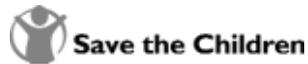




 Republic of Croatia 
Ombudsman for children

Protecting the Best Interest of the Child



PROTECTING THE BEST INTEREST OF THE CHILD

The Proceedings of the Annual Conference
and the Thematic Meeting of the Children's Rights
Ombudspersons' Network in South and Eastern Europe

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FOREWORD

The Ombudsman for Children of the Republic of Croatia is a member of the CRONSEE network (*Children's Rights Ombudspersons' Network in South and Eastern Europe*),¹ and in May 2015, as a Network coordinator, she organised the Annual Conference in Zagreb and a Thematic Meeting in October 2015 in Osijek. The topic of the Annual Conference: "The Rights of the Child - between the Interests of the Parents and the Obligations of the State" was chosen for several reasons. Namely, the issue of the rights of the child placing the child in the position of the subject of human, civil rights is still, one quarter of a century after the adoption of the Convention on the Rights of the Child, the subject of controversy and debate. From the perspective of understanding the content and the meaning of the Convention on the Rights of the Child and the role of the ombudsman for children, there should be no doubt as to the position of the child as the subject of rights. However, in practice, in many societies and countries, Croatia included, there is, sometimes even growing disagreement about the roles of the parents and the state in the realisation and protection of the rights of the child.

The selection of the topic of the CRONSEE Conference was largely influenced by current debates in Croatia regarding specific issues such as compulsory vaccination of children, introduction of sex education and civic education into regular school curriculum, views on corporal punishment and other issues. Similar debates can be found to take place in other countries, even in the member states of the CRONSEE network. The aim of the Conference was to discuss how to achieve the rights of the child and the child's best interest in the cases where it seems that the interest of the parents is in conflict with the interest of the child and the obligations of the state in the protection of the child's well-being.

Namely, it is beyond doubt that the Convention on the Rights of the Child as well as different national documents place focus on the parents as the persons first invited and responsible to take care about the protection of the rights and well-being of the child. But sometimes, despite good intentions, actions taken by the parents are detrimental to the child and the role of the

¹ This is a network of independent institutions for the protection of the rights of the child on the national, regional and local level, established in 2006 for the purpose of cooperation and empowering the institution of the ombudsperson for children in the countries of South-Eastern Europe and promotion and exchange of good practice between these institutions. Today, this regional framework has 14 members, representatives of ombudsmen from Albania, Bosnia and Herzegovina, Republic of Serbia, Bulgaria, Monte Negro, Cyprus, Greece, Croatia, Kosovo, Macedonia, Romania, Slovenia, Serbia and the AP of Voivodina.

state is to protect the child. The state, with its public law authorities should not interfere into the rights of an individual, the privacy of home and family when uncalled for and when there is no suspicion that the rights of the child have been violated. However, when there is suspicion that the child's rights are threatened, the state must investigate the circumstances of the case and protect the child should it prove necessary. In practice, very often issues are raised which focus on the rights of the parents as those making decisions on the children or on the rights of parents associations sometimes representing the rights of the parents, rather than on the rights of children. The right of the family is often emphasised, to the extent that the focus is sometimes shifted away from the child as an individual holder of human and civil rights.

In addition, from the perspective of the position of parents as those primarily responsible for the protection of the rights of their children and the perspective of the family as the best environment for the development and upbringing of children, whenever it is possible, the state with its public law authorities sometimes even tends to shrink away from its obligations and responsibilities in the protection of the rights of the child, as a result of reluctance to act in fear of the pressure from the parents or associations. Such doubts, disagreements and the "fine" lines between the rights and authorities of the individual, parents and the state inspired the selection of the topic for the Conference. However, the starting position of the rights of the child as the subject of human and civil rights is not and may not be challenged. We consider that the papers presented in the proceedings support this thesis, each from a different perspective, depending on the subject of each particular paper.

As in the case of other publications concerning the work of the CRONSEE network, this publication has been drafted in the English language and the languages of their authors. Some of the papers presented in the proceedings concern the rights of the child and the best interests of the child in general. Authors (Guran, Vučković Šahović) analyse the provisions, contents and the meaning of the Convention on the Rights of the Child and the General comment No. 14 of the Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration. The key message sent by the authors² is the necessity of viewing the rights of the child as a whole, in particular the principal provisions concerning the right to non-discrimination, the best interests of the child, the right to life, survival and development and the right of the child to participation and to express his/her views. It should be noted that the concept of the rights of the child does not threaten parental authority and the emphasis on the rights of the child, i.e. his/her human and civil rights, does not diminish the rights of others, such as parents as holders of own human and civil rights.

