise those children in the interests of their own safety.

Professor Lundy said she was reflecting on a metaphor for this protective approach to participation, and said we often 'cage' children. She said that we do not actually physically cage children, although we know that has happened as well. We build cages around children to protect them because they are vulnerable. She encouraged participants to start to think not of cages, but **scaffolds**. Scaffolds are a way in which we protect ourselves too, that we operate safely, we climb safely. If we can see children as climbing these scaffolds, being listened to, being heard, working their way out of vulnerability towards resilience in a 'scaffolded' way with the support of adult. This is the metaphor she invited Forum participants to take forward.

Professor Lundy then went on to address some common misunderstandings. She explained that she has had many years' experience of talking to children, leading studies in child participation, talking to children about their participatory experiences, researching child participation and what works for children and what does not work. In that context, she addressed **five misunderstandings**; all given in the form of statements, things that you might overhear in child participation circles. **The first misunderstanding is: "We listen to the voice of the child".** Many years ago she came to the conclusion that this concept of voice was really problematic; that it was a really imperfect abbreviation for what we are trying to achieve when we are trying to achieve rights-based participation. She suggested that really we need to go beyond voice, that we need **space, voice, audience, and influence**. Space and voice are obvious, in that we need to create safe and inclusive opportunities for children to be heard, to express their views freely. Professor Lundy said we continue to neglect the crucial second

half of Article 12 of the Convention on the rights of the child. That is not just the right to express views; it is the right to have them given due weight in accordance with age and maturity, and that often gets neglected. She emphasises that this is not counselling. Counselling is important, but this is not what rights-based participation is, letting them speak in a cathartic way. It is actually taking children seriously. That involves two extra elements. One oft-neglected element is 'audience'. We need to find the person who has the power to effect change - the decision-maker - that is the person children's views need to get to. Then we need influence, and that is difficult. She said that we need to ensure that children's views are taken seriously and noted that Ireland is the only country to have a national strategy on children's and young people's participation in decision-making (2015-2020). She worked with each of the Irish government departments to produce a checklist of this space, voice, audience, influence model (the Lundy Model of Child participation).

Misunderstanding No 2: "Children are the experts in their own lives." She said that many participants are sure to have heard that or even to have said it, but pointed out that although children have expertise in their own lives; they have insights that we cannot possibly have, they are not the only experts in their own lives. She pointed to the room full of experts who would have professional experience and understanding that children cannot have, and said that sometimes children need help to understand the issues affecting them. Sometimes they cannot see or know how something might affect them, or they do not see the range of options open to them. In a rights-based discourse we need to ensure - this is another model - that children have accessible information about their choices, their options, what is happening, and what the consequences of a particular decision might be. They need an often neglected right in the Convention, Article 5 of the Convention (the child's right to guidance). She recalled that children are entitled to support and guidance from adults who have a duty to provide it. That cannot be neglected in the equation. If they have these, they should then be able to come to both a well-formed and informed view, a clarified decision, so that they are able to express their view in a situation.

Misunderstanding No 3: "They're too young to understand. It's too sensitive, it's too complex, it's too anything." She said that this generally means that we are going to decide they cannot be heard. Professor Lundy reminded participants that this is not actually our call and it is not for us to decide that. If it is an issue that affects them, and they have a view on it, then children are entitled to express it and they are entitled to have it given due weight. It is the *right of the child*, it is not the gift of adults to be bestowed on a child. Professor Lundy gave an example of a project for the Council of Europe on the Lanzarote Convention, where they were asked to work with 9-12-year-old children to develop materials that explain sexual abuse and sexual exploitation. Some people would say, "It's too sensitive, you can't go and talk to them about sexual exploitation". Who are the children getting sexually exploited? It is young children of this age. We need to find

the language to talk to them about that. We were able to work with those children to find a language, which our group said was one that did not scare children and did not embarrass children. They wanted to talk about it in those ways.

Misunderstanding No 4: "It would cost too much, take too much time." Professor Lundy pointed out that talk is often cheap, it really does not cost much to sit in a room and talk, and said we cannot take such a decision based on perceived financial costs. She said that, when compared to some other groups of children, access to children in detention should be easier. Another general issue in participation is often representativeness. Given that they tend to be in detention in smaller units, where the numbers are small, you do not need to choose, you can talk to all children.

Misunderstanding No 5: "We shouldn't talk to them, it would be tokenistic." She said that she is currently working on this area because she gets frustrated every time she hears it. She said that often people use this as an honourable way out. "*We can't do it, it would be tokenistic", "we couldn't possibly, we wouldn't exploit the children that way*". Professor Lundy pointed out that there is no other human right that she could think of that you would say, "Because we cannot do it properly, we are not going to do it at all. We cannot give you a good education, so you are getting none!" She underlined the inappropriateness of such an approach, and urged participants to reflect on the reality of child participation. For anyone who has engaged in it, they will know that it is always messy and always imperfect. There could always be more time, more money, more resources, more access to children, better ways to talk about it. She suggested that sometimes tokenism can be a start, just to get into a conversation with children, albeit with a reminder that tokenism is *never* appropriate for a decision affecting an individual child. However, when it comes to talking to children as a group on our laws, on our policies, on our procedures, she suggested that we just need to get on with it and do something. Furthermore, she said that research with children tells us that even when adults treat them in a tokenistic way, children are still able to seize the opportunity. Adults should not underestimate children's ability to occupy the space, claim it back and work it.

Professor Lundy raised two questions for participants to reflect on throughout the Forum discussions. She expressed a concern that sometimes we make a normal human interaction, namely adults talking to children, which happens every day across the world and in every country, seem so complex that decision-makers are petrified to begin to do it. If adult decision-makers think they cannot do it, because they cannot do it properly without elaborate consultation mechanisms, and then do not do it, we are shutting children out of decisions. Finally, she suggested that the other question to take to the Forum is how to avoid being tokenistic. How do we really encourage more respectful engagement? She said that most of us would recognise that participation is a dialogue. It is an important dialogue with adults and children, and one of the most critical junctures of that dialogue is the point where adults give feedback. She said that often feedback is completely lacking or really, really inadequate and suggested that this is the point we need to concentrate on, that feedback should be fast because children grow up quickly. Feedback should also be full: if we take a decision for a child, then we have to explain what we agreed with; what we didn't agree with; what we are doing, and why. We need to explain why we are not doing what they asked in detail so they understand that they have been part of a decent rights-respecting process. The feedback process should also be child-friendly, accessible to them and followed up.

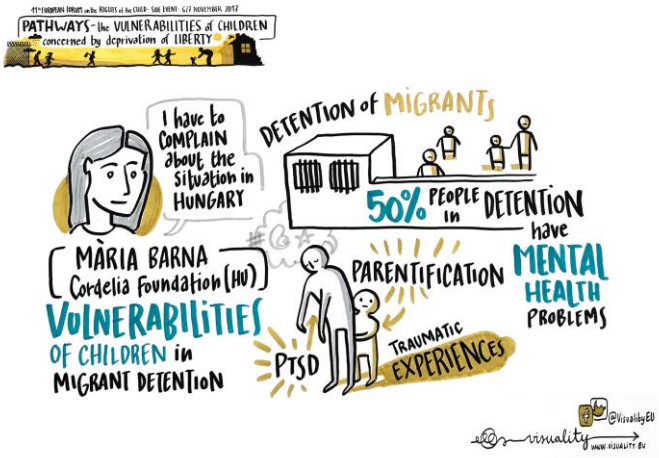
Mária Barna, Clinical Psychologist, Cordelia Foundation, Hungary: Ms Barna outlined the work of her organisation in delivering **psychosocial care and psychiatric care to asylum seekers and**

refugees in Hungary. The Cordelia Foundation has been doing that for over 20 years and has been present in all the important asylum and immigration detention and reception facilities in the country, up until March 2017 when the transit zones in Hungary were set up. She said that since then, practically all newly arriving asylum seekers apart from unaccompanied children under the age of 14 are detained in these transit zones. She said that aside from being detained there until the end of their asylum procedure, they are deprived of the services of all those NGOs that have been assisting them since an asylum system was set up in Hungary. In practice, this means also that the Cordelia Foundation psychologists and therapists are excluded from the transit zones and thus unable to provide psychiatric and psychological care there. She explained that the reason she has expertise with children, and families and young adults in detention is that an asylum detention regime existed in Hungary even prior to the transit zones. Ms Barna said that she also meets all those families and children who regain their freedom at the end of their asylum procedure.

She outlined the **effects of detention on mental health** in general saying that as expected, migrants who are detained – irrespective of their age or other characteristics - face more severe and more specific stress factors than others. **More than 50 percent** of those who end up in detention suffer from some kind of mental health problem. This is irrespective of their country of origin, of their prior mental health status, of their age, gender or anything else. It is also independent mostly of the country where detention takes place. Ms Barna underlined that the mental health consequences of detention are **long term.** It means that the consequences last for much longer than detention itself. They can manifest themselves even years after detention takes place. This is increasingly true for children. What does detention mean from a mental health perspective, from a psychological perspective? Mainly what it means is complete disempowerment and loss of control on all important aspects of one's own life and one's own coping mechanisms. It means loss of sense of justice or meaning. It means a loss of predictability. When we are talking about asylum or immigration detention, this is increasingly important. We are talking about people, about families, children who by default are in a certain situation when it comes to their future, when it comes to their legal status in the country where they are. This is topped by a sense of disempowerment in detention. People in detention are isolated from their community, from their culture, from their religious practices. They are isolated also from the community that should, on a later stage, hopefully integrate them. She said that when we are talking about unaccompanied children detained in Hungary, we are talking about the fact that while these children go through this prolonged detention, they do not meet any Hungarians apart from the armed guards in these transit zones. If they are granted international protection, they enter the country after long months of having been in detention and without having experienced anything other than the circumstances of detention.

Ms Barna showed a picture of the transit zone and said that when it comes to detention of children in particular, she would like to differentiate between two sub-groups that are different in many

perspectives. One of them is the **children who are detained together with their families**. The other group is that of unaccompanied children in detention. Ms Barna then showed a video of a father and his young son, clearly portraying that the father had severe PTSD, and how intrusive memories affected him in his daily life, while, at the same time, he was trying to take care of his son. She invited participants to imagine how such a person with such a severe traumatic background functions and manages to take care of his child in detention, while deprived of even basic coping mechanisms that allow him to carry on in daily life. She underlined that the key to the mental health of children in detention is clearly through the mental health of the parents. If parents become unable due to detention circumstances to function as care providers, as providers of the security that children are in need of in order to stay healthy, then the whole dynamics of the family get disrupted. She explained the term **'parentification'**. Parentification is when the child has to take over the role of the parent within the family, either from a psychological point of view or also from a very practical point of view, because the parent is unable to attend to his or her duties either emotionally or practically. She said that this has very severe consequences on children's mental health and that this is something that they see very, very often among asylum seeker families and it can result in actual separation of the family members too. If the parents become unable to function healthily, then they might even be hospitalised. Detention has, of course, effects on children's health in many different perspectives. Without going into details, for both adults and children, anxiety, depression, and Post Traumatic Stress Disorder (PTSD) is a triad that is very important to keep in mind. PTSD obviously can result from detention itself. She said that very often detention re-traumatises people who already arrive with a traumatic background. In the case of children, physical health aspects are also increasingly important and developmental aspects as well. Since the whole environment of detention is so far from something which is ideal for a child's upbringing, several studies have observed cognitive development impairments over protracted detention periods.



Ms Barna then went on to discuss the situation of **unaccompanied children in detention** and referred to the October 2017 National Geographic report on unaccompanied children in Serbia. She said there were hundreds and thousands of unaccompanied children stranded in Serbia waiting to be let into the EU, but the EU does not want them. She said that those children arrive on the doorsteps of Europe, to Hungarian transit zones, for example, after months or even sometimes years of travelling on their own and being severely abused on all possible levels. They are neither children nor adults. This is an aspect within this group that all actors in the field need to focus on. Unaccompanied children endure a very severe burden on them of having to make it, having to provide for their families in one way or another, while at the same time, they're still children. She said this brings us back to the importance of coping mechanisms and the ways of being able to carry on in life, and the fact that these children and young people have very different ways and sometimes less mature ways to cope with such difficult surroundings as a detention centre, for example. Aggression, substance abuse, and self-harm and even suicide are phenomena that are unfortunately increasingly linked to this very young group.

Ms Barna explained the situation of one unaccompanied child from Afghanistan she had worked with on his arrival in Hungary. He was about 16 when he arrived in Hungary nine months ago, and due to the fact that age assessment procedures are very, very problematic in Hungary, he ended up in an adult detention facility. He spent more than six months there and his asylum application was rejected. When he appealed, the court restarted the procedure and recognised that he was a child. In the meantime, his family had to be evacuated back at home in Afghanistan and a brother died. When he was released from adult detention, he was placed back in the transit zone, with no support, as outlined earlier. After three months, he was released, with subsidiary protection status. He immediately fled Hungary and is now somewhere else in Europe. He did not, in almost an entire year, receive protection in any shape or form. Ms Barna described the changes in his personality: he was a very mentally healthy, young, extroverted child who after eight and a half months basically became a shell of himself. He completely closed down. It was traumatic, even for her as a mental health practitioner, to observe these changes. Picking up on Laura Lundy's intervention on resilience, she said that the word resilience might be the best to capture what happened to him. What he lost is actually resilience. What he lost is this capability of fighting for his future. Ms Barna underlined that this was only one of many such sad examples and that detention of children is an increasing phenomenon.

Pinar Aksu, Young Advocate, International Detention Coalition, explained that she was born in Turkey, and when she was eight years old, her family sought asylum in the UK. The family was sent to Scotland as part of the dispersal programme in 2001. She said that as asylum seekers, life was not easy and implementation of the dispersal programme can mean that people are moved around from place to place, which creates uncertainty and a lack of stability. In their case, they were put on a bus with many other families and they were not told where they were going. After a long drive, they arrived in Scotland. Asylum-seekers are not allowed to work in the UK and receive an allowance of £36 per week. As from 2006, in the UK, the Home Office started detaining many families including hers, and also returning people to their countries of origin. Ms Aksu was detained with her parents and two younger siblings for over two months in an immigration removal centre called Dungavel, which is the only detention centre in Scotland. They were then sent to Yarl's Wood in England. She said Dungavel and Yarl's Wood could be described as prisons as she could not see any difference between a detention centre and a prison. They are both secured by immigration officers and by the government, and you are behind barriers and behind walls. She said people in immigration detention were treated as criminals even if governments use many different words to make these policies sound acceptable. Nevertheless, it is the same thing, as she was deprived of her liberty without cause and her rights were infringed.

She said that, as a child at the time, she saw many things that no child should see. She saw violence as families resisted being returned to their homeland against their wishes. She saw people committing suicide by drinking detergents or by hanging themselves with shoelaces. She said the reason why many people committed suicide was because they had given up hope, and they saw that the only way of being

free of detention centre was to die. She pointed out that the UK has no time limit on detention, so no one knew when and why we would be out, which made it even more difficult. The family were not criminals; they had done nothing wrong, but even criminals in prisons know when they will be getting out. She said that over the two months in detention, they witnessed many families being sent back to their countries, and she had formed relationships with people of her own age with whom she is still in touch. She said being in detention and seeing what people have to endure makes you question humanity. Ms Aksu said that thanks to some campaigning for her family carried out by the community and by Glasgow Campaign to Welcome Refugees, and Unity Centre Glasgow, the family was released from detention and subsequently got leave-to-remain papers. She said they were lucky, as many others were deported.

After all this experience during a school discussion when she was 15, one of her teachers of modern studies, suggested she participate in a conference and **share her experience**. She had been told there would be 20-30 in the audience, but there were 250 people. Since then she has been campaigning and advocating for asylum-seekers and refugees. Ms Aksu completed a degree in community development and a Master's in Human Rights and International Politics, and is currently a community development worker for an integration network. She helps newly arrived families and children in Glasgow. She reflected that her first experience of seeking asylum was far better than the time spent in detention. This first experience, living in the community, is often called an 'alternative to detention', which allows people to live in the community while they wait for their migration status to be clarified. Ms Aksu said that the efforts currently underway to make alternatives to detention available across Europe are important, especially as even short periods in detention have horrible, long-lasting impacts on children and on children's health and development, as stated earlier by Maria Barna. She considered that one important strategy to help end child detention is to engage with locals; building connections and organising meetings, multicultural and community events, and marches to welcome refugees, such as during the UN Anti-Racism Day, which helps to create a platform to understand one another. She said such events help to educate and connect people, promote dialogue and understanding, dispel myths about migrants and refugees, reduce feelings of "us" and "them" in favour of solidarity among the human race, as well as empowering refugees and migrants and showing the positive role they play in the community.

Ms Aksu said that allowing children to **live in the community** with their family is also less costly for the government and it allows people to access support in a more humane way. She said that alternatives to detention must be understood as non-custodial community-living rather than new and alternative forms of detention. She underlined that no person should be detained for seeking safety and refuge in another country, let alone a child. It is very basic human right not to be tortured or treated inhumanely, and not to be discriminated against based on race, colour, religion, or birthplace. In the context of the current humanitarian crisis at the EU external borders in Greece and Italy, she shared a voice message from a

friend working in Greece for Defence for Children International, who said that due to the lack of guardianship for unaccompanied children in Greece, children are being detained in so-called "protective custody" in police cells and detention centres. The DCI worker said the numbers are increasing and conditions are overcrowded and unsanitary. Children may be placed in small cells with unrelated adults, where they have little access to information about their rights and basic care services. Fear of detention is a deterrent for unaccompanied children to disclose their real age. They may declare themselves to be adults. If detention is the only "care" option available to unaccompanied children then the failures of the protection system are tremendous. The DCI worker said many of these children are detained while waiting to be reunited with their family in other European countries and underlined the need for urgent legal assistance with such family reunification processes. With regard to mental health, children in detention as well as those being exploited in Athens parks face serious issues and there is a clear degradation in mental health since their arrival in Greece.

In conclusion, Ms Aksu said that whether we are talking about the UK or Greece, or elsewhere, the conditions and effects are similar, if not the same, with regard to mental health issues and depriving children of their childhood. She reiterated the negative impact of having no upper time limit on immigration detention, and called for reform and actions rather than talk, pointing out that two people had committed suicide in immigration detention in the UK in the last month alone.

Astrid Podsiadlowski, Head of Sector for Rights of the Child, in the European Union Agency for Fundamental Rights (FRA): Ms Podsiadlowski explained that one of the agency's tasks is to provide the so-called evidence-based advice, based also on fieldwork research and learning from the experiences of different groups of people. Ms Podsiadlowski presented some of the findings related to children in vulnerable situations and putting them at risk of being deprived of liberty. With regard to vulnerabilities and deprivation of liberty, she said there were two components: the first is the increased risk of children in vulnerable situations being deprived of liberty, and the second relates to the effects of deprivation of liberty on children. While there is a serious lack of data, which reinforces the need for the UN Global Study on really learning more about the circumstances of children and the impact deprivation of liberty has on children, the agency has interviewed children about their experiences in judicial proceedings. During that research, they had children telling them that they were put into protective custody in police stations at night, because they were, for example, victims of violence. This is what, for example, one of the girls said: "It was a locked room with dirty sheets and blankets, dark everywhere. Mice, rats, things like that". "There were two beds, a couch, a table and chair; a white ceiling, white walls, a cabinet like this one here; a bed over there, a bed over here, a table, bars, very dark". There are similar accounts from the hotspots, where FRA has been a regular observer. She said that the situation in the hotspots in Greece has improved somewhat for unaccompanied children, but children with families are in detention or parents are in detention, and families are separated. As already discussed, on the mainland children continue to be placed in so-called protective custody in police cells. FRA considers that a migration status or an asylum-seeking status is no reason whatsoever to deprive children of liberty and protective custody is not an appropriate response.

