

Contents

FOREWORD	3
EXECUTIVE SUMMARY AND FRA OPINIONS	7
INTRODUCTION	11
1 CHILDREN’S RIGHT TO PROTECTION AND CARE	19
1.1. Establishing whether an individual is a child	20
1.2. The ‘best interests of the child’ principle	22
Conclusion	24
2 THE RIGHT TO LIBERTY AND SECURITY	25
2.1. Provisions applicable to all	26
2.2. Specific provisions for children	28
Conclusion	30
3 LEGAL BASIS IN NATIONAL LAW	33
3.1. National laws on immigration detention of children	34
3.2. National laws banning detention below a certain age	39
Conclusion	40
4 EXHAUSTIVE LIST OF GROUNDS FOR DETENTION	41
4.1. List of grounds under EU law	42
4.2. List of grounds under the ECHR	42
4.3. Discrepancies between the EU and ECHR legal systems	43
4.4. Inappropriate use of detention to protect the child	45
Conclusion	45
5 ASSESSING NECESSITY AND PROPORTIONALITY	47
5.1. Last resort and alternatives to detention	49
5.2. Family life	52
5.3. Shortest appropriate period of time	58
Conclusion	62
6 CHILD-SPECIFIC PROCEDURAL SAFEGUARDS	63
6.1. Child-friendly information and procedures	64
6.2. Guardianship and legal representation	66
Conclusion	68
7 HUMANE AND DIGNIFIED CONDITIONS IN DETENTION	69
7.1. Facilities	73
7.2. Child-specific training	78
7.3. Right to education	80
7.4. Healthcare	82
Conclusion	85
8 OVERSIGHT MECHANISMS	87
8.1. Independent monitoring bodies	87
8.2. Child protection authorities	91
8.3. Schengen evaluations	92
8.4. Complaint mechanisms	93
Conclusion	94
REFERENCES	97
ANNEX: LEGAL PROVISIONS	105