Some of the papers presented in the proceedings deal with certain specific rights of the child and the protection of such rights. For instance, some deal with the role of the ombudsman in the achievement of the right of the child to life in the family or in a family environment (Otmačić), others deal with the right of the child to the highest attainable standard in the protection of health and controversial trends and vaccination refusal (Poljičanin, Kaić), still others deal with the issue of the protection of the best interests of the child in case of parental divorce

² The mentioned authors are either former or present members of the UN Committee on the Rights of the Child.

and the role of the system in enabling and disabling manipulative behaviour on the part of the parents (Buljan Flander, Brezinščak, Španić), while others still deal with the subjective experience of parenthood associated with the parents' behaviour and the best interests of the child (Delale). One of the conclusions of the Conference was that there was a need to prepare indicators of the best interests of the child for different areas and one of the papers addresses this topic from the aspect of the protection of *children on the move* (Galonja).

And last but not the least, we are extremely proud of children participation in the Conference and their contribution to the proceedings. The Debate Club of a Zagreb's secondary school "Druga gimnazija" called *Bušmani*, of the Croatian Debate Society has shown us how, in line with the nature and meaning of debate as a form of public speaking, for each thesis good arguments may be found. Sometimes in some societies a thesis may prevail in public that is not in the best interest of the child. Exactly for this reason, there is a constant need for drawing attention to the content, scope and the meaning of the Convention on the Rights of the Child and children as the subjects of rights.

One part of the proceedings is dedicated to the Thematic Meeting of the CRONSEE network "The Third Optional Protocol - the Role of the Ombudsman"³ where the issue of the position and role of ombudsmen for children was discussed in connection with the Third Optional Protocol to the Convention on the Rights of the Child. The discussion on the Protocol concerning the possibility of filing complaints to the Committee on the Rights of the Child is in a way further discussion on the issue of the best interest of the child. Complaints to the Committee, under the provisions of the Protocol, will be possible in the cases where children's rights have been violated and where legal recourse in a State Party has been exhausted. Thanks to the Protocol, children will be able to file complaints directly to the UN Committee.

Author Poretti analyses the contents and particularly the procedure relating to individual complaints based on the Protocol and compares the arguments in favour and against filing collective complaints. Author Žagar gives an overview of the inclusion of the ombudsman for children in the initiative for the ratification of the Protocol in Croatia and international cooperation of the ombudsman in that area. In a discussion held during the Thematic Meeting of the CRONSEE network, special emphasis was laid on the role and position of ombudsman for children in connection with the Protocol and one of the basic conclusions was that it was necessary to promote the content and the meaning of the Protocol and encourage its ratification.

Annexes also provide an added value so the proceedings also contain the original texts of the General comment No. 14 of the Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration and the Third Optional Protocol and the conclusions of the Annual Conference and the Thematic Meeting of the CRONSEE network.

3 The Optional Protocol to the Convention on the Rights of the Child on a communications procedure or OP3 CRC.

We wish to thank especially the organisation *Save the Children* for their cooperation in the organisation of the Annual Conference and the Thematic Meeting of the Children's Rights Ombudspersons' Network in South and Eastern Europe and in co-financing of these proceedings. We hope that the papers of the proceedings and annexes thereto will encourage readers, professionals working on the protection of children and their rights as well as parents and children, towards further examination of theoretical, legal and practical issues and obstacles to the protection of the rights of the children.

The Annual Conference of the Children's Rights
Ombudspersons' Network in South and Eastern Europe
- CRONSEE

THE RIGHTS OF THE CHILD -
BETWEEN THE INTERESTS OF THE PARENTS
AND THE OBLIGATIONS OF THE STATE

Zagreb, 28 – 29 May 2015

Peter Guran

UN Committee on the Rights of the Child

PARENTAL RESPONSIBILITIES AND RIGHTS OF THE CHILD

Lately, some experts, the general public as well as a part of the political spectrum have been voicing their demand for the return and restoration of the traditional family and its values. This family is considered to be the foundation of society's stability and development. Individualization of the family and society - connected with the emphasis on individual rights of family members, especially women but also children - is said to be one of the factors responsible for the destabilization of the family and the so-called "crisis" within it. This institutes a correlation that the greater the children's rights are, the lesser are the rights of parents and the higher is the occurrence of broken and destabilized families. There is an effort underway to discredit the 25-year endeavor to establish, understand and successfully implement The Convention on the Rights of the Child, and to misinterpret the Convention itself, specifically certain articles and principles.

And so it seems quite essential to spend some time on the explanation of the Convention and its philosophy, especially in relation to the articles concerning the family.

The Convention was ratified in the UN on 20th November 1989, and without a doubt it signifies the greatest milestone in the entire history of mankind when it comes to the rights of child, protection of these rights and protection of the child's dignity. With 194 countries to this day, in 25 years of its existence, it has become the most ratified human-rights Convention. This, of course, does not mean that it has been implemented with equal success.

The Convention's new philosophy is based on a practically "revolutionary" change - for the first time in history, the child ceases to be an **object** of the law and our care, and he or she becomes the **subject**, i.e. becomes the **right holder**. The child thus becomes an active and equal partner in deciding on the matters affecting him or her.

Before we get to the interpretation of the articles about the family, it is necessary to explain the Convention's philosophy, which is based on four fundamental principles. These four articles of the Convention are not just rights, but they are considered its principles, or rules.