On the topic of vulnerabilities which place children at risk of being deprived of liberty, she presented data on countries which provide for immigration detention for asylum-seekers or in a return context. She said that it is quite likely that a child is detained: in an asylum-seeking process, in the different phases of his or her journey, during arrival in the European Union, during transit to another country, but also in return procedures. For children who are EU citizens or may have an immigrant background, for children belonging to an ethnic minority group for example or having migrant status, FRA findings are that there is a very high risk of segregation and discrimination. She said that in almost half of the EU Member States, children with a migrant background experience de facto school segregation. Roma children are over-represented in so-called special schools, and often find themselves in segregated schools or segregated classes. Local case studies show that parents who are non-Roma try to ensure that their children do not attend schools with a high proportion of Roma children. Research on children's experience of the justice system revealed quite a few examples of Roma children who felt discriminated against when involved with judicial proceedings that they were not properly heard or were not asked for their opinion. They felt that their views were not taken into consideration and they associated it largely with prejudices, cultural barriers, language, as well as a lack of support.

Another big group of children who are very vulnerable are children who are at risk of **poverty**. There is a high proportion of children (26.9%) in the European Union who are at risk of poverty. We also know that this is strongly linked to parents' educational level and the country of birth, and from our research with Roma, also with ethnic origin which is linked to decreased access to services for example to health, education and housing. Ms Podsiadlowski mentioned the European Court of Human Rights judgment in the case of Soares de Melo versus Portugal, where the Court concluded that Portugal violated the right to respect for family life. It concerned a family from which eight of a total of 10 children were forcibly taken into care with a view to their adoption because the mother did not provide the children with adequate material living conditions. This case adds to existing child protection jurisprudence establishing that poverty as such is not a reason to deprive a child of parental care; and that authorities need to sufficiently support families for them to be able to adequately take care of their children. Another situation which makes children very vulnerable is parental **disability** or their own disability. When a child resides in an institution, there are more risks of discrimination and difficulties in accessing justice. During research on children in judicial proceedings, professionals interviewed stated that children placed in institutions with or without disabilities are very often not heard in proceedings. The fact that one or both parents may have to leave employment to care for the child increases the risk of economic inequality and also the risks of violence. Children with disabilities appear to be very vulnerable, much more vulnerable than all other children. There is often no real system to take care of children with disabilities. In current systems, it may be the case that each actor refuses to take responsibility and passes the problem on to someone else. For a child with disabilities, we see the failure of the system which was not conceived to take care of those children. People with a disability are much more likely to feel and to be excluded from society. With regard to the increased risk of violence faced by certain groups of children, the survey on women's experience of violence during

childhood reveals very high numbers across the European Union countries, for example, children who self-identify as LGBTI face increased risk of discrimination, violence and bullying.

Ms Podsiadlowski outlined some of the content of the June 2017 FRA report on immigration detention of children in the EU, which also sets out examples of non-custodial measures which should apply to children, underlining that these measures should be adequately resources and subject to a case by case best interests assessment to see what is best for an individual child or family.

Discussion points:

- ✓ Children of Prisoners Europe, following up on **Laura Lundy**'s presentation, pointed out that frequently children are lied to or not informed about the imprisonment of their parent. This has terrible consequences for the child. Very often they figure it out, and this means they also feel a sense of betrayal by their parents and it's very important to keep this in mind. The participant commended **Mária Barna** on her really clear statement on how critical the mental health of parents is to the mental health and wellbeing of their children and remarked that this is exactly the experience we have when the parent is in prison; not just in relation to the imprisoned parent but to the other parent or other carer who's looking after the child. Children cope much better if their carer is coping well. But that is very often not the case. The participant also referred to the table included in the FRA immigration detention report (see link just above) which includes a table setting out the policy and practice for children in prison with a parent in EU Member States (under the criminal justice system). This usually concerns mothers, but also sometimes fathers, and the table sets out the different age groups concerned.

- ✓ The International Detention Coalition, grouping 300 NGOs worldwide to end immigration detention of children, recalled that in the context of immigration detention, IDC would argue that the time is ripe to end immigration detention of children, noting that governments around the world made a commitment in the September 2016 New York Declaration for refugees and migrants to work towards ending immigration detention of children, not just to ensure it's a last resort, but to actually end it. This Forum is an opportunity to look at alternatives to detention that make such detention completely unnecessary.

- ✓ Defence for Children International informed participants that they are running an EU-funded project on the participation of children in detention in the juvenile justice system in the evaluation and monitoring of their own detention. The project is ongoing and results will be shared given the importance of ensuring child participation and the difficulties to ensure valuable and meaningful participation in that particular context.

- ✓ The Hungarian Helsinki Committee welcomed the global political commitments to work towards ending child immigration detention, but said that the situation in Hungary is exactly the opposite, and unfortunately the situation in Hungary is as described by **Mária Barna.** In Hungary, with an increasingly authoritarian government, children are used as tools. They are dehumanised, for example when they are only ever referred to as "migrants". The systematic detention of children, which is indefinite, violates European and domestic Hungarian law. The detention of children does not only result in obvious cases of violations of law, but also impinges on other aspects which need to be addressed also. The migration-related detention of children should, of course, be ended immediately.

- ✓ In response to a question from DCI, on whether even a very short detention period can also have such negative impacts on health and mental health, **Mária Barna** highlighted two things about the **effect of the length of detention**. The first is, as might already be well known, a very large proportion of asylum seekers suffers from post-traumatic symptoms, from PTSD. While a longer period of detention obviously affects one's mental health more than a short-term detention, in the case of people with PTSD, the negative consequences of detention can happen almost instantly. Detention has a very strong capacity to re-traumatise traumatised persons. Why? Because it very much resembles the environment of a prison, as was mentioned by **Pinar Aksu.** For those people who have been imprisoned in their country, who have seen armed guards in contexts where those armed guards have beaten them up and have tortured them, or they have simply been detained in their country of origin for whatever reason, if they find themselves in an environment which resembles a prison and where they are surrounded by armed police officers, that is something that can have an instant and very, very strong effect on their mental health. This does not only concern adults. **Ms Barna** said she had met many, many unaccompanied children in detention, for example Afghan boys and boys from Syria who have been detained in their country of origin and tortured. Another aspect is that with regard to immigration detention, the length of detention is pretty much unknown to the person who is being detained. This is just unimaginable. They simply do not know whether it will be one month or two months. In Hungary, when we are talking about the fact that every asylum seeker is detained for the whole period of their asylum procedure, the reason why we say that it is indefinite is that it really is. It can take years with multiple appeals, with multiple procedural steps. We have come across many people who have finally managed to enter the transit zones after having spent months in Serbia and they just gave up. They gave up because you cannot survive if you do not know how long it is going to last. They just went back to Serbia.

Ursula Kilkelly made some closing comments on the session. Presentations covered different perspectives on the detention of asylum seekers and refugees. She said that while it is a relatively recent phenomenon vis-à-vis other forms of deprivation of liberty, it is being undertaken on a scale throughout Europe and around its borders that it is quite catastrophic in its potential. The fact is that the conditions of detention as outlined by **Mária Barna** and others have a hugely negative impact on the persons detained, but they also have the potential to impact on their wider families and generations. One of the concerns that we may well come back to is that the enormity of the concerns around migration detention in some respects risk dwarfing some of the other challenges that we have, given that they are so considerable and serious. She said that discussions over the course of the Forum aim to address the whole range of issues relating to deprivation of liberty but being mindful that this is a very acute problem for those who are deprived of their liberty in the migration context for all of the reasons

that had been put forward today. This is particularly the case, given that, as we have heard already from Pinar, in particular, this is detention in many respects without cause. The impact on the person of the uncertainty as well as the lack of rigour around procedure and accountability makes it an acute problem. She recalled that other discussions will focus more positively on resilience and on how to protect as well as respect the rights of those who are in various forms of detention that we would come back to over the course of the sessions.

Session 2

Huw Williams, Associate Professor in Clinical Neuropsychology at the University of Exeter (UK) began his talk on **brain injury, neuro-disability**, and young people who end up in secure systems or prisons, with a focus on brains because so many children who end up in the criminal justice system have brains that have had some form of injury or some kind of lesion at some point early on. He said brains are amazing things, with a hundred billion neurons in the cranium, and each neuron has about 10 000 to 30 000 connections to others. The neurons towards the front of the brain have greater connections. The neurons towards the front of the brain are really complex – they create consciousness and decision-making ability and impulse control areas. As the brain matures, with the cortex "thickening", the last part of the brain to fully mature - between the ages of 19 and 21 approximately - is the dorsolateral prefrontal cortex, which has to do with long-range decision making and holding back on doing something; namely doing things after some reflection.

The minimum age of criminal responsibility (MACR) in many countries is way before the brain has matured into being able to do the job of thinking ahead, reflecting and controlling impulse. One of the big problems for children where they are growing up - especially when there is adversity and where there is a lack of socioeconomic security - is that they may end up having traumatic brain injuries.

Brain injury is when the brain is injured in an event like an assault or a car crash. Professor Williams showed an image of someone who had been hit by blunt force to the head. The brain moves around inside the skull. The brain hits the inside of the skull and moves around and backwards, for example. Areas of the brain typically affected are frontal, temporal, and limbic systems. Those are the areas important for long-range decision making, thinking things through, and impulse control. The skull is there to protect the brain – which it does. But he explained that there is a range of bony tissue that holds the brain in place. As the brain comes to a fast stop, as you would in a car accident or if you had been hit with a baseball bat, the brain moves around a bit like a blancmange or a jelly on a cheese grater. He invited participants to keep that image in mind, because that is why you end up with these lesions in the frontal lobes and the temporal lobes. Temporal lobes are important for memory, frontal lobes are important for conscious decision-making and judgment.

Professor Williams briefly explained the **kinds of traumatic brain injury**. The main form of brain injury is mild, to be knocked out for up to 20 or 30 minutes, then moderate to severe brain injury, which is 20, 30 minutes or more of loss of consciousness. He underlined that the consequences of brain injury are the biggest cause of death and disability in children and young people. This fact is often neglected because people do not tend to know about it, because it is an invisible disability. The brain may be injured but you cannot see it like a wound in the arm or where there is a break. As it is not visible, people do not take account of it. Around the world about 10 million people per year are affected by traumatic brain injury. The people who are most affected by brain injury, typically, would be young, with a classic spike showing that it is mostly adolescents who are affected by brain injury, between the ages of 14 and 21. (For the global picture on TBI see: see http://www.thelancet.com/commissions/traumatic-brain-injury and http://www.thelancet.com/pb-assets/Lancet/stories/commissions/traumatic-brain-injury/traumatic-brain-injury-infographic.pdf.)

The other group that is most affected are the under-fives - toddlers. Toddlers frequently suffer falls, especially those from low socioeconomic groups, so lots of brain injuries happen in the young and that affects behaviour all the time.

In terms of issues encountered as a result of mild brain injury Professor Williams said they might include what we might call organic personality change, because the brain has now been changed to some extent. This might cause more irritability and lack of ability to manage one's temper, and may also affect memory.

Professor Williams invited the audience to keep in mind that after a moderate to severe brain injury there is a likelihood of a major personality change in approximately 50 percent of people. After mild brain injuries, this would occur in 10 to 30 percent of young people.

He said that he was quite intrigued, as a Clinical Neuro-psychologist, that so many offenders are described as having problems with impulse control, controlling their emotions and so on and so forth. He went on to consider how many people who end up in the criminal justice system may have had traumatic brain injuries, and also to consider how traumatic brain injury might be related to crime. He pointed to a study by a colleague, Seena Fazel, University of Oxford, who assessed the health records of all Swedes over 35 years. Fazel discovered that if you link data between the healthcare records and crime records, you find that 2.5 percent of Swedes become violent at some point in their life. But eight percent to nine percent of those with brain injury become violent offenders at some point. Brain trauma multiplies the risk for becoming somebody with a violent crime history, and that is twice more likely than for a sibling from the same socioeconomic background. http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001150 (and see: https://www.psych.ox.ac.uk/team/seena-fazel).

Professor Williams pointed to research in New Zealand that if a child has a brain injury at around the age of five, by the time they are about 10, they are twice more likely to have attention concentration problems in school and then they drift to the back of the class. By the time they are 12 or 13 they drift out of school and get excluded from school, and by the time they are 15 they are twice as likely to end up in the criminal justice system. This drift into crime then may well be to do with social exclusion, especially from education.

Recent data from various German studies would indicate that **people who end up in prison as adults**, compared to people who are not in prison, tend to have many more lesions, particularly in the frontal part of their brain. They are much more likely to have lesions in these parts of the brain if they are a violent offender. Professor Williams and colleagues have been involved in a range of studies in the UK and with collaborators worldwide looking at the rates of traumatic brain injury in prison populations. He cited an example: you expect about one person in 10 to have had some kind of head injury at some point; two people in 100 to have a moderate to severe brain injury; and about 10 people in 100 have a mild head injury. However, in the prison population the level is something like **60 percent**, so two young people out of every 10 in prison have moderate to severe brain injury and another four in 10 have a mild or repeated mild traumatic brain injuries. These are losses of consciousness leading to changes in brain function over time. Given this data, a few years ago in the UK, as part of a new comprehensive health assessment tool for all young people coming into the secure estate, a system was set up to screen for psychiatric cases and for neuro-disability. In the first one hundred children that came through, they discovered about 80 percent had some form of brain injury. They looked at the background of these young people with traumatic brain injury, particularly with a more moderate-severe type of brain injury, and found that more than half were self-harming, and more than half were also suicidal, and that was not due to depression. Also, many more came from an in-care/care-home background.

Professor Williams was asked by the office of the children's commissioner in the UK a few years ago to do a review of the number of children in custody around the world who may have a neuro-disability, like traumatic brain injury, and these are some of the figures compared to the general population. (http://psychology.exeter.ac.uk/documents/Nobody_made_the_connection_Neurodevelopment%20Report_OCC_October2012.pdf) We can expect, for example, that brain injury would be three or four times higher in children in custody than in the community and 15 percent of children in custody have an autism spectrum disorder, compared to less than two percent of the general population. Attention deficit disorder is also very high. However, Professor Williams underlined the need to look at communication disorders. Five percent of the general population present with communication disorders, but this rises to 60 to 90 percent for children in custody. Those children cannot follow what is going on and they are not quite sure how to respond to requests that are being made of them.

Professor Williams said we need to make sure that young people do not end up in secure systems; that they are placed in the least restrictive environments. When we look at rates for re-offending, we see that they are incredibly high. Half of the young people who come out of the youth secure estate in the UK end up re-offending, they get re-convicted within a year and this rises to 75 percent within two years, which indicates the system does not seem to work to help them change their behaviour. He said it is incredibly important to try to take account of things like traumatic brain injury and communication disorders in this population, otherwise, behaviour is not going to get changed. He said that they have recently made the case around the financial burden of not addressing things like traumatic brain injury

in the young people who come into or come out of the justice system in the UK. Effectively, brain injury-causing crime probably leads to something like three billion pounds a year of cost to our economy. That money could be better spent on keeping children in school and in more inclusive environments, as well as in communities.

Professor Williams mentioned some ongoing reforms in the UK: at parliamentary level, where there is more awareness on the need for a change in prison systems to take account of some of these neuro-disabilities. There are also some interesting examples in other parts of the world where these kinds of issues have taken hold. For example, in New Zealand, Judge Becroft saw the table produced on the number of children with a neuro-disability in prison, and then reviewed the New Zealand justice system to take account of neuro-disability. As a result, in New Zealand, if you are assessed as having a neuro-disability, you more likely to be given a community sentence, as a form of restorative justice within a culturally sensitive environment. In the UK, there are some other interesting initiatives being developed around providing more sensitive trauma-informed care. For example, in Wales, the Youth Justice Board has developed a more clinical psychology formulation that can try to identify underlying adversity factors that lead young people into crime, and therefore identify how to address in these issues more effectively, which has resulted in a drop in crime, and a drop in young people being sent into custody in Wales. That system is now being piloted in other parts of the UK (see: Enhanced Case Management Approach through the Wales Youth Justice Connect Board).

In the context of the secure estate model, Professor Williams expressed the hope that research findings will be taken on board in the future in the UK. He gave an example of the impact of traumatic brain injury, such as the case of a young man who was 17 at the time when a brain injury link-worker was posted at the prison. The boy had a huge amount of problems to keep with the programme that he was supposed to be in, and was being quite violent, throwing things at staff, and not engaging with the prison staff or with other people within his young offender unit. It transpired, from his medical records, that he had had a fractured skull. The fractured skull was on the left hemisphere of the head, and the left hemisphere of the brain had been affected. When assessed by the brain injury link-worker in the prison, he was shown to have verbal ability at the first percentile. In other words, he was not able to follow verbal commands, but his visual systems had not been affected. His injury was due to his father assaulting him by hitting him over the head with a chair. His visual system was not impaired, and using pictograms and other visual material enabled him to then understand what was going on. This helped him to settle down in the wing. Within three months, he was on a community programme (see report on the use of linkworkers for young offenders to manage TBI in custody).

Professor Williams said his main message would be that it would be much more beneficial for societies to spend to save and not to wait to fail young people particularly exposed to adversity, typically having neuro-disabilities that compromise their functions. These children and young people are not being enabled to develop ways in which to manage their own behaviour. He said that brains develop in society. Brains need to be around other brains to become minds. People need to be able to communicate and be able to be accepted by others. To borrow an analogy from economics, by investing early and well in our children's development, we increase the rate of return in later life, and in doing so improve not only the lives of individuals, but society's as well.

References:

- An overview for practitioners and policy makers and practitioners on TBI & Crime, Repairing shattered lives (French version also available);

- A report for the British Psychological Society (BPS) working group on Neuro-Disability in children and young people in custody;
- With Nathan Hughes a report on Neuro-disability and TBI in young offenders in children in custody for the Office of the Children's Commissioner (England);
- With Child Brain Injury Trust (CBIT) and General Lord Ramsbotham, the Criminal Justice and Acquired Brain Injury Group (CJAABIG) and produced an infographic to illustrate the links between TBI and crime;
- With Dr Prathiba Chitasabesan, a report on the use of linkworkers for young offenders to manage TBI in custody;
- Supported the Centre for mental health in producing a report on the economic costs of crime due to TBI. He also recently edited a special issue on TBI and Crime for the Journal of head Trauma Rehabilitation.
- Guest editor of the Journal of Head Trauma Rehabilitation on TBI & Crime in young people
- November 2017 contributed to Lancet Neurology - Traumatic Brain Injury: Integrated approaches to improve prevention, clinical care, and research http://www.thelancet.com/commissions/traumatic-brain-injury

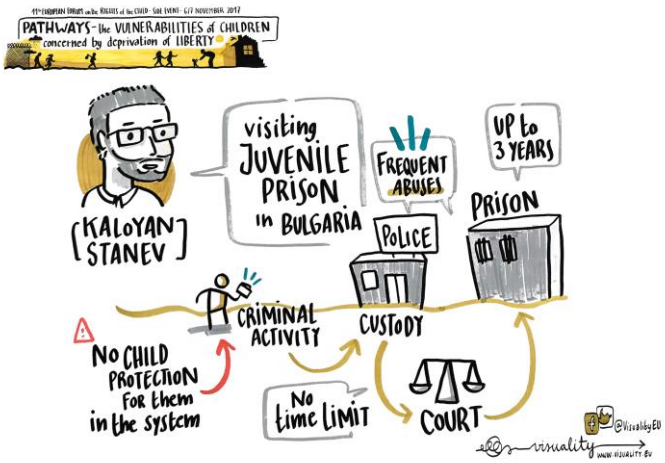
Kaloyan Stanev, Researcher, Bulgarian Helsinki Committee, said that the Bulgarian Helsinki Committee has just turned 25 and has worked on the topic of prisons and detention for more than 20 years. They have an agreement with the Ministry of Justice so that they can make unannounced visits to prisons and talk to persons detained there. He said that he would focus on the situation in the juvenile detention facility in Bulgaria. There is only one prison: one for boys and one for girls, although no girls have been detained for the last four or five years. Mr Stanev had visited the juvenile prison the week before this conference, to speak with the boys and understand their situation. An interview with a 17-year-old boy brought him back in time to his very first visit to an institution, in 2013. That was in the context of a big EU-funded (Fundamental Rights and Citizenship Programme) project together with colleagues from Hungary, Poland and Romania called "Children deprived of liberty in Central and Eastern Europe", during the course of which they visited more than 56 institutions and talked to more than 150 children. For his very first visit, it was to something called a "correction school". This is a separate system in Bulgaria that deals with children in conflict with the law who have carried out so-called status offences. They are considered to be part of the general educational system, but children can be deprived of liberty there for up to three years, sometimes more.

The very first child that Mr Stanev spoke to was a 12-year-old boy who had recently been raped by five other boys from the same institution. There was an incident where there were some foreign volunteers in the school who were helping engage with the boys. Someone stole some money from them. As a result of the theft, there was an immense amount of physical abuse, of physiological humiliation to

older boys. The five boys who raped the other boy were the main victims of this abuse. When he went to the prison before the Forum, he spoke to one boy who was there, aged 13, during that time. They discussed the old days and the fact that he was now in prison.

Mr Stanev briefly described the **Bulgarian system**. They have three distinctive systems in the broad context of the juvenile justice system in Bulgaria that work very separately to one other. The criminal justice system deals with children who are above the age of 14. The minimum age of criminal responsibility in Bulgaria is 14. For children below eight, they can only be subjected to protective measure through the child protection system. The third component is this system in between, called the juvenile delinquency system, dating back to the 1950s. Such a system is quite common in Eastern Europe. There, children who have done things that are not deemed crimes for adults, namely crimes for which adults would not be prosecuted, go through this system. This could include simply running away from home, running away from an institution, begging, or prostitution. The harshest measure served is to be sent to these correctional schools for up to three years. In 2016, there were more than 6 000 criminal offences conducted by children in Bulgaria, mostly thefts and robberies. Last year again, there were just over 100 children who were sentenced to deprivation of liberty. At the same time, at the beginning of this year there were only 27 children in this prison. The variation in figures can be explained by the fact that for most children, they practically serve their sentences during their pre-trial detention. There is no distinction in Bulgaria between adults and children in terms of the period that can be spent in pre-trial detention. A child can spend up to one and half years in a pre-trial detention centre depending on the gravity of the crime they are prosecuted for. There are no organised educational or any kind of activities in these centres. Some of them are in such a bad condition that there are no opportunities to go outside there. There may simply be a room where you go for an hour just to walk around.

How do these children come into contact with the system? If a child is caught stealing, the child is brought to the police station. There have been cases of very young children, such as a nine-year-old girl who spent the night in police custody. Each year, the Bulgarian Helsinki Committee studies the levels of police abuse and access to a lawyer while in police custody. They recently interviewed sentenced prisoners about their experience with the police. In the latest such study, they interviewed 17 recently sentenced boys in the prison. Two of them reported that they were abused by the police during the arrest. Ten of them reported they were abused inside the police station itself. Children may be restrained and then inflicted with abuse to extract a confession. A contributing factor to this abuse is the huge problem with access to a lawyer during police custody. There is no obligation for a lawyer to be present from the very start, when a child is taken into custody when all the questioning happens and where children are made to confess if they have something to confess. Some of the boys said they had a lawyer. Most of the time it is a legal aid lawyer, but there no system for specialised child/youth lawyers in Bulgaria.



Mr Stanev recounted what a boy had just told him about his experience. The boy was not arrested, but summoned for questioning. He went to the police station and a lawyer was present. The boy did not choose the lawyer or know him or ever speak with him. There was no chance for the child to speak with the lawyer before the questioning. During questioning, the lawyer was very passive. Then they said, "OK, give me your number and I will call you". The next time the boy saw his lawyer was in court just before the hearing started. The lawyer told him, "OK, you will just say yes to everything I say". Fortunately, the boy in this case asked the judge to intervene and take note that the boy was not happy with that lawyer and the lawyer was changed, but not every child gets to change his or her lawyer.

There is one juvenile prison in Bulgaria, located in a very small town, 200 kilometres from the capital with poor transportation links and very limited access for parents and other relatives, where **25 boys** were detained. More than 80 percent of them were of minority origin; 17 of Roma origin and three of ethnic Turkish origin. There is a very high connection between the type of crimes that they have been sentenced for and their ethnic background. Out of the 15 boys detained for theft and robberies, 14 of them are from an ethnic minority background. Once in the prison, a very basic assessment is made of the child's background. What you see is that 15 of them had a lack of a solid parental figure. Fourteen of them were living in extreme poverty. Eight boys have either one or both of their parents being involved in crimes themselves. Twelve boys were previously placed in correctional schools discussed earlier. Again, 11 of them are of ethnic minority background. Mr Stanev described the case of one of the boys to give an insight into their vulnerabilities. Take a 14-year-old Roma boy, who had 44 police registrations for tests before going to the prison. His father was sentenced multiple times, his mother too. His whole family is involved in crime. He started stealing when he was eight because his father took him with him to steal. He has a brother and a cousin in prison. Two of his sisters are in a correctional school. He himself has been in this correctional school for three years before going to prison. At the same time, there is no record whatsoever of any child protection measures towards this boy.

Mr Stanev described another similar case, highlighting that the system does not work for children: contact with the law leads to correctional school leads to prison. The next case concerns the case of the boy discussed at the beginning of Mr Stanev's presentation; illustrating how the whole system works. One of the prison officials told him about an official document that they received when they asked for some documents for the file of the boy. It says there is no institution or a person in Bulgaria that can handle the case of this boy.

Mr Stanev posted the question as to why this is happening and remarked that Bulgaria has long been criticised for the lack of a reform of its juvenile justice system. The UN Committee on the rights of the child draw up concluding observations on that as far back as 2008.

Mr Stanev said that the principle of the best interests of the child is not incorporated into the criminal justice system and in the correctional educational system. Children who are in conflict with the law are not perceived as children at risk. They do not actually receive protective measures from the child protection system. In the study mentioned above, when the Bulgarian Helsinki Committee visited the juvenile prison, that was the first time that the national child protection agency was actually involved in an inspection simply because the BHC had alerted them to the very high level of physical abuse in the prison and an awful lot of other human rights violations in the prison itself.

Mr Stanev pointed to some progress. In 2016, a brand new act was tabled, called Diversion and Implementation of Educational Measures Act, which aimed to reform the system, and to bring it into line with international standards, and to end this system of correctional schools and other places where children are deprived of their liberty. However, progress has not been made with regard to the draft law; the system is still there and Bulgaria still has broken lives.

Jan Frühbauer, Manager of Social Programmes, JAHODA, Czech Republic, said he was optimistic that his story with its happy ending would provide a welcome change to the bad and sad stories that preceded. He explained that he is the manager of social programmes in JAHODA, which means 'strawberry'. JAHODA is an NGO in the suburb of Prague. They are part of the Dynamo International network and the Czech People Association. He said JAHODA has a very diverse target group, not only comprising minorities but also the majority population, given that if we really want to include people in society, it is best to mix them. The children they work with are generally living in a violence-filled environment. There is poverty in varying degrees. They have problems at school and have no structured or organised leisure activities. They have problems with their leisure time in that they spend most of it on the streets, being bored. JAHODA therefore organises leisure activities as well as information, counselling, coaching, mediation and meditation. Mr Frühbauer underlined the importance of family (both positive and negative). They also work individually with the children and provide a space in which children can talk about their problems at school and in the family. The children are free to use nicknames and not to disclose their identity; the most important aspect is to establish a safe environment so that children can be supported if needed further down the line. JAHODA adopts a client-oriented attitude.

Mr Frühbauer showed a video of a young couple, which came into contact with JAHODA when Lucie was 16 and Petr was 20. When Mr Frühbauer was a street worker, Mr Frühbauer was Petr's social worker and knew a lot about him. In 2015, Petr, from Prague, introduced his new girlfriend, who lived in a small town close to the German border. Lucie decided to move to Prague and there was a lack of care and protection by her mother. On the other hand, Petr's mother was quite a strong presence in the family. Petr's father had been in prison since he was six years old. Petr had some risky behaviour, such as falling in with the wrong crowd, and low self-esteem, and Lucie was immature. Then Lucie became pregnant and JAHODA needed to support this young couple in the light of all of the risks and threats they faced. At first they lived with Petr's mother, but that did not work out. They relationship came under pressure. JAHODA worked with them to support them to face up to new challenges and to avoid Lucie being a single mother and Petr being isolated from his child. They worked with them on dealing with problems they had faced in their own childhood to avoid passing them on to their children. The young couple started to do their best and to cooperate with JAHODA but did not have the knowledge to solve their problems. JAHODA identified and found a network of institutions and professionals to help them and counselled them whenever needed, also helping with regard to interactions with administrative bodies. JAHODA effectively

coached this young couple to change their situation and address their needs in very practical ways such as housing, and employment. Within a year of all this coaching intervention, the couple had made good progress on parenthood, family and social protection, as well as an improvement in Petr's self-esteem. Mr Frühbauer said that sometimes it is very important for young people to break communication with their family, where that family has a bad influence on them. For this young couple such a break allowed them to make the changes needed for them and at a later stage to make contact again. Petr is working; Lucie is at home with the child, they have a flat and live a normal life. The couple is still together and one nuclear family is supported, and this intervention gives insights into the breadth and scope of early intervention and family support work.

Nikolina Milić, Human Rights Lawyer, Belgrade Centre for Human Rights, introduced the Belgrade Centre for Human Rights, which is 22 years old and is one of the leading, oldest and most experienced organisations in Serbia. Since 2012, the Centre is an implementing partner of the UNHCR in Serbia, in the area of providing free legal aid and representation to asylum seekers and refugees. This role is extremely important, given that Serbia does not have a law on free legal aid. The only legal aid that an asylum seeker who does not have the money to pay a lawyer can have is to engage a BCHR lawyer or a lawyer from another organisation. She explained that Serbia was particularly challenged since the beginning of this so-called refugee crisis since 2015, primarily because Serbia adopted an asylum law only in 2008, and is not experienced in this field. Discussions on integration only started in 2016.

Ms Milić said that Serbia was traditionally perceived as a transit country. However, due to border restrictions, many refugees find themselves stranded for over a year. Since the beginning of the crisis, Serbia adopted a genuinely humanitarian approach, receiving thousands and thousands of refugees and migrants into its territory. However, it still has to adopt a systematic approach for ensuring full and effective legal protection to them, especially to unaccompanied children, as one of the most vulnerable group among the refugee population. According to available information, one-fifth of all children who are residing in any of 18 reception and asylum centres in Serbia are unaccompanied by their parents or legal guardians, bearing in mind also that there is no uniform and comprehensive data collection on the number of unaccompanied children, and there are no reliable age assessment procedures. It may be very difficult to assess how old a child is due to the absence of a psychologist trained to work with children. Interviews are carried out by a police officer, or usually, if a child is represented by the Centre, the Centre would engage with the Asylum Office, to ensure that the child is treated as a child. However, without legal representation there is a risk that a child would be treated as an adult in asylum procedure.

Ms Milić said that authorities have difficulties to ascertain whether children are travelling alone or with their parents or other relatives, because they usually come in a group. It can be that children are advised by people, e.g. their smugglers or by their parents, to say that they are a part of a family, when that is not the case.

Also, data collection is inconsistent because authorities only count children who express their intention to seek asylum, and a number of those who are residing in these residential institutions. The situation on the field is completely different because there are many children who are not registered, who did not seek asylum and do not reside in reception centres. It is therefore difficult to establish measures to ensure adequate support for these children.

While some progress can be seen when compared to previous years, unaccompanied children who are residing in Serbia still face numerous difficulties in exercising their fundamental rights. This often happens not because of the lack of systematic solutions prescribed by law, because Serbian laws are mostly in line with international standards and international law, but due to insufficient familiarity of officials on how to respect the rights of the child. Because children are usually treated only as refugees or asylum seekers, rarely the fact of their being a child is taken into consideration when making decisions. There is also a lack of legal guardians who are usually appointed by centres for social work. In practice, one guardian may be appointed to more than 60 children, and the ratio for child protection minimum standards in humanitarian action is not more than 25 children for one guardian. Children are often unaware of the fact that they have a guardian. There is also a lack of interpreters for some languages, with interpreters being provided by NGOs and not the State, and guardians having to rely on NGOs for interpretation. In the absence of an effective guardianship system, it is impossible to identify a child's particular vulnerabilities and exposure to various forms of violence, sexual exploitation, or abuse. Furthermore, guardians are usually not familiar with the basics of international refugee law or asylum law provisions and are unable to ensure that the principle of the child's best interests is well respected by the authorities during asylum procedure.

In cases where a child was able or willing to access the asylum procedure, a child would face different problems, namely, Serbian asylum law in practice in general. In practice, this is characterised by automatic application of the safe third country concept principle, which in practice means that all asylum applications by people who, on the way to Serbia, crossed some of the neighbouring countries that Serbia deems safe, have their applications refused.

Ms Milić said that this practice is particularly dangerous in the case of unaccompanied children, because they are usually ordered to leave Serbia without taking into consideration possible harmful consequences of returning an unaccompanied child from a refugee-producing country without a travel

document, without the means to support him or herself, to a country which he or she transited on the way to Serbia. Serbian law prohibits returning children if the authorities are unable to secure proper reception in a country where child should be returned to. This prohibition is still disregarded by default as the authorities rarely even contact such third countries, but merely give expulsion orders to children ordering them to leave Serbia within 7 or 10 days. This problem was addressed by the European Commission in a progress report, but also in recent reports by the treaty bodies, namely the CRC and HRC. Unaccompanied children who did not seek asylum in Serbia are in an irregular situation, and are in an especially difficult position. These children have experienced greater difficulties in exercising their fundamental rights, and the right to education and social inclusion was pretty much unattainable.

However, by the end of the September 2017, with the support of UNICEF and local NGOs, progress was made in primary school enrolment for around 500 children, including many unaccompanied children. There is an effort to also allow them to enrol in high school as well. Due to the commitment of the state to provide humanitarian care to all migrants, the accommodation at one of the reception or asylum centre was usually available to all unaccompanied children regardless of status.

According to relevant instructions and guidelines of the competent ministry, unaccompanied children should be accommodated in one of three residential centres that have separate units for unaccompanied children. In practice, however, unaccompanied children are generally accommodated in the regular reception or asylum centre. While there is genuine effort by the management of these centres to provide specific facilities, or even a room for children, they are often accommodated together with adults, generally in overcrowded conditions. The situation is especially serious given that unaccompanied children may spend several months there, and their exposure to risks of violence, sexual abuse, exploitation, and human trafficking. Failing to identify, then adequately support these severely vulnerable children, some of whom are as young as nine, who have fled war or poverty and travelled under the radar for thousands of kilometres without a parent or a guardian often causes desperation, which is for many children a push factor into the hands of smugglers and traffickers who are promising them a better future in Europe. Children often need to earn money to continue their journey or pay for a previous leg and are at risk of being exploited by smugglers. Some smugglers use children below 14 for various activities, because these children are below the minimum age of criminal responsibility. There are also frequent reports of unlawful pushbacks from one country to another along the route, in some cases using violence, as reported by Médecins sans Frontières in October 2017. Some children report attempting to cross borders several times, and having suffered beatings and abuse by law enforcement.

Ms Milić pointed out that the number of unaccompanied children is rising from one month to another and this trend is likely to continue. In that context, it is essential to work together to establish an effective system for protection of children. She underlined the gaps in terms of healthcare, including psychological support, education, social protection and care, and the need to think about durable solutions. While these guarantees and services are the responsibility of the state, civil society also plays a role and should be factored into discussions.

Angus Mulready-Jones, Lead Inspector for Children in Detention for England and Wales, explained that Her Majesty's Inspectorate of Prisons coordinates the national preventative mechanism in the UK, and inspects all places of detention: police detention, court detention, criminal justice detention, i.e. all prisons and also remand centres, and immigration detention. https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/children-in-custody-2016-17/.
Mr Mulready-Jones said that he would focus on those prisons that are holding children and could also

draw on some findings around immigration and police detention, as well. He briefly explained the three different types of detention centre that hold children. The majority of children who are held in custody in England and Wales are held in what are called Young Offender Institutions (YOI). He said that there were about 900 children in custody as at 6 November 2017, of which around 650-700 were held in Young Offender Institutions. These are, broadly speaking, larger institutions, holding between 100 and 200 boys at any one time. They cost about €100 000 per place per child per year. Secure Training Centres (STCs) hold boys and girls, and they hold about 180 children in those institutions. The placement cost is about double the cost of a YOI. There are also several Secure Children's Homes. Between them, they hold around a hundred young people who are in conflict with the law at any given time. Mr Mulready-Jones said that he does not inspect Secure Children's Homes, so would focus on STCs and YOIs and the vulnerabilities of children as they come into custody — and on some of their vulnerabilities that they have by fact of being in custody. There are two halves to this presentation.

In terms of the **population and demographics**, children can be sentenced to custody in England and Wales from the age of 10, although very, very few children are. All of them are held in Secure Children's Homes, which is the same setting that they would be if they were held for welfare reasons - the same providers and the same setting. Of the 900 children, about four percent of them were between 10 and 14, and the rest were over 15. About half the population at any one time were age 17, and that has been a fairly static figure. There is a disproportionality issue around the ethnic minority population, and that problem has been getting worse as the population has been getting smaller. England and Wales had some success over recent years in reducing the population of young people held in custody, but while the number of white British children held has reduced, the number of black, Asian, and minority ethnic children is reducing at a slower pace. These children now make up about 44-45 percent of the population, compared to about 18 percent in the wider population, constituting a significant over-representation of those groups. There are a whole range of different reasons for that, but a simple heuristic is that those groups tend to be more disadvantaged in society across England and Wales.

Mr Mulready-Jones went on to discuss some of the problems that the institutions holding these children face, and that is their existing vulnerability, and some of the education outcomes of children before they got to custody. Nearly all of them have been categorised as persistently absent from school before they get to prison. About a third of them have been permanently excluded from school before they get to prison. Around half of the population have some form of additional educational need that does not have money attached to it to meet that need. A good number of them, about 20 percent, have a special educational need that has been recognised with money attached to it.

Mr Mulready-Jones highlighted one of the starkest differences with the population at large: the number of children who are incarcerated in England and Wales who were **previously looked after** by the state. Whilst one percent of the general child population is looked after by the state, the population in custody stands at around 30 percent who were previously looked after by the state. However, in reality, the figure is much higher because there are different groups in England and Wales that are looked after, or who the state has some responsibility for. If you took the whole picture of looked after children in custody, you would get a figure closer to 50 percent. He emphasised that while that means that the looked after children, those that have been looked after by Social Services, are massively over-represented in custody, it does not mean that that proportion or anything like that proportion of looked after children end up in custody. Only a small number of looked after children end up in custody from the tens of thousands that are looked after at any one time but there is a shocking reality to the fact that in England and Wales, the largest provider of care for young people looked after by the state is the Prison Service. He said that young people come into prison with all sorts of pre-existing issues that have not been dealt with.

Mr Mulready-Jones said that this is one of the main problems with custody as a concept for this age group (16-17), in that they are not there long enough to do anything about it. If you are trying to design a service to address the pre-existing brain injuries that were discussed earlier, some of the social stigmas that some of these children face, their educational issues, their attachment issues if they have come in from the care system, you could not design a service that was going to do that in 118 days.

There are children who are sentenced to several years in custody, but 85 percent of them are given a sentence of less than 12 months, which makes it very difficult, no matter how much money you throw at these institutions, to address the issues that they come in with. This does not mean that you should lock up these children for longer, but rather that you might want to think about doing something more than we have already done to address those short-sentenced children, because they do not go out of custody in any better state than they came in, which is a real issue for society at large and it is unreasonable to expect an institution to turn around, or even assess properly the issues that some of these children have, given the time frame. He cited an anecdote from a recent inspection of a secure training centre concerning a child in custody for taking a car. He was remanded in custody on the Friday. He was restrained over a period of an hour and a half by prison staff to remove a mobile phone on the Friday. He was then assaulted by the other young people who were on his unit on the Saturday. He had a fairly quiet day on the Sunday, and then he was released on bail on the Monday.

The other issue with children in custody is that they are vulnerable because they are in custody. They are vulnerable because custodial institutions that hold children are often quite chaotic. They are often unpredictable, or they certainly are so in England and Wales. As part of an inspection, there is a survey of children at each institution that visited. About 4 out of 10 children in YOI say that they felt scared. About 2 out of 10 children in STCs say that they feel scared. Mr Mulready-Jones underlined this as a fundamental issue of concern: that that if you are feeling frightened about your own safety, you are unlikely to address anything else. You are just going to deal with that fear of either attack or mistreatment, wherever that instinct comes from, and that figure is high. The same survey questions have been asked for about 10 years, and that's the highest figure bar one, which was last year, for feelings of vulnerability while in custody. The reason children feel vulnerable, is that violence, use of force, and self-harm are all increasing within the system. While population numbers are coming down, the outcomes for those that are held are not improving.

Children are vulnerable because of the fear and the environment that they live in. They are also particularly vulnerable because they lack credibility. There is something slightly perverse in society that as children become more vulnerable, their word is taken less seriously. People in prison, whether they are children or adults, when they complain, when they ask for things, they do it from, quite frankly, a cell that might be clean, or it might not be. There is generally a toilet in the corner. They are generally wearing ill-fitting clothes. They are less credible than a speaker at the conference. The systems that are designed to protect them often treat them as such. That is a fundamental vulnerability of being in custody.

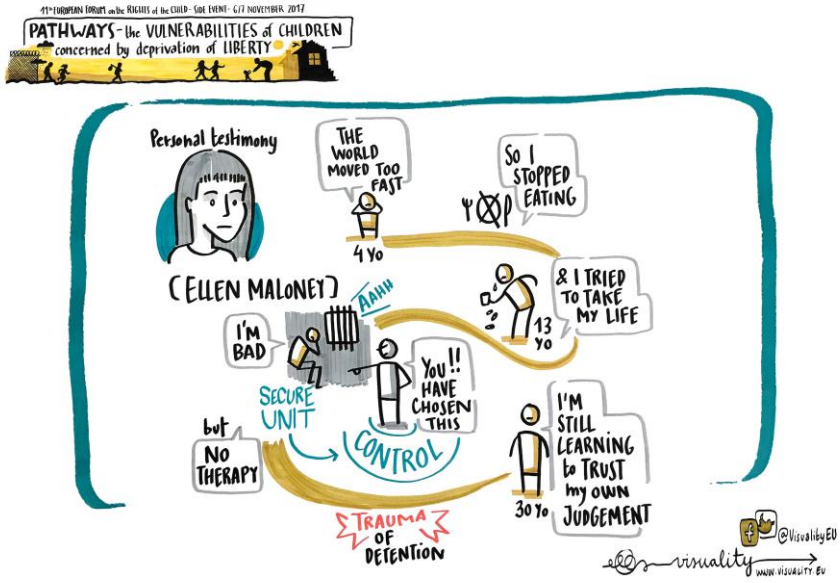
Mr Mulready-Jones pointed out that it is not a vulnerability that is unique to children, but because children by and large do not like to **complain** — we know that children in England and Wales in custody are 10 times less likely to complain than their adult counterparts — we should take their complaints more seriously than we do currently. Mr Mulready-Jones invited participants to reflect on n the fact that custody makes people vulnerable because it necessarily isolates them. It isolates them from where they came from. It isolates them from their family, if they had one before they came into custody. It isolates them from existing support networks that they had in the community, be that through Social Services, or through any other support group or NGO that was dealing with them at the time of incarceration. He said that of all the statistics that he could quote, the one that concerns him most is that in YOIs, nearly a quarter of children in custody tell him that they do not have anyone to turn to if they have a problem. That is one in four at the time of the inspection, and that is despite the fact that we spend literally hundreds of thousands of pounds per place on people for them to talk to: independent advocates, psychologists, medical professionals, and people working with them on a day-to-day basis. When children were asked who they would turn to with a problem, if they had a problem, something slightly surprising cropped up, is that who they would turn to if they had a problem are the residential officers that work on their unit, who would be care staff in a social care setting, or they would be discipline staff in a prison, and they are discipline staff for sure in these institutions. Mr Mulready-Jones said that these responses show where some of the solution to these issues are. It is not, in England and Wales, the creation of more posts that do not work directly with the children, or that work on an episodic basis. It is actually an improvement and an up-skilling of those roles that work directly with children so that you can create the trauma-informed models that were discussed earlier today. Mr Mulready-Jones concluded by saying that this cannot be done without focusing primarily on those who spend the most time with the children in custody.

Ellen Maloney, personal testimony: *"When I was four years old, I wrote a letter to my nursery school, complaining that they didn't teach me anything about medicine. I had decided that I wanted to be a doctor, and as far as I was concerned, my time was being wasted playing in sand and drawing pictures all day.*

When I was 12 years old, I stopped eating. I was under a lot of pressure at school and it felt like the world was moving too fast for me, and I needed time to think. If I could press a pause button, I could slow things down.

When I first stopped eating, time seemed to stop, and everything would go quiet. It wasn't long before I was first admitted to a hospital. First, it was somewhere near to where I lived. Then it was somewhere an hour's drive away, then somewhere four hours away.

I missed my family, I missed my friends, but most of all I missed school. It seemed like my future was being taken away from me. I was 13 when I first tried to kill myself. I spent three years moving around different hospitals, sometimes hundreds of miles away from home.



Then just after I turned 15, the doctors in charge of my care decided that the immediate risk to my life was too high for me to be kept in hospital, and I was placed in one of Scotland's secure children homes.

The secure children's home I was in was not a facility that was equipped to deal with a young person with mental health problems. It operated on a strict behavioural regime, and so the only tools they had for keeping me safe were harsh and punitive.

From the strip searches, to the endless nights listening to other young people scream as they were restrained in their bedrooms, to spending days locked in my room with nothing but a mattress, because I had cut myself.

I kept asking myself what I had done that was so wrong to deserve being treated like this. This was no place to put vulnerable young people. The process of dehumanisation began the moment we were brought into the unit.

For me, it began with being taken into a small interview room and being told that I needed to take all my clothes off, and wrap a towel around me to be searched. Then I was taken to my room and locked inside while I waited for someone to come back and search my bags.

I waited and waited. It got later and later. I heard other young people shouting and screaming. I was terrified and I was completely alone. Nobody was coming to help me, nobody was coming to see if I was OK. Nobody was coming to tell me that this had been a horrible mistake.

I listened to the screams coming down the hall late into the night, and I had no idea what was happening. I've never been as scared as I was that night. I stayed awake all night curled up against the wall, just hoping that nobody would come and make me scream like that.

It's been 20 years, and still, as I climb into bed every night, I can hear that screaming as I stay curled up against the wall. Nothing has been the same for me since that first night. We were told by the staff all the time that we had put ourselves in the unit; that we were there because we were just bad kids.

This was, of course, a damaging lie, but when you're told something often enough, you start to believe it. We had all had experiences that had impacted upon our mental health, and we all needed help.

Most of my energy was spent focused on surviving within those walls, rather than on doing the work I needed to do for things to be different when I left. I was told constantly that I had chosen to put myself in the situation and chosen to let other people take control of my life. As if I could have made some other choice.

The word choice implies that I had options, but the mental health problems I was struggling with meant I couldn't see options. To tell me that I had chosen this, and by implication was responsible and to blame for the situation I was in, was neither helpful nor true.

I was completely powerless during those months. I was punished for being unwell, punished for minor mistakes, punished for being a normal teenager. Punished by staff who were over-controlling, because the environment enabled them to exert control just to prove to the young people that they were in charge.

If there was a sign that a situation might escalate, like someone raising their voice, staff would lock that young person in their room until they had calmed down. When I looked back, I can see how toxic an environment this was for all of us. Children need to be allowed to be children.

Then there were other situations, for example, when I cut myself, staff would respond with excessive force that created a situation that was traumatic for everyone involved. I can see now that the staff also felt powerless much of the time, but this frequently came across as frustration and anger.

This is not a zero sum game, staff and young people need to be empowered so that emotionally charged situations are opportunities for working together, rather than the combative us versus them relationships that add fuel to the fire.

Being treated constantly as if I had done something terribly wrong has left me with a sense that everyone else sees something inside of me that I don't see. That they know something about me that I don't know. I've been left doubting myself, unable to trust myself, hating myself.

I question my own thoughts and opinions, because so often I was told that how I was feeling was wrong. That how I was thinking was wrong. As if, I, as a person, was wrong. I was told so often that I was fundamentally a bad person, and treated as such, that I came to believe that everything I thought must be bad too.

That what I think is less valid than what anyone else thinks. I find it hard to believe that my ideas and opinions are worth exploring, are worth sharing, are worth giving voice to. I feel inferior to other people, as if I'm a second class citizen. Someone who probably should be locked away.

I feel like I have this dark secret that I carry with me, but I don't quite know what it is. Other people saw it and they locked me up because of it. It's been 20 years since I was in the secure unit, and I struggle with the after effects.

Nightmares, panic attacks, flashbacks. There are parts of the city I live in that I don't go to because of the memories that they hold. I can't bring myself to even mention the unit's name. More than that, I struggle to rid myself of the belief that I was there because I was just a bad person; that I was locked up because of something inside of me that was dark and horrible.

It's difficult for me to justify taking up space I don't feel entitled to, because for so long I believed what I was told, and then internalised that I need to be locked away, erased from society, silenced.

I was seen as a problem and treated as a problem, and the fact that I was a person got forgotten. I was talked about, and I was talked to, and I was talked on behalf of, but my voice wasn't part of the conversation. I was deliberately silenced.

What I wanted or needed didn't matter. This is important because it has a lasting impact. I'm in my 30s now and I still struggle to believe that what I think matters, that what I need matters. Everyone has the right to stand within the centre of their own story.

When I think about myself at 15, I remember how desperate I felt. I remember racing thoughts, constant anxiety, feeling like the world was too big and too fast for me. I felt lost inside it. I needed to be heard, I needed reassurance, and I needed hope.

I needed what all of you here today would want for your own children if they were in pain. Someone who can ease that for them. I needed to be lifted out of the darkness I was in, not kicked further down inside of it.

When we think about young people who are at immediate physical risk, we need to consider how best to keep them safe. We need to think about how the actions we take will be interpreted by them, and the long term impact that will have.

It's very easy to judge and condemn what we don't understand, but when young people express their pain in a way that frightens us, we still need to respond with empathy and kindness. Instead of care

being something that is done to a person, it needs to be a collaborative process of listening and learning, acknowledgment and engagement, trust and cooperation.

By building relationships and working together with young people, we can empower them to find their own ways forward. It's those relationships that ultimately have saved me. I'm in my 30s now, and I'm still very much in the process of putting my life back together.

I've always dreamed of going to university, and this year, I finally returned to formal education, having been made to leave school when I was taken into the secure unit, 20 years ago. I'm learning that there's more to me than what's happened to me and what I've been through.

I'm finding my voice. I'm finally creating a future for myself that I'm excited to explore. This is what every young person deserves the opportunity to do."

Discussion points:

- ✓ Human Rights Watch, referring to Professor Williams' presentation, said that the brain injury research is interesting for all the obvious reasons, and that it creates an interesting dilemma in some respects, in that other brain research about the ways that the adolescent brain develops without injuries, but just focusing on the length of time it takes to develop, has been very convincing in a lot of jurisdictions to raise the age of juvenile court jurisdiction and to reduce the most serious sentences, including, in some cases, the use of the death penalty for juvenile offences and life without possibility of release. All of this has been premised on the idea that adolescents are malleable, that they can change with the right interventions. HRW wondered if there was a risk in how we present the impact of traumatic brain injury on children, namely that the children who are locked up are those who are the least capable of change because of the kinds of injuries they have. In response, **Professor Williams** acknowledged the importance of this point and said that at present, young people are being denied opportunities to change behaviour, and therefore end up (repeatedly) back in prison. Brain injury is a part of that: young people may have difficulty in changing behaviour because they cannot remember what they have been told. Neuro-rehabilitation works. It actually reduces the chance that somebody's going to be violent and enhances a person's chance of accessing employment. It requires working in a different way with a young person to achieve goals. We have just heard about the need to work collaboratively with young people in care to increase the chances somebody will then be able to achieve their goals in their lives. If we think back to the young man with the left-sided brain injury, who could not follow oral instructions, knowledge of his brain injury allowed for the creation of an environment to adapt the approach, to use pictograms for communication. Professor Williams also remarked that wearable technology can support people living in the community.

- ✓ An independent expert commented that notwithstanding how inspiring the presentations and testimonies have been, the basic message seemed to be very clearly and strongly that detention

does not work; not as a last resort; not for the shortest period of time; that it does not work, full stop, for children. Furthermore, it seems that detention actually puts the child further at risk and if we take a child rights based approach, this would preclude trying to find some acceptable way that we can continue to lock up children. He further suggested that money should be invested in guardianship and legal representation. No child in detention should be without independent counsel and a guardian, in the best sense of the word. Last year's Forum side event discussions on guardianship showed that it is a model that really works, albeit with some of the implementation difficulties as described by Nikolina earlier.

- ✓ Terre des Hommes asked panellists to what extent there is emerging evidence base around care in non-institutional, community settings for mental health issues, or for severe injuries such as those the professor was speaking about, neurological injuries. **Professor Williams** recalled the evidence base from New Zealand mentioned earlier, with a reduction in young people being sent into prison and or being given a criminal record in the last two years. This is partly due to the identification of neuro-disabilities in children and a focus on community-based, restorative justice approaches aligned with that a development of a youth or adolescent-oriented police system. The police are more likely to engage with children where that de-escalates problematic situations and so on. The Wales Justice Board programme mentioned earlier indicates that if you take account of adversity factors and also of neuro-disability, you arrive at a more clinical psychology informed view as to what is going on in the young person's life. This informs the way all parts of the system including judges and magistrates work with the young person. This approach has reduced the number of children ending up in custody and also reduced crime. He referred to the importance of trauma-informed practice, and also on the need to move away from a system where young people are detained, to a more therapeutic environment. He pointed to a similar system in Spain and said there is a strong body of evidence to support such moves. As well as putting forward the necessary human rights and child rights case, we should make the economic case, given that such changes would reduce crime rates. **Ms Maloney** said she has been working with a treatment team for the last eight years which was set up because of the lack of in-patient beds, and they do everything that an in-patient team would do in the community. They have psychiatrists, physiologists, support workers, and they come to your house as many times a day as you need with the aim to do the work of a hospital in your home, and that has been very effective. Ms Maloney said she had not been in hospital since this community-based approach was adopted. It started at a rate of 20 hours a week to a once-a-week appointment with a therapist from the team. Ms Maloney thought that this model would not have been enough when she was 15 because by that point things were really out of control, but something like that when she was 12 would have really helped, and more needs to be done for early intervention and adequate psychiatric help for young people when they first present with symptoms and are asking for help. She did not see a therapist on a one-to-one basis until she was 17 or 18, after having been within the system for six or seven years, and in institutions the entire time, which made no sense to her, as she had been asking for help from the very beginning. More community-based approaches early on could be really effective.
- ✓ The Hungarian Helsinki Committee offered some thoughts on the situation of unaccompanied children and the importance of trust: it is very important to earn the trust of the children that you work with, but especially with children in the migratory context. It is very hard to earn their trust because of the many things that have been told to them by the people who are the first line contact with refugees, or in asylum procedures, or legal proceedings, or smugglers, quite often. Listening to them may lead to catastrophic consequences for children, just to bring up the example of Hungary. If children asking for asylum rely on advice given by smugglers, and state

that they are related to each other, it may cause a situation for someone to be arbitrarily detained of his or her liberty in an unlawful manner in inhuman conditions in the transit zone, whereas even the current state of Hungarian law may provide that that person should not stay in the transit zone for an indefinite period of time. It is essential to invest a lot of effort in first line contacts with children, and this point should be recalled over the two days of the Forum.

- ✓ Children of Prisoners Europe asked if there was data on how many young people in the secure estate are actually themselves parents. **Mr Mulready-Jones** said the question is asked, but the data are based on self-reported data. The Youth Justice Board (YJB) has some data. According to the 2016-17 report, **10%** of children said they themselves had children (see page 28).

Ursula Kilkelly made some closing remarks on the session. Reflecting on all of the presentations, she said we have clearly heard about the **very serious impact of detention on children** and young people, both directly and indirectly, the harms that it causes, the violence, the lack of support, the failure to provide and invest in really individualised care, and the poor outcomes. Presentations have also given very important insights into practice and that reality of detention coupled with insights also into some really important programmes and initiatives and how we can advance those in the days ahead. Professor Kilkelly said that when we talk about the impact of detention on young people, we need to bear in mind the disproportionate and often discriminatory impact of detention on those young people who have particular **vulnerability**, irrespective of whether it is disability, experience of trauma, poverty, minority status or mental health problems, across the sectors: young people in conflict with the law or migration or some form of secure protective care. Presentations highlighted gaps between law and practice including the gaps between the standards that are set out in the Convention on the Rights of the Child and the reality that young people experience.

On a more positive note, presentations highlighted the importance of research, the importance of data and evidence; in terms of addressing health issues, the kind of support that we need to put in place, or the experiences of young people, their views and their testimony. The presentations underlined the importance of a children's rights approach, both in how we conceptualise these issues, and also in how we support advocacy, whether we are drawing on the concluding observations of the UN Committee on the rights of the child, international standards, or the case law of the European Court of Human Rights, all of which had been referenced during the discussion. There had also been references to reforms ongoing right across Europe and some references to the United States as well. She said there are reasons to be optimistic, as we reassert the importance of things such as specialisation, the right to a lawyer, the importance of the rule of law, accountability in how we both use detention and the conditions of detention. She flagged the importance of an awareness of rights, holistic responses, the visibility of these issues and critically prevention and early intervention. Professor Kilkelly considered that the case against detention is very strong which is why she would advocate for the global study, as this is the kind of data we need to politically convince, both at national and international level. She said we must improve the way children are treated and convince law- and policy-makers to move towards elimination altogether. As borne out by previous studies, the kind of momentum that can build around a

global study is really important. To conclude on a positive note, she recalled the discussions on participation as presented by Laura Lundy, the importance of family, the importance of support, early intervention, the importance of working together, of empowerment, of trust and of resilience and encouraged participants to carry all these themes into discussions over the next two days.

Session 3

Stephanie Rap, Assistant Professor, Department of Child Law, Leiden University Law School, discussed the situation of children who are deprived of their liberty in the juvenile justice system, with a particular focus on the **right to participation and the right to information**. She said that children who are deprived of liberty are in a particularly vulnerable position, and rights violations in deprivation of liberty take place on a large scale. The deprivation of liberty can take place on various legal grounds in different systems. Article 37 of the UN Convention on the Rights of the Child (CRC) is the core provision on deprivation of liberty of children. It recognises the impact deprivation of liberty has on children. It also advocates for a child-specific approach towards children in detention. Children are entitled to be treated with humanity and respect. The special needs of children should be taken into account, according to this provision. Professor Rap noted that it is vital that children can enjoy all rights under the CRC and in this context a strong legal position of children deprived of liberty is of importance. When looking at the CRC, it is important to bear in mind that children are, or should be seen, as rights bearers, not only children who are in need of protection, but also those who can exercise their rights independently and autonomously. Article 3 and Article 12 are of much importance in that regard so that the best interests of the child are taken as a primary consideration and that the child has

the right to be heard. Professor Rap underlined the fact that access to justice is a way of having effective remedies, in case of rights violations.

She said that the umbrella term of participation has been further conceptualised for children in conflict with the law. First of all, we have the right to be heard for children in Article 12 CRC. Children have the right to be heard in all matters that affect them. It means that procedures should be accessible to them, and that they should actually be able to give their views. Article 40 is of importance in this regard, because it states that state parties should promote the reintegration of children and prevent stigmatisation and social isolation. Furthermore, states are encouraged to provide specific treatment to children in specific juvenile justice systems. The Beijing Rules (1985) for the first time laid down that children should be able to understand and participate in juvenile justice procedures (Rule 14.2). The UN Committee on the Rights of the Child has been very prominent in standard setting with regard to participation in juvenile justice. The Committee makes a strong link between fair trial and participation during trials, influenced by the European Court of Human Rights. Moreover, the Committee also advocates strongly for providing information to children, because having adequate information is a precondition for making clarified and informed decisions by children, which is part of their right to be heard.

Professor Rap said that the Havana Rules (1991) provide guidance with regard to children who are actually deprived of liberty, with two sets of rules. First, children should be informed about the rules governing the institution. When they are admitted to an institution, they should be given information in writing about what the house rules are of the institution, and they should be helped to understand these rules. Second, it is important that children are informed about how to make a complaint when their rights are violated in the institution. Information should be given about how the complaints procedure works.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) standards give us further guidance with regard to information on rights. They stress the importance of giving information from when a child is detained in police custody. An information sheet should be provided to children, preferably written in child-friendly language; simple and clear language that children should be able to understand. House rules should be given to children and information on how to launch complaints. The CPT standards specifically state that the complaints procedure should be simple, effective, and child-friendly so that it is accessible to children.

Two other **EU directives** are important to mention here. The EU Directive on the right to information in criminal proceedings specifically draws attention to providing information on procedural safeguards when children are involved in justice procedures in a simple and accessible language specifically for children. The newest EU Directive on procedural safeguards for children who are suspected or accused in criminal proceedings sets out participation rights in Article 16 for the trial, but not for other parts of the procedure.

Professor Rap said that deprivation of liberty can cause much stress and feelings of anxiety especially in the early phases when children are deprived of liberty, when they are arrested by the police, for example, and held in custody. It has been shown that poor adaptation to the imprisonment situation can lead to risky situations where children experience much anxiety, but also involving self-harm or suicidal or aggressive behaviour towards staff because of their insecurity and feelings of unsafety. Generally, it can be stated that children who are deprived of liberty have particular problems with accessing legal assistance, having contact with their families, and also accessing information at its earliest stages. From a procedural justice perspective, she said that people will perceive procedures as being fair when they are able to effectively participate in these procedures. The treatment they receive is perceived as more fair when they are able to have a say and give their opinion on their situation. It has also been shown specifically for children who are in a detention facility, that the level of aggression and feelings of loss of autonomy can be reduced when young people feel that they are treated more fairly. On the other hand, experiencing unfair treatment in a detention setting relates to feelings of stress, anxiety and fear. There is a strong link found between fair treatment and adaptation of young people to detention, with knock on effects for participation in training programmes. In general, it can be stated from other research as well that children value being able to be heard in procedures, not only in detention but also in juvenile justice procedures in general; and that they feel that better decisions can be reached when their voice is heard. However, many children feel that they are not given enough information to be able to participate. They do not feel sufficiently protected in juvenile justice procedures, and they complain about unfriendly professionals in the juvenile justice system, in detention, and also outside of detention. Children do not always feel respected.

Professor Rap recalled that research in the area of **adolescent (cognitive) development** makes it clear that some young people may not understand yet all the information that is provided to them and this will hamper their understanding of rules and procedure. She underlined the importance of ensuring that children truly understand the information, and also the consequences of any decisions that they would like to take. A thorough appreciation of what they are consenting to or deciding on is crucial. Children should receive adequate support and help with that, and staff at the institutions can play a major role in giving information to young people and also explaining the different options that follow from their decisions. As had been said before, fair treatment by staff can diminish violence in institutions and risky situations.

As stated by the UN High Commissioner for Human Rights in his 2015 Report on access to justice for children, children must be empowered with child-sensitive information and also child-sensitive procedures so that they have effective ways to access justice. With regard to detention, this has a strong link with being able to make complaints if they feel that their rights are violated and having effective mechanisms of putting forward these complaints and having effective resolution to that as well. She concluded that providing information to children without them understanding it is rather meaningless.

Sara Pasztor, Child Rights Project Manager, Mental Disability Advocacy Centre (MDAC) (2018: NGO name change to Validity (www.validity.ngo)), explained that she is a special needs therapist of children with intellectual disabilities and a cognitive neuroscientist. Ms Pasztor said that she would present findings of human rights monitoring visits in residential institutions of children with mental disabilities that MDAC and partners have covered between 2016 and 2017 in Bulgaria, Czech Republic, Hungary, and the United Kingdom, in the context of an EU-funded rights of the child project (CHARM Project).

Ms Pasztor described the situation of 220 children and adults living in the Tophaz Special Home in Hungary. Most residents have intellectual or multiple disabilities. The adults living here were often child residents of the same institution. Children and adults are mixed together. In one common area of a ward, it could be seen that the room was unstructured, noisy. It smelled of urine and disinfectant. The windows were covered by bars and nets, and the window handles had been removed. The windows could not be opened. Except for a few pieces of furniture, there were no toys, no books, no objects, no personal belongings here. Residents wore training clothes. One of them was in a makeshift pyjama, with trousers sewn to a mismatched top. Staff explained that they were preparing these using old and torn bed sheets. Ms Pasztor said they had been to this institution five times and no organised activity took place during any of their visits. This means that young men and teenagers having to live here had nothing to do. There was zero physical, cognitive, or emotional stimulation, no education, no therapy. They were not challenged, no one was communicating with them. They were just left there for a whole day between mealtimes locked in this world, completely neglected.

In terms of the CHARM Project Ms Pasztor coordinated, a methodology was created with the contribution of roughly 30 international experts coming from multidisciplinary backgrounds, some of whom were at the side event. Copies of the project outputs were also made available to participants (see link above). One of the project outputs, the CHARM toolkit, is a collection of extensive information focusing specifically on the human rights violations children with mental disabilities face in institutions, and the high standards, way of conducting monitoring visits, and interdisciplinary teams needed to detect these. MDAC trained 147 professionals internationally to identify, prevent, and publish the abuse in these countries to promote rights of children with mental disabilities in institutions and to push governments and policymakers towards full de-institutionalisation. MDAC methodology includes communication with children with mental disabilities during monitoring visits, and they also created pictures to support that.

As in Tophaz, in Bulgaria, MDAC found similar conditions. There were stickers referring to EU funding (structural funds), evidence of serious neglect, and abuse of residents. As in Tophaz, there was a strong smell; a mixture of body fluids and disinfectant. Cardboard shelves, beds, desks, chairs were uniform in all bedrooms. Windows could not be closed, handles were removed, residents had cold hands. One worker wore a white medical coat with an EU logo on it. Workers grabbed and pulled residents. In another Hungarian institution, there was a resident locked in her bedroom with a wooden

gate which only staff could open. The resident was not allowed to leave the room unless a worker so decided. All the monitored residential institutions were considered as places of detention because children cannot leave them freely and were placed here on a discriminatory basis because of their disabilities. Hundreds of thousands of children live in institutions Europe-wide, and children with mental disabilities are over-represented. All countries in the MDAC research (Bulgaria, Czech Republic, Hungary, and the United Kingdom) lack support services for individual care and families, and lack inclusive education. European states in 2017 detain their children, discriminate and segregate them, and often force families to put their children in such places because of the lack of alternatives provided. In several cases, local authorities denied access to institutions for the independent monitoring teams. Access to Tophaz was sought for six months. MDAC wrote letters to managing authorities, organised meetings, constantly sought cooperation, tried to access the institution once with a Hungarian member of parliament. But access was always denied for our independent experts.

Ms Pasztor described situations in Tophaz between February and April 2017. A male resident was lying on a bed in a curved position with his shoes on. He was covering his eyes, to shield them from the light, or to be disconnected since there was nothing he could connect to. He did not stand up when they approached him, did not show any interest. The lack of individual care led to neglect in his case. His cognitive, emotional, and physical needs were obviously not served. If children are not communicated with, if their nervous system does not receive sufficient stimulation for a long time, they start to stimulate themselves in various ways to stimulate their nervous system, to perceive stimuli, and show a behavioural response to that. If children have no education, no programmes, no hobbies, no friends, no visitors, no books, no toys, no personal objects, no pillows on their beds, no children and adults around they could communicate with, there is nothing left than to start to stimulate themselves, to feel their own bodies or to stimulate an environment to connect to. Typical self-stimulating behaviours include rocking, biting on their own hand, hitting their own head, punching their own eyes, inappropriate masturbation, chewing on clothes, papers, objects, while others might act violently towards peers because of the extreme boredom and deprivation they live in.

Ms Pasztor said they saw all these behaviours in Tophaz. She emphasised that the behaviours witnessed resulted directly from the neglect they suffer from and from psychological consequence of restrictions, not because of their mental disabilities. She said that as such behaviours manifest, the institution gives them even more medication or restricts them in other ways so that they are less active and less aggressive. She described a self-stimulating behaviour: a man chewing on the wooden frame of his bed. On one visit, they found him face down on his bed. On a closer look, they discovered that he was biting his mattress, which already had a head-sized hold in it. Aside from the psychological neglect, he clearly suffered from physical neglect as well. His contractions in his body were extreme, which could be

pretty painful as well, despite the restrictions to his movements. She wondered when this person last had physiotherapy or whether he had physiotherapy on a regular basis at all? When visiting one ward, there was a seated boy with Down syndrome whose body was contracted and stooped and very skinny, wearing pyjamas and a nappy. He had fresh and older untreated wounds on his head. He had something black in his ear, it was not possible to see if it was caused by insects or something else. He did not move during the 30 minutes of the visit to the ward. There was also a woman showing signs of malnutrition, sleeping deeply at 11:00 in the morning. Like all other residents who were in bed, she had very short hair. When MDAC approached, they realised that her face was injured and she was tied to her bed with some textile, possibly stockings. Another female resident in her early 20s, with short hair, sat in pyjamas, on a dirty sheet in a 150 cm tall cage. Her eyes were open, but she would not even engage in eye contact, let alone conversation. Her face was injured and she was tied to her bed with some textile piece, maybe stockings. Staff said that she was in a caged bed because of her epilepsy to avoid injury. MDAC expressed concern that she would probably hurt herself more falling in a metal frame. The staff agreed after a while and it transpired that she was having no more than a few seizures per month. Ms Pasztor also discussed the situation of a child suffering from complete neglect and physically restrained in a makeshift straitjacket. His hands were tied, probably below his knees, to the straitjacket. He was wearing a helmet, his face was full of wounds, his facial bones and teeth were deformed and his eyes only slightly open. He was completely isolated within his body. His movements were very slow for a 12-year-old, possibly overmedicated. He was subject too to psychological neglect. There were no activities to involve him, nothing for him to pay attention to, nothing for him to do. His only activity was to stand in the middle of the room, tied up. Ms Pasztor said another resident of the same institution, who had been there for 10 years, was in his early 20s. He had previously been a resident of a psychiatric hospital. He was separated from his family since he was four years old. He had spent all his life deprived of liberty and physically restrained. He was tied to the metal frame of his bed with a textile strap, and a proper metal lock locking the strap around his ankle. There was nothing in his room, but a metal bucket for his urine and stools and a few plastic dinosaurs in a box under his bed. He was allowed to leave his room once every day when he went to shower. Workers were afraid of him because he was tall and strong, so they kept him tied and medicated. He was so used to being tied up that he sometimes asked the workers to tie him up. When asked whether he wanted to leave the institution, whether he wanted to move somewhere else, he responded with a clear no. He could not imagine how it was to not live on the cold floor of a $5m^2$ room tied to a bed. That was all he knew. He did not know the difference between being in the institution and outside. All he knew was being inside. He saw Ms Pasztor's cellphone and said he wanted one as well. He knew that he could get one in a shop. When asked if he wanted to go to the shop and buy a phone for himself, he said yes. He wanted to leave the institution and go out. But he was not permitted to. He was detained.

Ms Pasztor explained that that MDAC had published a report on this and done their utmost to raise awareness of the media and the whole Hungarian society. They also reached out to international media platforms. Their international advocacy work, in the last six months, covered a side event in the UN and a presentation of findings of all four European countries in the European Parliament. She said that MDAC currently has to face reprisals for its work. They have been sued, and the Hungarian data protection authority has also initiated an investigation against them. Since the publication of the Tophaz report, six months prior, they had not had any update from the Hungarian government on how the residents were doing and whether any steps were being made to urgently help them. The UN Voluntary Fund of Victims of Torture is funding the next steps now to provide emergency assistance to the victims and to litigate on their behalf. MDAC had no further access to the institution.

Ms Pasztor said her aim was not to shock Forum participants, but to bring to light the **reality of large scale institutionalisation of children with mental disabilities in Europe** today. These children need to be included in the community, in a caring family, to enjoy their right to freedom and free movement, to have access to education and to enjoy all their other rights, as any other child. She said their detention needs to be ended and alternative care established as a matter of urgency.

Georgette Mulheir, Chief Executive Officer, Lumos, invited participants to go back in time 28 years to that extraordinary moment when the Berlin Wall came down. She said that for so many people who had been born after the wall went up, they had known nothing else in Europe, but a divided continent, and half of it in the block of red in geography text books. People vaguely knew the names of countries like Romania, and Hungary, and Poland, and Bulgaria and Czechoslovakia as it was then. It was a block of red that had disappeared at the end of the Second World War. Then once the wall went up, it seemed as if it would be closed forever. When it came down, she said, many people found it almost impossible to believe that it had happened. Europeans were all euphoric with the revolutions that spread peacefully across Central and Eastern Europe. They imagined that there was this transition to democracy that would happen rapidly and would change everything forever. Of course, it has not happened rapidly. The reality is there has been very significant progress over 28 years. She said the EU has played an extraordinary role in healing our continent and bringing together the countries that were divided and in strengthening and supporting democracy and the development of democracy. Even at a time when we see tides of nationalism sweeping across our continent, she said it is actually the EU - certainly from her perspective and from the perspective of Lumos - that keeps that flame of democracy alive.

What does democracy actually mean? What does a move away from authoritarianism mean? She said that along with the euphoria, very quickly, in late 1989 and the early '90s we started to see some of these images. People remember the pictures from Romania and just quite how shocking some of these images were at the time. It was almost indescribable to imagine that children were being kept in these kinds of conditions. It seemed like something that belonged to science fiction or to a bygone age. Ms Mulheir showed a photo from 1989 in Romania and said there were many shocking things that happened in institutions in Romania. While she would not focus on Romania, it was images of Romania that people were shocked by, with many people not realising that the same thing was happening, perhaps not on quite the same scale, across the whole of Central and Eastern Europe. She said that whilst these institutions purportedly were set up to care for children - it's called the child welfare system, it's called protection, it's called care - what happens once you place children in an

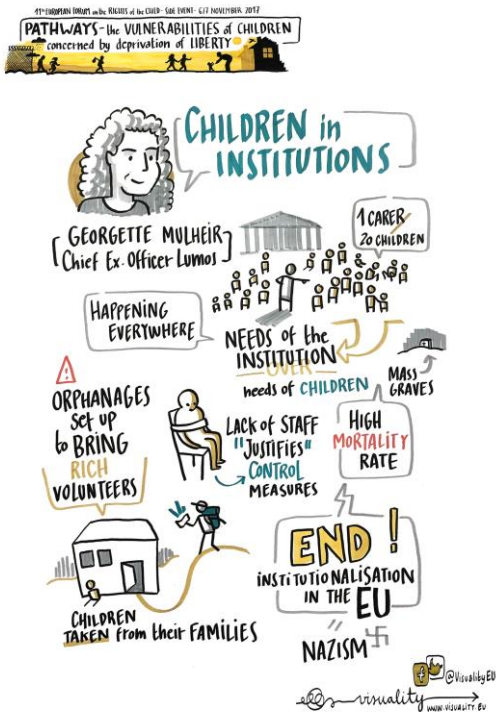
institutional environment, very much what Sara Pasztor was telling us is that the regime itself; the needs of the institution, take precedence over the needs of the children.

The staff have a particular set of things they have to do each day. You may have one staff member looking after 20 children and sometimes 40. They develop approaches to looking after the children that ultimately are degrading or humiliating and at times constitute torture. She showed a photo of an institution she was involved in closing in 2001-02 in Northwest Romania. At the time it was considered still the country's worst institution. There were 270 children and adults with disabilities. Every couple of months the children were lined up to have their heads shaved allegedly to control lice. We would see the children at the back of the queue getting more and more distressed as their turn was coming. If you were at the back of the queue, by the time you got to the front of the queue, the razor was getting blunter and blunter, resulting in injuries to the children's heads. This was a painful, humiliating, degrading process.

Ms Mulheir referred to **Ellen Maloney's** description of her experiences of dehumanisation and said it was amazing how many institutions across the world use this head shaving, purportedly to control lice but ultimately about dehumanisation. She said that **Angus Mulready-Jones** spoke about how difficult it is for children to complain; how less credible they are when they are in a uniform. She said that, when you see children who are half naked and whose heads are shaved, the vulnerability of these children and the challenge for us to see them as individual human beings, and the challenge for them to assert themselves as individual human beings in that environment, were almost insurmountable. These processes that people say are about running the institution, about hygiene, about controlling lice, are really about othering the children. They are about us creating this excuse for why we are doing this to children. When she walked into that first Romanian orphanage in 1993, Ms Mulheir had been working with children for about two years at that stage. Ms Mulheir had been told that there were 550 children under the age of three. Anyone who knows anything about little children would imagine that this would be absolute chaos. There would be noise and screams. There was utter silence. She thought a joke was being played on her. She wondered how it was possible to have 550 children under the age of three who were completely silent, and said that those who know about attachments know that within a couple of days of newborn babies laying in a cot and in institution, they have actually stopped demanding. They stop crying because nobody comes to meet their demands, hence the silence. The lack of stimulation, that neglect then results, as we know in the self-stimulating behaviours that Sara Pasztor described, the rocking back and forth and so on. Quite often then that would turn into self-harming. She said she had seen 12-month-old babies smacking their heads against bars of cots, smacking themselves in the faces. Instead of that stimulation that they should be getting, and instead of that interaction with other human beings around them, they close themselves off into their own world, as a means of surviving. This means the brain is not developing. The personality is not developing, and the body does not develop properly either.

She showed another similar photo from the United States of America in 1987 and said that Willowbrook had only closed in 1987. Willowbrook was allegedly a residential special school. It had 6 000 children and adults with disabilities in New York State. It was one of the most terrifying places imaginable, but it took until 1987 to close it down. Then two years later, we saw the images from Romania and the entire world was shocked. We forget our own histories very, very rapidly. Ms Mulheir showed another photo that actually sparked Lumos: a child in a cage bed in the Czech Republic. We see still cage beds being used in Hungary today. We see them in Greece. We see them in other parts of the world. She has seen them in Haiti and in Colombia. She said that the process of institutionalising children allegedly with the intents of care, and protection, and welfare ends up with all of the classic traits of detention. It ends up with depriving children of their liberty to the extent that we actually put them in cages, that we tie them up, that we use psychiatric medication to control their behaviour.

She said that once we have these big groups of children and once some of the challenging behaviours they are a result of institutionalisation start to appear, we then have to control that behaviour further. We do that through caging children still, in Europe, in 2017. She showed another image lest anyone consider that they have seen everything. It related to a detention centre in Australia, where again the logic of control of behaviour allows us to think it is OK to do this to children, to tie them to a chair and put a spit hood over their head. Ms Mulheir explained that she had worked in residential care a long time ago, back in 1991 in the UK, in what was not a great residential care facility. There were only six children there. There were three members of staff on duty at all times. You would think that that would work very well, but these were children with challenging behaviours, teenagers with challenging behaviours. There was one young man who spent his entire life spitting. He would eat chocolate on purpose so that he could spit brown spit all over you. She said it was not pleasant, but they did not treat him like in Australia, not even in 1991. She asked what makes us think that this is OK to do this to children? Ms Mulheir said that another really common result of institutionalisation is a very high mortality rate. She referred to news coming out of Ireland last year of a mass grave of about 800 babies and infants, in Tuam in the West of Ireland, and more recently a report from Scotland showing us another mass grave there.



She said that she had come across a mass grave recently in an institution in Haiti, where in order to attract volunteers, institutions in Haiti and in many countries in the global south are set up precisely to bring volunteers who bring donations. Lots of young people from wealthy countries want to volunteer in orphanages as part of their gap year experience. It has become trendy. She said that it brings so much money in that orphanages get set up just to provide that volunteering experience. Then they bring the children in, because once you have an orphanage you need children. They pay child finders. The child finders go out into the community and they trick parents into giving up their children. The children end up in the institutions so that someone can come and volunteer and bring a donation. In order to get as much money as possible, Ms Mulheir said that unscrupulous orphanage directors will

sometimes systematically starve the children, so they have pictures of emaciated babies to put up on the internet and say, "Please come and help our poor, starving orphans". She said that in one such for-profit Haitian orphanage, Lumos recently found a mass grave, and they have also come across mass graves in Bulgaria and in Romania. Ms Mulheir underlined that this is not about one country, but about what happens when we think it's OK to detain and deprive children of their liberty en masse. As to why children die at a high rate in institutions, Ms Mulheir explained that there are much higher levels of violence in institutions, but particularly for children with disabilities. What we find is that, again, institutional regimes mean the children with disabilities often are not given enough time and support to eat properly. In Bulgaria six years ago it was found that there were very high levels of mortality in the disability institutions, all of which have since closed. Lumos sent in an expert at the request of the government to the worst institution. She started by observing meal times. Every member of staff had 30 minutes to feed 20 children. This meant that, on average each child with disabilities with eating and drinking difficulties was being given **80 seconds to eat their meal**.

Ms Mulheir said that in Canadian residential schools, or rather schools for indigenous first nation children in Canada in the 1950s, '60s and '70s, one in every 25 children died in those schools. If you were a Canadian soldier serving in the Second World War, you had a better chance of surviving than you did as an indigenous child in the Canadian residential schools.

In terms of what can be done, she said that whilst Sara had shown us some shocking images of what is still happening today in Europe, there has been a dramatic change over the last 28 years on our continent. There has been a dramatic reduction of the number of children institutionalised. The EU, several years ago now, changed its regulations to stop funding towards improving orphanages and instead to transform services and to set up community-based health, education and social services which will eventually mean that on our continent there are no more children in institutions and we will stop doing this to our children. Ms Mulheir said that it is important that if we do not think something is good enough for our own children, then Europe needs to ensure coherency and underline that it is not good enough for any children to be in institutions and to be deprived of their liberty. She said that we need to make sure that everywhere we spend money we ensure that. She referred to Maygoma in Sudan where the mortality rate in this baby institution was 82 per cent. Lumos turned it round completely and managed to set up a foster care, and local adoption, and prevention services. She said they had worked to decriminalise being a single mother, which meant that babies were no longer abandoned on the streets, and it was possible for children to stay with their families. She said that it is actually possible to transform systems of care and to do this globally and underlined that it is important as a Union that we do this together.

Ms Mulheir said that wherever we Europeans spend our money we must say that child welfare and child protection cannot mean detaining children, locking them up, putting them in institutions. It means family-based care. It means community support services. She said that even in some of the most difficult of circumstances, it is possible to transform systems, such as in the case of child soldiers who escaped Lord's Resistance Army in Sudan and found their way to Khartoum. They were put in an

institution there and had terribly difficult behaviours. Lumos has helped UNICEF and the government to set up foster families for these children. Within days of them moving into foster families, the challenging behaviours had all disappeared, as the children started to realise and remember what it meant to be in a family and remember their own families, and then to start talking about them. She said this work made it possible to actually trace the families in Uganda and get children back home. Even for children with the most challenging pasts imaginable, it is possible to provide family-based care and to support children to live in the communities. She said it is amazing to see the resilience and the transformation of children once you get them out of these circumstances. Lumos was working in November 2017 with UNHCR in Ethiopia. Ms Mulheir showed a photo of Endabaguna Detention Centre where children who come from Eritrea across the border end up together with adults, in an outrage of a place, much in the news. Lumos and UNHCR are working to set up an emergency foster care programme based on the one that was set up in Sudan. The Sudanese and the Ethiopians are learning from each other in order to make sure that unaccompanied refugee children from Eritrea and Ethiopia can also be placed in families. She said this will ensure that we stop putting them into these shocking places where we know they are subject to rape, to all forms of abuse, and terrifying traumas which compound what they have already been through. With regard to Haiti, Ms Mulheir showed a photo of one of the institutions that people came and volunteered in. It had been closed down, but it illustrated the shocking and terrible conditions created for children, just to make it possible for volunteers to come and donate. Following the money, Lumos found $100 million, at least, going into orphanages in Haiti every year, with its 30,000 children, but that same money would have put more than 700 000 children in school. It was 130 times the government's child protection budget, and it was more than the EU puts into its entire aid programme in Haiti. It was half what the US puts into its entire aid programme in Haiti. She said that the money being poured into these appalling institutions for children could do so much good if targeted at the right actions.

Ms Mulheir recalled that it costs a lot less per child to look after them in a family including for children with disabilities than it does to put them in these terrible, poor quality institutions. There is literally no excuse and the money needs to be spent differently. Twenty-eight years after the Wall came down, what are we doing in Europe? When we are turning it round for our own children, for the children who are citizens of Europe and when we are transforming systems of care, we are starting to build walls again for children, to keep the children who we are othering today out: the **refugee and migrant children**. She said that we need to make sure that our systems of child protection across the union are not about detaining and depriving children of liberty.

Ms Mulheir closed with **four recommendations for the EU**. 1) To make sure we continue the implementation of the European Structural Investment Funds rules, and end the institutionalisation of children in the European Union as it is completely unnecessary. She reminded participants that we know what the alternatives are and we can afford to implement them. The money is there to make the change happen and we must put pressure on all of our governments to make sure that they are all going in the right direction. 2) We must make sure that

every EU Member State receiving refugee and migrant children includes them in their child protection system, and not in a separate refugee system. As soon as a child is on our territory, they have the same right as every other child in that territory. They should be looked after by the child protection system, not by the asylum and migration system. They should never be detained with adults. They should never be locked up. 3) She said that we need to make sure that all of our EU funding, irrespective of the funding strand (development, humanitarian aid, etc.) serves to end institutionalisation globally, and that we assure policy coherence so that everywhere, when spending money on alternative care we are spending it on family-based, and community-based services that stop depriving children of their liberty. 4) The final and most important message would be that the EU had taken the lead over this last quarter of a century in transforming child protection systems in tackling this terrible deprivation of liberty in so many institutions across our continent. The EU should take the lead on funding the global study on children deprived of liberty, and encourage all Member States to do so. She said if Europe did not make it a priority globally, clearly no one else would.

In closing, Ms Mulheir said that it was no coincidence that the Nazi regime and the Soviet Union used mass deprivation of liberty of children as a way of controlling society. The Nazi programme started by insisting that parents and children with disabilities be placed in institutions and then turned those institutions into extermination centres. The so-called Euthanasia Programme started with babies, and children. They were the easiest ones to kill. The staff, the personnel from those extermination centres who became immured to killing children, those were the staff who were then transferred to run the extermination camps that killed millions of Jewish people and others. In the Soviet Union, it became habitual to lock up the children of "undesirable" parents. Politically undesirable parents went to concentration camps. Next door to the camps, they set up orphanages for their children. Children with disabilities were warehoused, and left to die because they were seen as undesirable. She said that if any country starts to go down the road of mass deprivation of liberty, mass detention of children, whatever it calls it, however it normalises it, that is the road to authoritarianism. At a time when we are seeing democracy under threat, we must see this as the canary in the coal mine. Anywhere we start locking up children again, this is a sign that there is something wrong with our democracy. For democracy to flourish in the EU, and beyond, we need to liberate children.

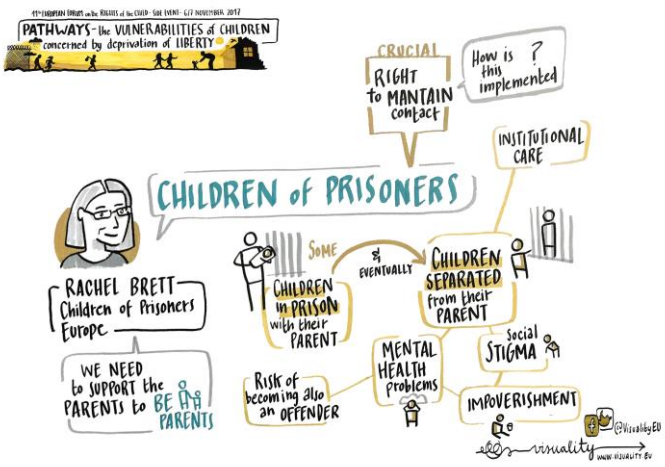
Rachel Brett, Member, Children of Prisoners Europe (COPE), said she would provide information about children of prisoners in general, following on from some of the issues discussed earlier. She said that in talking about children of prisoners, she would use the words 'prisoners' and 'imprisonment', not only to cover prison following sentencing, but all detention in relation to the criminal justice system, namely pre-trial, during trial, after trial and before sentencing, as well as actual imprisonment on sentence. Ms Brett said that in terms of the number of children affected, the simple answer is that we do not know because nobody collects the statistics, but, in order to have a picture, COPE itself, Children of Prisoners Europe, has produced an

extrapolation using the World Prison Brief. That collects the number of prisoners and from that COPE estimated the number of children of prisoners and this is very much an extrapolation. It is not an accurate figure, but in the Council of Europe member states, the estimate is 2.1 million children every day, noting that this is a daily figure, not an annual one. It is not a figure of how many children have been affected by parental imprisonment and not a figure, of course, that includes how many adults were affected by parental imprisonment when they were children. Within the EU that figure is — again, an extrapolation — 800 000. She said that we are talking about a large number of children in every single country in Europe noting that every single country in the world has some form of criminal detention of adults.

Ms Brett said that the situation of children comprises two different groups. Most, but not all European countries have provision for babies and young children — infants — to live in prison with their mother or, in a few cases, with their father. She pointed to the Fundamental Rights Agency table in its June 2017 Report on immigration detention of children, which is a table in relation to the criminal detention of the parent. She said that the table does not mean that all mothers of babies and young children or fathers, noting those few cases, can have their child in the prison with them. Very often this is not the case, very often it does not appear to relate to any assessment of the best interests of the child. Ms Brett said that she was struck by **Georgette Mulheir's** comment on the needs of the institution taking precedence over the needs of children, and said that is very true in prison systems for adults. Of course, in some cases, that is correct. In closed prisons, in closed male prisons would you really want children, babies, and infants to be there? Throughout most of Europe, the age limit is around three years or less, but in fact, in some European countries, it is permitted for rather older children. She said that means - even for those who do accompany their parent into prison or are born when the parent is in prison - that many of those will overlap with the larger group which is the children who are separated from the parent in prison, because many of those who were in the prison with their parent will have to leave prison before their parent leaves prison. The overwhelming majority of that 2.1 million estimate in the Council of Europe are separated from their imprisoned parent.

Ms Brett recalled the provisions of the UN Convention on the Rights of the Child to which all countries in the Council of Europe and almost all countries in the world are parties, which actually says in Article 9[1], that children should not be separated from their parents unless it is in their best interests. If they are separated, they have a right to maintain regular and direct contact with both parents except if it is contrary to their best interests.

[1] Article 9 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known. 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.



Ms Brett went on to discuss what happens to those children who are separated from a parent. Obviously they may be cared for by another parent, other relatives, or go into care, foster parents or institutions. However, information is lacking on how they are cared for. Wat we do know is that for most of those whose father is in prison, remain with their mother. Children whose mother is in prison, are more likely to be cared for, not by the father, but by other family members or informal carers or through the state care. Ms Brett said that this is not simply a social or attitudinal question, that is also a question that more mothers who go into prison are single parents and were usually the sole or primary carer of their child before they went into prison. In some cases, both parents may be in prison. In addition to this general picture, she said it was important to pick up a couple of things that came up during the first day's discussion, in that children in young offender or juvenile detention facilities may also be parents *(10% according to UK data – see above).* In Europe there are particular issues about Roma and Travellers who tend to be over-represented in the prison systems as well as often in other institutions and in particular are over represented in juvenile and youth offender facilities. Ms Brett said that, given that within these groups, in very broad brush terms, there is a tendency for early marriage and child bearing, that means that again, you are more likely to have more children from these groups disproportionally affected in this way.

In terms of impact, Ms Brett said that children of prisoners have now been recognised as a vulnerable group by UNICEF and by the EU and COPE very much welcomed the draft recommendation from the Committee of Ministers of the Council of Europe which is due to be adopted in early 2018 *(post-meeting note: Recommendation adopted by the Council of Ministers on 4 April 2018)*, on children with imprisoned parents. Ms Brett also pointed to the very good background paper/explanatory memorandum on this as well, which is in the Forum list of resources. Ms Brett said that while we have to recognise that for a small proportion of these children, the removal of the parent may in fact be beneficial, a consistent finding of research is that having a parent in prison is generally negative for the children concerned. As a group they are at significantly greater risk of suffering multiple adverse effects unless provided with support. She said that in addition to the actual separation from their parent, they may suffer economic difficulties. Particularly of course if it is the bread-winner who goes into prison but in fact there are economic difficulties that derive from the imprisonment because families tend to have to pay out much more to visit and to support those in prison. There may be a loss of housing, family breakdown, stigma and mental health problems.

In the coping research that was funded by the EU, in three of the four countries studied, 25 percent of the children were at greater risk of mental health difficulties than their peers and in the fourth country it was 50 percent. Although each child, even within the same family is an individual and will have a different experience in relation to parental imprisonment and therefore must be considered individually, the broad overview is physical and emotional separation. Ms Brett said that it is quite clear that actual detention or imprisonment has a more negative effect than noncustodial alternatives. For babies and infants, there is a loss of breastfeeding and opportunity for mother-child bonding, which is so important

in those early years, and the attachment issues in the case of the mother being imprisoned unless, of course, they accompany her into prison. She spoke of the stigma faced by children of criminals, in particular if it is high profile or notorious or even in the local community, and the fact that attitudes tend to expectations that the child will follow in the parent's footsteps. The withdrawal of friendship, the attitudes of teachers, police, neighbours, etc. also have an impact on children. There is a greater likelihood of change in the caring arrangements including having to move house, move school, going into care, or even when these do not change the increased stress on the other parent or carer impacts on the child.

Ms Brett said that separation from the parent by imprisonment may also lead to siblings being separated, and it quite often in fact leads to permanent separation of child and parents. Even if that was not the intention of the care arrangements for the child, the parent who comes out of prison may not be able to regain custody of the child for either legal or accommodation reasons, etc. Studies suggest that parental imprisonment can increase a child's likelihood of becoming an offender, but positive responses can mitigate this by aiding wellbeing, attitude, and attainment. Many of the behaviours and factors reported by children of prisoners including anger, truancy and lack of social ties are recognised as risk factors predicting antisocial behaviour and offending. Ms Brett underlined that the negative impacts of parental imprisonment do not end when the parent is released. The emotional, economic, and social stresses and strains of imprisonment may continue post release. Ms Brett reiterated that some children live in prison with their parent; that is direct deprivation of liberty although they are not technically deprived of their liberty, but they are living in a prison. Some children of prisoners live in institutions. This may be directly linked to the imprisonment. The parent goes into prison, the child goes into care, in this case institutional care. It may be indirectly linked. The increased poverty, for example, the lack of adequate housing, the inability of the other parent or carer to provide for the child can lead therefore to institutionalisation. It may be related to underlying circumstances.

Ms Brett said that addiction or domestic violence which may lead the parent into prison may also be factors in the child being institutionalised. It may be completely unrelated, but we do not know how many institutionalised children have a parent in prison. Given one of the key findings from the coping research was the benefits for children of maintaining contact with and visiting their imprisoned parents except in the specific cases where it is not in their best interests, Ms Brett wondered how children in institutions were informed and enabled to do this. She said that links to young offenders and to over representation of Roma and Travellers had already been mentioned in the context of pathways. Amongst the reason for overrepresentation in prison populations, are over policing, stop and search operations, which increase the likelihood of ending up in the criminal justice system, as well as the difficulty in claiming state benefits. Ms Brett pointed to factors such as inability to demonstrate the right to reside in accordance with the European Union directive on this, and fulfilling other conditions which increases the likelihood of poverty and antisocial behaviour such as begging, leading to arrests, unpaid fines, etc., and belonging to one of the most excluded and marginalised populations in Europe. These factors tend to mean that they are less considered appropriate to alternatives to imprisonment before, during, and after trial and for early release.

In terms of exploring what we can do, Ms Brett said alternatives to detention and imprisonment and taking account of the best interests of the child when considering detention or imprisonment of a parent or carer can also contribute. The UN Committee on the Rights of the Child consistently recommends this to states, but in the first instance many of those taking those decisions are not even aware that the person has children. They need the information. Decision-makers need to consider what is going to happen to children and many of them are very resistant to the idea that this is a relevant consideration in sentencing a parent, in sentencing an adult. It is important to help the child to maintain that contact with the parent, and it is crucial to consider how best to facilitate that contact, including financial and practical and emotional support and of another accompanying adult if the parent or the care is unable or unwilling to accompany the child during visits. Ms Brett reminded participants that we are not only talking about those in their own country of origin or normal residence, but there may be foreign nationals, and their children may be either in that country or another country. She underlined the need to support parents in their parenting role, helping them and supporting them and encouraging them and working with them so that hopefully they could become better parents, not only while they were in prison but afterwards.

Lina Hellmark, Bufff, gave a personal testimony. Ms Hellmark said she worked with the Swedish NGO Bufff, which supports children and youth with parents and family members in the penitentiary system. She had been working in this organisation since May 2017, and she started right after she finished her studies to be a social worker. In her work, she met families that are in need of information and support. Her job was to listen to the individual family's needs, and then offer them the best possible support. Ms Hellmark shared a little bit of her story, on how it affected her during her adolescence and adult life to grow up with a mother in prison. She lived with her mother until she turned five. During these years, her mother was diagnosed with personality disorder and started to self-medicate by using drugs. She quickly developed an addiction, which eventually resulted in her losing her home. Ms Hellmark's mother's addiction and life decisions were not the optimal environment for a child, so she moved to live with her father. During the time she lived with her father, he was struggling with alcohol abuse and had a hard time keeping a job, paying the bills, and making sure that his daughter had food to eat.

By the time Ms Hellmark turned seven, social services decided to place her with her grandparents, where she lived until she became independent. She had spent a lot of time with her grandparents when she was a little girl, often for holidays and weekends, so she felt very secure with them. Ms Hellmark said that her grandparents' only difficulty was that a long time had passed since they took care of a child and found it difficult to meet her needs, but they did the best they could in regard to the situation and the resources. Her grandparents had separate bedrooms, and she shared a room with her grandmother. They slept in the same bed, and Ms Hellmark had no toys. Her clothes were inherited from her male cousin who was four years older. Ms Hellmark was happy to be with her

grandparents but missed having a normal family life and she often felt jealous of friends who lived with both their parents.

Ms Hellmark said that during her childhood, her mother was imprisoned many times. It was a relief every time she was incarcerated, because they were the only times Ms Hellmark knew she was safe and taken care of. Her mother always wrote her letters and paintings when she was incarcerated, and Ms Hellmark was always welcome to visit. She said that she had great memories of the times she visited her mother. Her mother always looked nice. In the prison, they had a solarium and her mother was always tanned and her mother would give her buns that she had made herself. The visits always took place in the same room and that made Ms Hellmark feel safe, even if it was not child adapted. The only thing that mattered was the fact that she got to spend time with her mother. Her grandmother, who always accompanied Ms Hellmark to the prison, would always step aside so that she and her mother could have some quality time together. Ms Hellmark said that today she is unbelievably grateful for all the times her grandmother accompanied her to prison, and made it possible for her to spend that time with her mother. If she had not got the chance, she probably would not have any kind of relationship with her mother today. She recalled that sometimes she hated her mother for not being there. She hated her mother because she brought her into this world and later abandoned her. Sometimes Ms Hellmark cried because she felt extremely lonely. She used to wonder if she was the only person in this world in that situation, even though she loved her mother from the bottom of her heart and more than anything in this world, her only wish was that she would love her back in the same way.

As a child, Ms Hellmark said that she did not get the help that she needed. She had nobody to talk to or share her feelings with. She had a constant feeling that she was the only one in the world having a mother in prison. Nobody asked her about her family situation outside her grandparents' home and she never spoke to anybody about it. Without any information or support, she assumed it was her burden and secret to carry alone. When she was growing up, she had a hard time making new friends, and the few friends she had did not know the truth about her mother. If somebody asked, she always lied. She usually told them that she was abroad or living in another city, or sometimes she even told them she was dead. Unconsciously, as she was growing up, she developed certain survival strategies and coping mechanisms. It wasn't until she was 27 she got help and realised that she had to develop those coping strategies as a child, in order to survive. Ms Hellmark said she thought that she would have been very different if she got the help needed.

Ms Hellmark explained the impact of some of these strategies. In order to counter the chaos and uncertainty and the feeling of not knowing how the next day would turn out, due to the lack of routines, as an adult she has the urge to have everything under control so that she never has to experience the feeling of uncertainty again. Another challenge is that because of the fear of being hurt, she built up a wall in order to protect herself, and would push someone away if they got too close or if she felt she liked them too much. She was so afraid of being hurt that it always felt easier to leave rather to be left. She became a chameleon, learning to adapt her behaviour and personality to different situations. She

confused actions with character and felt the need to always perform better than anybody else. Somewhere along the way, she lost track of the things that were important to her.

Ms Hellmark said that she is now mother to a beautiful girl, and she could never in her wildest dreams believe in a greater love, but being a parent is not obvious for her. She struggles with emotions and thoughts about the social heritage, thinking about the possibility of not being able to love or take care of her child. She lives with the constant fear of failing in her parenthood the same way her parents did with her. However, she said she has such great support from her partner that she is looking forward to what the future holds, in a way that she could not have dreamed about when she was growing up.

She said that the last time her mother went to prison was in 2007, and today she has been clean for nine years. It took Ms Hellmark a long time to let her mother back into her life, and today she sees her more like a best friend than as her mother. Today she knows she will be there and she is the most amazing grandmother, a grandmother compensating for the time she could not be there for her daughter. Ms Hellmark has forgiven, but she will never forget, because by never forgetting where she has been and what she went through, she will never lose hope in the fact that everything is possible.

Discussion points:

- ✓ A **Greek prosecutor** said that children whose parents are in prison have twice the risk of children whose parents are free, to have antisocial behaviours included conflict with the law. Moreover, children whose parents are in prison often become victims of bullying in school, and risk being excluded from society, as mentioned by **Rachel Brett**. Finally, she said it has been ascertained that children who often visit their imprisoned parents are better adjusted than children who do not visit their parents in prison.
- ✓ **Professor Nowak, Independent Expert, leading the UN Global Study on children deprived of liberty,** welcomed the strong statements made by speakers and said they brought back of lot of memories from Professor Nowak's time as Special Rapporteur on Torture. From the many places of deprivation of liberty, for children and for adults, he can confirm all that has been said by speakers, such as on dehumanising practices like shaving. He has seen places in Central and Eastern Europe, in particular, or Central Asia, where the youngest was three, an orphan, and the oldest was a 16-year-old boy who had committed some kind of misdemeanour and others were street children. All were treated in the same way, shaved, dressed in a kind of prison uniform and locked up and beaten up every day. Professor Nowak agreed with statements on how easy it is to focus on the right alternatives. To give a positive example, in Denmark, for instance, that they created the possibilities for children visiting their parents in prison in a very, very child-friendly atmosphere. Small children did not even have the feeling that they went to a prison. They had a different entrance. It was like a children's playground where they could meet their father in normal clothes and play together. Such child-sensitive models are not expensive or difficult to implement. Then you see other prisons where children visit their parents and they

cannot even touch them because there is a screen between them or a wall. Many parents describe how painful that is for them and they do not want to be visited by their children because they feel so ashamed. And once the children leave again, it is emotionally more difficulty. Professor Nowak underlined how easy it is to develop suitable alternatives and said that before sentencing a parent to a prison sentence, the judiciary should consider what the alternatives are, at least for a period of time until the child grows up and can deal with it in a better manner. Professor Nowak welcomed the support for the Global study, which would help to bring order together in a concerted effort of really getting the data that we need in order then to develop joint recommendations.

- ✓ The **Hungarian Helsinki Committee** reiterated one thought which was expressed during this very valuable discussion, and that was that you know that something is wrong with your democracy when you start locking children up. He added that you know that something even worse is going on in your democracy when you lock children up and you deny access or seal society from those places where children especially but people in general not just children are locked up. If you take these criteria and through these glasses look at recent developments, you will see that something is clearly very wrong with Hungarian democracy. In recent months, the Hungarian Helsinki Committee has experienced the new asylum regime set up in March 2017, when the systematic mass detention of asylum-seeking children solely based on the fact that they are seeking asylum became the norm. Children as young as six months were locked up in the transit zones in the middle of nowhere in metal containers without air conditioning when it was 40 degrees outside, with no shade, access to play, or adequate care services for them. The Hungarian Helsinki Committee which has been monitoring place of detention for decades has been systematically denied access to these places, which is also a new development not only to the transit zones which were put up in the border with Serbia, but also to inland places of detention. The Hungarian Helsinki Committee had very fruitful corporation with the government agencies responsible for detention and these cooperation agreements were all cancelled in recent months in a clear attempt to block access to these places and to block the potential raising of concerns. The Hungarian Helsinki Committee reiterated the importance of access by civilians to places like Tophaz, as described by **Sara Pasztor**, which led to a huge public outcry and underlined the necessity of having such indicators, monitoring and responding to such situations.
- ✓ **Defence for Children International Belgium** pointed out that DCI has published a practical guide on monitoring detention places where children are deprived of liberty in all kinds of settings, all kind of places. Copies of the guide were available to Forum participants in the publications room and online. DCI underlined the importance of having external oversight and a professional view on what is going on in places of detention. People are generally unaware of what is happening and it is very important to raise awareness of the public about what is going on in our countries. If the general public saw all those images that we saw today, which could be taken in so many countries, they probably would not accept it from their society. DCI said that aside from monitoring, better use should be made of strategic litigation to combat these practices, using all legal mechanisms available, such as the European Court of Human Rights and, European Social Committee applying the European Social Charter, the UN Committee on the Rights of the Child using Optional Protocol No 3, making sure that your country ratifies the OPCAT, the Optional Protocol for the Convention Against Torture. All those mechanisms should be used much more. DCI pointed that there are relatively few decisions from those bodies and mechanism, pointing to missed opportunities. This should be part of the advocacy

work of the NGOs, and even more broadly, to provoke change. Change will not happen only by visiting or only by denouncing those places, but more proactive means must be used.

✓ **Defence for Children International Italy** said they were struck by the fact that we are considering different kinds of detention and different kinds of phenomena. He said there should be a paradigm shift in some way if we want to limit the vulnerabilities of children. He said that, in fact, we are continuing in some way to treat vulnerability as if it were a sickness. But, in fact, we have to start considering that vulnerabilities are determined by the context. Otherwise, we are going to put the burden of vulnerabilities all on children. He said that especially because we are talking about deprivation of liberty, we have to start to consider that deprivation of liberty is probably the last kind of vulnerability that we impose on children. This is maybe an obvious thing but it is not very much discussed as we continue to talk about "exception". But the construction of vulnerability is the structural phenomenon that we have to start to consider if we want to talk about detention. Detention of children is an indicator of malfunction in society. If we want to be closer to these children, we have to start considering that we are the ones who are determining this vulnerability at various levels. Migration management is one example. We tend to isolate and be very violent with diversities and with children. DCI Italy said that the fact that there are children who are detained across Europe more and more in some way is just an indicator that maybe detention and isolation is a structural element of our development model. Unless we start using the CRC principles and provisions as a kind of ecological element for our new narrative, we will continue to be very much shocked by the images that we have been shown, but without really connecting with them. DCI Italy also said there was a high degree of fragmentation in our analysis, in our action. Fragmentation is the exact place where the exceptions come in, and exception is the rule, unfortunately. More and more children are violated by our system. If we are not relating the detention or the vulnerability created in detention with the causes and the responsibility which determine, even before the detention, this vulnerability, he said we will continue using the same narrative that will make children even more vulnerable.

Professor Ursula Kilkelly made some key points to draw the morning's presentations together. The first is the power and the importance of testimony, both in terms of personal story and the documented evidence of what we see whether in our role as NGOs or otherwise. Clearly, what participants saw in the images presented was the undeniable truth about the appalling conditions in detention in the EU in 2017. Also, very eloquently expressed was the pre-eminence of institutional need or concern over the needs and rights of children. Professor Kilkelly said that there were two other aspects to this. The first was that really big steps need to be taken. That opportunities need to be taken to address the need for reform and change. She said we had seen examples, particularly when **Ms Mulheir** talked about the influence of the EU in Europe and also globally was hugely important. She said it was a hugely

significant issue in the context of the migration and humanitarian crisis that we are now facing, and our failure as a Union to address this with humanity and respect for the rights of individual children and their families. Professor Kilkelly said we need to be conscious that we have extraordinary power both within the EU and in how the EU operates in the global words to effect change and reflective of that throughout the presentations also was the power of advocacy. The power of creating visibility, and voice, giving, and echoing those stories that we had heard throughout the rest of the forum in terms of delivering accountability through the use of advocacy. DCI touched, in particular, on the use of all available remedies, international and domestic, which need to be part of that whole strategy. She said that another aspect relevant to most of the presentations, which was most powerfully and eloquently expressed by **Lina Hellmark**, is how the small things also matter; how we take time, how we prioritise time with children, how we prioritise making and sustaining and supporting the development of their relationships, creating happy memories. These are very small things that clearly can have a hugely powerful effect on the lives of individual children. I think that needs to stay with us through the forum as well. Thank you very much everybody.

Session 4

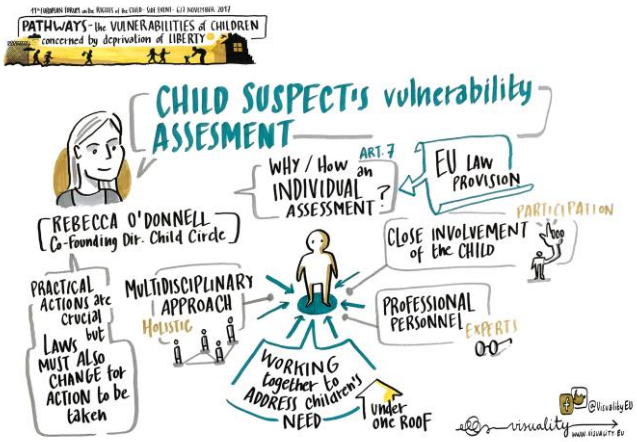
Rebecca O'Donnell, Co-founding Director, Child Circle, explained that Child Circle is a non-profit centre of expertise on child protection measures in EU actions, with a key goal to support actors to work together across professions and across borders to protect children. Child Circle uses European measures as a common starting point to build knowledge, guidance and practical tools that help practitioners and policymakers in their daily work. It works with many organisations across Europe in the area of children and migration, child victims of violence, children who go missing and children in conflict with the law. Ms O'Donnell referred to the many discussions during this side event which illustrated how the specific circumstances of children may go either unidentified or unaddressed when a child is involved in criminal proceedings. Participants have also heard that, if specific circumstances are identified and addressed, this has the capacity to transform the outcome of a criminal proceeding for a child. She noted the example mentioned earlier of how engaging some young offenders in literacy and training programmes can help them from re-offending. Consequently, Child Circle is very interested in a recent provision of EU law on this issue, namely Directive 2016/800 on procedural safeguards for children who are suspected or accused in criminal proceedings. **Article 7** of that directive contains a specific obligation to meet the needs of child suspects or accused. Member States have until the 11th of July 2019 to bring this directive into force. Ireland and the UK have opted out of the directive, and Denmark is not subject to the directive, but the other Member States should be implementing the provision. Ms O'Donnell said she would shine a spotlight on Article 7 and raise some issues for us to think about, and not just to think about, but potentially to act upon together. She remarked that there were so many different actors at the side event including social, health, legal professionals, policymakers, and academics, that we had an opportunity to work on the implementation of this article.

The Directive provides that Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account. For that purpose, children who are suspects or accused in criminal proceedings shall be individually assessed. The assessment shall in particular take into account the child's personality and maturity, economic, social and family background and any specific vulnerabilities that the child may have, all very relevant to the matters discussed at the side event. Ms O'Donnell said that the Directive provides that the nature of the assessment may vary depending on certain circumstances, but children should not be going into detention without that assessment. With regard to how and where the assessment is to be used, Ms O'Donnell noted that it should be used very broadly across the whole proceeding: to determine whether a special measure is needed during the proceeding, or the appropriateness of a precautionary measure, and that might include pre-trial detention, or taking any decision in the criminal proceedings including sentencing. In essence, law enforcement and justice professionals should have more information on the child before they take these decisions.

As to how the assessment is carried out, Ms O'Donnell said the Directive provides that it should be carried out at the earliest possible moment by qualified personnel, with the close involvement of the child and following as far as possible a multi-disciplinary approach. Each of these elements raises interesting and important issues. For the close involvement of the child, she referred back to **Laura Lundy's** presentation and that of **Stephanie Rap**, to consider how and why a child is closely involved. What might that mean beyond simply listing information for them? What is the power of the process itself to engage with the child? In relation to the involvement of qualified personnel, she underlined the importance of considering what special skills may be essential to really decipher what is happening in the child's situation, such as the mental health issues that **Huw Williams** talked about yesterday. Ms O'Donnell said that having a multidisciplinary approach brings us back to the recent guidance of the UN Committee on the rights of the child in the area with its insistence on taking a holistic approach to the child's situation. It also takes us back to the Commission's proposal for 10 principles for integrated child protection systems which were put forward at the forum two years ago. She said that those principles say that the necessary protocols and processes should be in place between professionals and practitioners working with children to facilitate their roles and responses to violence.

Ms O'Donnell said that, consequently, Article 7 had real potential to ensure that children's needs are addressed in all aspects of proceedings including detention, but only if it is properly implemented. Ms O'Donnell said that, whereas there are a lot of questions to think about on how it might be best implemented, having a common EU law provision means that we can more easily share our knowledge and good practice across Member States and it also means that we can develop together common practices. She said that this is the opportunity on which we should currently focus, with that almost two-year window of transposition.

Looking back, she reflected on what was the state of play before the directive was adopted. In carrying out its impact assessment study prior to proposing the Directive, the Commission looked at what vulnerability assessment mechanisms existed in different Member States. That analysis showed at the time that generally there were simply case by case approaches to assessing vulnerability in the case of children, with only one systematic approach to vulnerability assessment in a Member State. In some cases, these assessments only involved questioning in police stations. In other cases, other professionals were involved. She said that, although there have been recent developments since 2012, we also know from more recent research that there is some ground still to cover. One EU-funded project has recently touched upon this. Led by the Belgian section of Defence for Children International, it is called My Lawyers, My Rights and it involves a number of organisations here at the Forum. The project explores many of the aspects and problems concerning the roles and skills of lawyers when involved in representing children in criminal proceedings. Of course, amongst other things, the project sought to raise awareness of the role of the lawyer in relation to the individual assessment. Ms O'Donnell said that, given that Article 7 has a potential to be so central to the outcomes, the lawyer clearly needs to be involved in some way, and at a minimum to be fully informed of what the



individual assessment says. That project will develop training and advocacy manuals to trigger reflection by lawyers and policymakers on what needs to happen. Manuals will be published in 2018.

Ms O Donnell added that, beyond lawyers there are a range of professionals who need to explore together how to do this. Article 7 really raises some interesting questions on whether and how cooperation takes place between the state actors which are focusing on the needs of children, on the one hand, and the state actors who are focusing on enforcing the law, on the other hand. She reflected on how law enforcement and child protection actors work together, with children and with children's families when a criminal law proceeding is under way, and referred to some of the multi-agency work in the UK and the case management tools that are used there. Ms O'Donnell noted that the proper implementation of an individual assessment should lead to better outcomes for children, which might require some significant changes in procedures. For example, it may require protocols between family law courts and criminal law courts to link up the situation of a child in conflict with the law and their family law situation. It may involve changes to how services are provided.

More broadly, she wondered whether the criminal law proceeding able to focus on solutions rather than just punishments? She referred to a very recent speech by a UK judge, Sir James Munby, President of the Family Division, England and Wales, on children in the justice system. The speech was a very interesting exploration not only of what needs to happen, but also of how it can happen and what really difficult issues need to be addressed. One of the striking things in it was Judge Munby noting that, once it was realised that a particular kind of family law court was needed, it took 40 years for that type of court to be established. Whereas we are now probably at the stage where we realise that we may need certain specialised proceedings and practices for children in conflict with the law, Ms O'Donnell expressed the hope that it would not take 40 years for these to be developed, in particular, given that we all should have the ability to work together and make it happen sooner. Apart from thinking of what should happen in the field of children in conflict with the law, we can look into what is already happening in other fields to get inspiration. She pointed to another EU-funded project, which is the PROMISE Project led by the Council of Baltic Sea States in which Child Circle is involved. The project looked at practice concerning child victims of violence. It looked at the practice that started in Iceland and spread across Scandinavia and beyond, where you have agencies working together under one roof to address children's needs. This interagency multidisciplinary practice avoids secondary victimisation of children, and prevents them from having to go through repeated interviews in different locations and having to go to different places for a medical examination. Here, under one roof, in a Barnahus, judges can come and listen, and interview the child. It also enables specialisation and better cooperation among agencies. Ms O'Donnell said the PROMISE Project saw a real need to develop standards, a vision for practice and outcomes in the field, and specific operational arrangements such as sophisticated data protection agreements between agencies. She said that the Promise project thus developed useful tools to promote and establish Barnahus, available on the PROMISE website, and there is a second project under way now.

In conclusion, Ms O'Donnell said that some effort and rigour would be needed to implement Article 7 in an effective way. She said that Member States may need to develop new procedures or adapt and improve existing procedures, so that an individual assessment should not simply be regarded as a tick the box exercise. She said it would represent real progress across Europe if we could use that provision of our common legal framework as a real engine to help children out of conflict with the law and into better lives.

Pat Bergin, Director at Oberstown Children Detention Campus, said that Oberstown is the only facility of its kind in Ireland, where young people are placed through the courts either on remand or in committal orders in respect of criminal behaviour. He said that over the past number of years there were three different schools there and in recent years they have come together under one, new facility called Oberstown Children Detention Campus. Mr Bergin said he would give an overview of that facility and some of the challenges experienced, as well as the initiatives taken to try to address some of the issues faced by young people coming into detention, and trying to break the cycle of young people coming into detention. Mr Bergin explained that he had been in this role for four years, and in his early days someone had defined the criterion for success of Oberstown as being when Oberstown would be only half full. What it meant was when you can contribute to ensuring children are not placed in Oberstown, when you will have identified a process of working with children in communities and other services, and that was what they have attempted to do; namely to work with other services to keep children out of Oberstown. Mr Bergin briefly described the layout of the campus and explained that €55m has been spent on it in the last 3-4 years. It can accommodate up to 82 young people and there were 265 staff. There are about 40 young people on campus at any one point in time. On 7 November 2017, there were 42 children, 14 of whom were on remand, the rest on committal orders, and there was only one girl, who was there for a week before she would go back to court. Mr Bergin reiterated that the facility resulted from three different schools' long history and said that some of the points made earlier highlight some of the challenges also for Ireland. The focus for Mr Bergin has been about bringing the outside world in, about welcoming in different services and different organisations, even if there is a fence on the external perimeter.

Mr Bergin said that on campus they do not have all the skills that are necessary to address young people's behaviour within the campus; nor do they have all the skills to maintain young people out of Oberstown, so help is needed and that has been a substantial challenge. He said that the risk in inviting people in is being exposed open to and exposed to criticism, from people who will see areas requiring improvement. That can raise issues for staff, for management, for young people, for families, for people living in the area because they question what is wrong. Oberstown should be working properly, and the staff should know what they are doing. Mr Bergin pointed out that human beings, including children, are complicated and part of the issue we have to look at is how we continue to improve what we do and how we do it. He said that discussions over the last two days were interesting in that regard, for example children with mental health problems and problems with education.

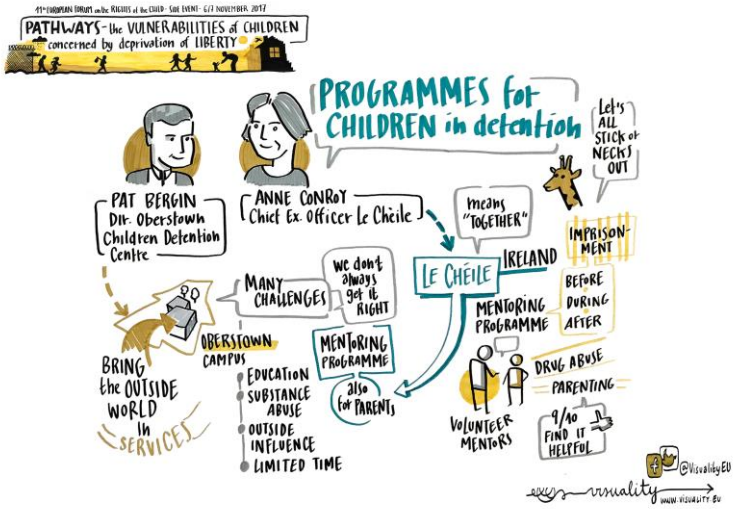
Mr Bergin said that in the context of people invited into the Campus, Anne Conroy would speak later about one of the initiatives to work with parents in the community, to try and mentor the parents to support those children when they leave so they do not come back.

Mr Bergin referred to a review of the key characteristics of the young people on campus for the first quarter of 2017. There were 69 children, of whom 33 were on detention orders and 36 were on remand.

Remand means that they are in court today and the judge has said, go to Oberstown, come back next week and the adults in the services will decide what to do with you. That young person has no interest in being involved with Oberstown from a relation perspective, given that Oberstown is detaining him or her. The challenging behaviours that they will display are real, because their view is, “I’m gone next week." Mr Bergin said that they have to manage their behaviour, they have to support them and they also have to ensure their rights are met and the families are engaged with. He said participants had heard earlier about children and their parents and the importance of that connectivity and he fully supports that, but he also has to manage situations where parents bring drugs into their children. If he puts up a screen, he is told he is preventing parents from having contact with their children. Therefore, children are searched and adults are searched in order to allow a situation where they have that connectivity. He said that they had just had the first case of a parent being prosecuted in relation to bringing drugs into the campus.

With regard to how a young person who is a father has contact with their newborn baby, he said you have to assess the vulnerability of the parent and their capacity to care for their child, as well as the baby.

Out of the 69 young people on campus in quarter 1 of 2017, for 10 of them (15%) it was their first time there. Forty-five per cent of them were 16 years old and 41 per cent were 17 on admission. Three were 14 years old on admission. All of them were boys. For the 10 new arrivals, they would most likely be back again. Mr Bergin said that in relation to key factors, 38 (55%) of the 69 children were deemed to have mental health issues prior to admission, 31 of them (45%) had been in state care and many of them had had multiple care placements. They became involved in the juvenile justice system on the basis of challenges they experienced either in the care setting or because the care setting was not robust enough to care for them. Five of them (7% were parents or parents to be). Forty-nine (71%) were not engaging in education prior to admission.



Mr Bergin said that children in Oberstown are required to go to school. He said that they love going to school; there is a structure, there is engagement and the teachers are focused on their individual needs. Those children could not cope in classes of 30 or 40. They fell out. He said that perhaps in their home life education was not a priority and perhaps no one got them up for school, but now they were in a routine. This may prove a real challenge for them. Mr Bergin said that out of that group, 54 (78%) were considered to have substance misuse problems and this could also contribute to very challenging behaviour.

Mr Bergin referred to the case of a young person who was due to be on bail, but who considered, as did his parents, that he would be safer on the campus, away from his peer group. Mr Bergin said that these

were simply examples of some of the very real challenges encountered. In terms of initiatives, he referred to the Youth Advocacy Programme (YAP), which has been on the campus for the last two years, mentoring young people prior to them leaving and the idea is that they can effect some change, look at the environment that they are going back to whether it is education whether it is training, whether it is accommodation. He said that when young people leave, there needs to be an adult who is aware of aware of their experiences in Oberstown and their experience on release, and who tries to support them. Over the last two years, 25 young people have engaged in that project but there are limitations to it. He said that the limitations to it are that if young people return into the same environment, even if they themselves want changes, if the environment or the home situation has not improved, there may be issues. He said that Anne Conroy would thus explain the Le Chéile project mentoring families.

Mr Bergin said that other initiatives have been launched vis-à-vis staff and how they relate to young people. He said that if you send a 15-year-old in with 15 month sentence, you need to be realistic about the changes expected for a child who has experienced 15 years of chaos. He said it is not possible in 15 months to turn a child's life around.

Mr Bergin said that in August 2016, there was a significant incident on campus and there were a number of young boys involved in that and it has been a long year. He said part of the lesson for all the staff on campus is that three or four of those young people are now the subject of advocacy by the staff to keep them on even if they have hit 18 years of age. Oberstown did not give up on those boys, even though they seriously challenged the facility 12 months ago. Mr Bergin said he has a group of staff who see the potential and capacity of those boys and ask if they can stay on a bit longer.

Mr Bergin said that it was important to have a perspective over time and to understand that there are challenges in managing young people in detention. Children do not want to be there and may have complex needs. He said the facility is expected to do it right, and they do not always get it right. There would continue to be shortcomings. He said that the campus may be ridiculed for those shortcomings, and that is probably correct, but there has to be an understanding that you cannot fix overnight issues or challenges that have gone on for a long, long period of time. He said that the culture is changing and there are more requirements for different approaches and they are working on that and hoped that his presentation provided some useful insights.

Anne Conroy, Chief Executive Officer, Le Chéile, said her presentation would focus on the importance of targeted support for young people and their families in order to, one, reduce the number of young people who are going into detention, because we should not lose sight of that, and secondly to support young people in detention and reduce the rate of recidivism. Ms Conroy gave some background information on youth justice in Ireland. In 2001, the Children Act focused on diversion and alternatives to young people going into detention. Part of that law provided for mentoring for young people on probation. Ms Conroy said that in 2005, Le Chéile was set up. Le Chéile is the Irish word for "together", an NGO, funded by the Department of Justice and the European Social Fund, and they work in partnership with the probation service in Ireland. She said their vision is that for every young person at risk, the right supports at the right time enable them to make the most of their lives. Ms Conroy said that vision underlies their commitment to young people's rights to realise their full potential, which contributes to reducing youth crime and in turn contributes to reducing young people going into detention. Mentoring for young people on probation is their core service.

Ms Conroy said that the young people they deal with, similar to what Pat Bergin described earlier, are typically not in school or education or training. They have been involved in repeat offences for substance abuse, poor parental supervision, and a history of involvement with many state services. The mentoring happens in the community, it is one to one, a volunteer-mentor meeting with a young person in the community. It could be going to have a cup of coffee, going to have a game of pool, going to the cinema, going to a football match, whatever they are interested in. Ms Conroy said they have over 200 volunteer mentors nationally.

The volunteers are not part of the system and this is instrumental in getting and keeping the young people on board. She said there is a whole system of recruiting, vetting, training, support, supervision, all of that, with staff coordinating all of that and recording outcomes and monitoring, all of which were of major importance. Ms Conroy said that in 2016, an independent evaluator looked at the impact of mentoring, published in 2017. It found that there was significant reduction in terms of the offending behaviour by the young people. The report refers to a figure of 28 percent reduction, which it took as a very cautious figure as regards reduction in offending behaviour. There was also a significant reduction in alcohol and drug use by the young people. On the improvement side, the report found that there were significant improvements in terms of young people's self-confidence, communication skills, hopefulness, involvement in activity, education, out of home activities, and improvements in relationships with family and persons in authority.

The evaluation concluded that Le Chéile mentoring was more effective than other research on mentoring in the current youth justice system. It also highlighted that it is all about the relationship formed between the mentor and the young person. She said that that is not a surprise; at the end of the day, it is all about the relationship that the worker or the volunteer can form with the young person. What happened then if the young person went into detention? Because that sometimes happened that the young person being mentored suddenly disappeared and the mentoring just stopped abruptly. Ms Conroy said it sometimes happened that they have been getting on really well on probation, and with their mentor, and may have then been convicted for an earlier offence and received a custodial sentence. Le Chéile sought therefore to try to continue with mentoring in and after detention also.

In 2015, they had discussions with Pat Bergin in Oberstown and agreed that if a young person is with Le Chélie and has a mentor, they would stick with them if they go into detention. Feedback from the young people, parents and staff has been really positive and Ms Conroy suggested it should be done for young people in adult prisons too.

Another aspect of their work concerns parent mentoring and there was an evaluation on this too. Ms Conroy said 'parents' is understood to mean parents, carers, foster parents, grandparents, whoever would be the significant adult for the young person. The evaluation found improvements in the parent's relationship with the child in trouble and other children. These included improvements in involvement in activities outside the home, education, or work, improved communication skills, parenting skills, ability to manage stress, and self-confidence and self-esteem. The evaluator concluded that the improvements in emotional well-being and particularly hopefulness were most significant as prerequisites for the parent or carer being able to support their young person in trouble. When parents were asked about the overall helpfulness of mentoring, most of them gave it a 9 out of 10, with comments such as: "I don't know we would have managed without them." "It was a lifeline." "It saved my life". She said that quite often, they are dealing with parents or carers who are in very desperate situations, and noted that parental involvement is entirely voluntary. They may be referred to or

recommended, but it is up to them. She said 90 percent of parents stick with the programme for between one and two years and it works really well.

Ms Conroy said that in 2016, they started a discussion with Oberstown about making parent mentoring available to parents or carers of young people in Oberstown. Over time, they developed a proposal and in March 2017 secured some funding. In April 2017, they employed a part-time coordinator for a two-year period. He was based in Oberstown, and they now had 15 volunteer mentors, specially recruited and trained. They have started matching some parents with their mentors, with a whole system of structures and outcomes in place as to what would happen and how it would be run, and the first referrals had been made.

Ms Conroy said the approach is really innovative internationally and they have not been able to find another example of parent mentoring of parents of young people in detention. In closing Ms Conroy showed a picture of a lovely giraffe as a prompt to all present to remind everyone involved in services or policy for children in detention or in conflict with the law that they need to stick their neck out for these children and young people. They are very vulnerable young people.

Discussion points:

- ✓ **Antigone,** an Italian NGO, raised a concern about Italy, where the Italian government had tabled a bill to Parliament to remove the specialisations in the criminal justice system for children, namely specialist prosecutors and juvenile judges. This would prevent specific focus on children and on their individual assessment. She said that while the law has not yet been voted, it is hoped that it will not pass.
- ✓ A **professor** from the **University of Liverpool** said he has been reflecting, researching and writing about child detention for a very long time. He shared an observation on silence, in reference to three different levels. The first level is silencing children and young people who are detained. He referred to the very powerful statements by **Pinar and Ellen** on the impact of that silencing. A second level concerns silencing operators at an institutional level. He referred back to **Georgette Mulheir's** statement on the needs of the institution taking precedence over the needs and the rights of children, particularly where institutions will obfuscate or will perpetuate silence if they are confronted with inconvenient voices or voices that inconvenience their imperatives and priorities. He said the third level is where silence operates at a high level: at political level. He said various contributions had articulated that, where the needs of power and political interest take precedence over democratic principles, over questions of transparency and over public interests. He said that taken together, the individual, the institution, and the political manifestations of silence all serve, of course, to silence truth, to obfuscate knowledge, to deny evidence, and perhaps most importantly and most reprehensibly, to profoundly compromise the human rights of a profoundly disadvantaged group of young people. He said that we must all do all that we can, both individually and collectively to challenge the culture of silence and the

different practices of silencing. Then, in this respect, of course, the global study is absolutely imperative. The fact that it appears to be lacking political support and financial resources is itself an insidious reminder of the forms of silencing to which I refer. He asked panellists if, drawing on their own experience, comments or contributions or responses to make about silencing at different levels?

- ✓ The **Commissioner for Children in Northern Ireland, Koulla Yiasouma,** saw a common thread through all three very helpful presentations. She said that if we see the individual child through individual assessments as described by **Rebecca O'Donnell**, then it make sense that we follow that child and that assessment through whatever context that we may find them in. She said that if we do an individual assessment and follow through on services to address those needs, the child is less likely to end up in the sort of place **Pat Bergin** described. When you look at what the background is of those children, early intervention and prevention would have helped. With regard to what **Rebecca** said on the dilemma between state actors focusing on need and those state actors focusing on law enforcement, Ms Yiasouma considered it to be a false dichotomy. She said it is the job of everyone in a role like hers to remind every state actor that where their work interacts with a child or a family, there can be no contest. Ms Yiasouma said that if we use children's rights as the framework, we need to get to a place where there is not a competition between accountability or law enforcement and the best interests of the child. She said that if we carried out proper assessments of children and families, and parents particularly, then maybe we would not need places as big as Oberstown, or Woodlands in Northern Island, or any other such place and children could be looked after in the community.

- ✓ **Children in Scotland,** the national network for children's services in Scotland, followed on from the previous speaker. With almost 40 years' experience in policy planning and service delivery for children and young people at risk, she found it quite depressing that we continue to go round in the same circles, over and over again. She said we hear speaker after speaker say that children who are detained by the state (leaving aside children in migration which is a different issue) for various other reasons have backgrounds of crude education, of mental health difficulties, and many of them are care-experienced. The circumstances that bring them into these establishments are poverty, poor support for families, lack of nurturing and attachment. Indeed, most of the solutions presented are about offering children a constructive and supportive relationship, often for the first time in their lives. It is not surprising that if they are deprived of responses to their emotional needs they actually end up with circumstances that put them in detention. She wondered why we do not look very clearly at the things we need to put in place to prevent these things happening to children, and why, at national and supranational level, we are not making very clear and unambiguous statements about that.
- ✓ A **university professor from the Boltzmann Institute of Human Rights in Vienna** remarked on the fact that, as pointed out by speakers, many children are well known to the system and institutions already and wondered to what extent we should have a more closer look at what the child protection system means and its relationship to prevention of the deprivation of the liberty of children. While there are discussions in Austria, it seems that we sometimes wait until children are 14, when they reach the minimum age of criminal responsibility, before we can intervene and work with these children. He said that we do not fully grasp how to work with families to prevent these situations. When a child is in a justice sector institution, they are looked after, but if there is no intervention targeted at the family while the child is detained, this is a system gap. Finally, he mentioned an Austrian case of a 17-year-old girl from Serbia who was convicted of 134 cases of theft, where there were clear indications that she had been trafficked and forced to commit these crimes. However, the trafficking case lacked evidence and it was easier to convict the child for theft, with the lawyer pleading for a prison sentence in order to extricate her from her trafficking situation. The girl was sentenced to 18 months' detention. Given the trafficking aspect, this case demonstrates fundamental problems with the child protection system. He said that if on the one hand, we talk about deprivation of liberty as a last resort, and on the other we actually plead to put someone put into prison because we have no appropriate child protection alternative, there is something fundamentally wrong.
- ✓ **Bufff NGO asked Lena Hellmark** if she thought anything would have been different if she had been supported by an NGO such as Bufff. Ms Hellmark replied that she would have loved to have been given the opportunity to meet others in similar situations because she felt she was the only one in the world in that situation and she would have loved to have tools to handle the situation she was in. She said that if she had the right tools she could have dealt with her problems while she was growing up rather than as an adult.

- ✓ **Cork Life Centre** followed up on the remarks by Children in Scotland and the continuation of the same discussions 40 years later. He said we need to change the type of discussion because it is obvious from the figures just heard from **Pat Bergin** and listening to all the speakers that the issue in relating to children ending up in the justice system is not because there are problems with them, but because there are problems in our system. He said that our system is criminalising the most vulnerable children in our community. Children in care do not get proper care. They are ending up in the juvenile justice system. Children with problems and issues with mental health who do not get the proper support are ending up in the juvenile justice system, and we continue to criminalise our young people. He said we have to keep restating these facts because they are sometimes missed. He said that we blame the young people, we blame the parents, but it is our society that is creating the issues. Children bear the brunt of problems of our society and children end up being dumped, and being dumped into the criminal justice system.
- ✓ **Margaret Tuite** recalled the Howard League programme to combat the criminalisation of children in care, documenting the policing of children in care and the disproportionate responses to behaviours compared to what happens when a child behaves badly in a family home.
- ✓ **Pat Bergin** made two observations. With regard to the crucial point that **Cork Life Centre** raised in relation to the system, he said we do need to take that away in our considerations for the future. He said that if we have created the systems that are there, we can also change those systems, but it is about determining what that change should look like, noting that there are competing demands when you create a system. There are also competing demands when you alter it. Those demands relate to children's rights, and how they relate to other requirements, and different countries will have different expectations and despite the complications, it does require serious consideration. Mr Bergin referred to the point made on political silence, which is a valid point. He said that when seeking to address issues, the fact that we talk to children does not resolve the issue. It is how we address the particular issues with children, and how we can make those changes are important. He said that forums such as this where information and understanding is shared serve to allow the right options to be considered and implemented.
- ✓ **Rebecca O'Donnell** added that one of the things that is interesting about Directive 2016/800 is that, for jurisdictional reasons, or for competence reasons, the EU can act where there are criminal proceedings in place. The Directive applies where children are involved in criminal proceedings. Now in some countries, proceedings not defined as criminal proceedings, even though you can send a child to detention so in theory, the Directive will not apply completely. Ms O'Donnell said that there are arguments against that, because you might look to the nature of what is happening rather than how it is labelled. Even though the context is criminal proceedings, we have an article requiring you to look at what protective measures might be necessary in the context of a criminal proceeding. She said it is really interesting to think about what that means. And coming back to the issue of whether it is a false dichotomy between child protection and criminal proceedings, she said that in a way, Article 7 does bring them together. We have that potential and it should happen. However, she recalled that we have systems in place that sometimes prevent that from happening, where things happen in silos. Ms O'Donnell

said that there are some really good, practical things that can happen, like joint training of lawyers and police. Ms O'Donnell referred to the case where a trafficked child has been convicted, for example a child found in a cannabis farm in the UK and being exploited, found by the police, arrested, convicted and sent to jail, before finally being identified as trafficked, and being released. She said that sometimes in that instance, the criminal court will recognise that they are dealing with a victim of trafficking. In other cases, the criminal court simply releases the child, because that is all they can do in some jurisdictions, and they do not follow up with what should happen to the child then. The child simply falls back into the hands of the traffickers. Ms O'Donnell asked what the options really are for courts and what is needed to make that change, saying that sometimes it is legislation but sometimes it can be done in practice.

Ursula Kilkelly made some concluding remarks recalling the content of the side event. She said we started with **Laura Lundy's** presentation on voice, which addressed the fact that voice is not enough, but also that we need to give visibility also to the range and complexity of issues that we had touched on over the last 24 hours, all across the spectrum of concerns relating to children deprived of their liberty and the need for a greater focus on alternatives. What was clear from all of the presentations throughout the sessions was the importance of testimony, both individual testimony and expert testimony, a source of great power in its information and expertise. Professor Kilkelly thanked everybody who contributed to that knowledge and understanding about how awful detention can be for children, and said we had discussed its impacts in lots of different ways. She said participants had considered how, in many ways, deprivation of liberty makes no sense. It makes no sense for children, for their families, for society or for the economy. She said we had also heard about reform and the need for change, in particular, focusing on that metaphor of building the scaffolding, not the cage, as a hugely important child rights approach to these issues. She underlined the importance of shared understanding among the participants of the circumstances of young people deprived of their liberty, and an understanding of how to advocate for change in those circumstances and conditions, and practices, and a commitment to effect that change politically, academically and practice.

She said we all try to advocate for and effect change in lots of different ways. Many of us on the outside, some of us on the inside, and the extent of that challenge, as articulated by **Cork Life Centre,** should not be ever underestimated. What we are trying to do is break what is often an ingrained systemic approach to these issues. The challenge of that, from whatever your perspective, should never be underestimated. It is really important that there is, following this event, great cohesion and a sense of shared purpose about the importance of change and how we go about effecting it together. Professor Kilkelly underlined the importance of the evidence base, and reiterated the importance of the Global study, as a hugely important part of how we can build momentum internationally. She said that, at a time when, certainly, the rates of detention of children in some contexts and countries, are falling, we see an extraordinary use of detention in the context of migration, with all of the impacts that will have, not just on children, but on their families, and in fact, their countries. An important message from the side event is that support for the Global study could not be taken for granted. She underlined that it was

a really important commitment to creating that evidence base, and building further momentum so we could advocate for the kind of change that we know young people are entitled to.

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