The implementation and interpretation of all other articles, or rights (41 in total), implicitly require their application - always and under any circumstance - without the particular article stating so. They are these four articles:

- Right and principle of non-discrimination (art.2)
- Right and principle of the best interests of the child (art.3)
- Right and principle dealing with inherent right to live, survival and development (art.6)
- Right and principle to be heard, express the views freely in all matters affecting the child

These four principles constitute the indelible part of the Convention's articles concerning the family, and they are Articles 5, 7, 8, 9, 10 and 18.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

The main term is stated right at the beginning - **respect** the responsibilities, rights and duties of parents...

The expression respect for the family repeats throughout the majority of international documents and it stands for the respect and equal esteem of a wide variety of family types and the values applied within them, as long as they are in accordance with the Convention's principles. The philosophy regarding the approach to the family is based on the great flexibility of family types and forms with the emphasis on its irreplaceable role in the growth and development of the child. The Convention's preamble itself talks about the family being the fundamental group of society and the natural environment for the growth and well-being of all its members, particularly children. Nowhere does it define a "better" or "worse" family type, rather it always states that the family is the best natural environment for the child.

Further it talks about **the responsibilities, rights and duties** of parents (or legal guardians). As we can see it is a triad of terms, in which the key term is responsibility, i.e. the parent has not only rights and duties, but most importantly the responsibility to appropriately direct and guide the child in the exercising of his rights. Considering the child's physical and mental immaturity, he or she needs special safeguards and care which is the parents' primary responsibility and the State has to respect this as long as it is in accordance with the four principles of the Convention, meaning as long as the principles of non-discrimination, best interests, development and the right to participate are upheld. This way it is possible to secure harmony and happiness, and a happy and content child brings happiness to the truly loving parent. Parental rights and children's rights are not in mutual opposition, they complement one another.

The end of the article talks about the guidance of the child in his exercise of the rights **in consistence with his or her evolving capacities**. Crucial here is the child's age. Again, necessary is the connecte-

ness to Article 12 of the Convention, which talks about the child's right to be heard in accordance with his or her age and maturity. This gives leeway for sensitive and adequate consideration of the child's opinion which is never limited by age but by the parents' and adults' ways and stance on it. Parental rights do not get limited, limited is the approach which is not in line with the child's best interests, and encouraged is the approach of trust and discussion. Again, we can see that the Convention does not contain any conflict between parental and children's rights, exactly the opposite is true.

This interpretation is reflected to full extent by Article 18, section 1 of the Convention.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

It is evident that the regulation of the state-family-child tripartite relations is rather difficult and it requires a sensitive approach, proper information, the training of all the participants, etc. The Convention does not have the ambition of one-sided advocacy of the child's rights without taking in consideration the context which is clear from the principle of the best interests of the child. Its aim is to establish equilibrium between the family, state and the child, who is the most vulnerable part of this triangle. From this perspective, the Convention can be considered a type of **affirmative international law**.

The State should aid and assist in the exercise of parental responsibilities and actively interfere with the family only when the parents cannot or do not want to take on these responsibilities. No document within international law talks about the right to have a family; it talks about the respect for the family life, for the family environment (e.g. European Convention on Human Rights). There does not exist a prioritized form of the family. As stated in the "Joint position paper" of the most prominent children's rights organizations issued in June 2014 - a reaction to several UN member countries' proposals to ratify a resolution on the "protection of the family" - the family in reality encompasses "all forms of the family in different contexts" including a wide range of foster family types, relatives, non-nuclear families, single-parent families, adoptive families, households in the care of children, and many others securing child care, nurture and growth.

In conclusion, it can be unambiguously established that the Convention's philosophy in no way questions the primary and irreplaceable importance of parents and the family environment in the child's development. It views the role of parents and children through the concept of parental responsibility and from the standpoint of the more vulnerable party - the child - through the assurance of his rights, upbringing and happy childhood. That in turn protects and enriches the parents. Relationships based on respect may often be more fragile but they are certainly more valuable.

Returning to the issue of fearing the loss of parental authority and rights resulting from the strengthening of children's rights we can say that parental rights and children's rights definitely are not in contradiction but are complementary.

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THE BEST INTERESTS OF THE CHILD: THE LAW, PRINCIPLES, PROCEDURAL LAW - INTERNATIONAL STANDARDS AND IMPLEMENTATION TOOLS

Introduction

How many times were we as parents, friends or professionals uncertain of what to do when faced with something which is supposedly “good” for the child? My daughter wishes to enrol in a secondary specialist music school and me, as her mother, think that it is better for her to attend a general education secondary school (gymnasium), which will provide her broader education. What is best for my daughter? Or, to give another example, my thirteen-year-old son is considering abandoning his basketball practice, which he has been practising since he was seven years old because he has too many obligations at school. His trainer says that would be a pity because he is very talented. His class mistress says he has slacked off at school because of basketball. What is best for my son? Or, to use the terminology commonly used now in accordance with the Convention on the Rights of the Child (CRC), what is in the best interest of my son? There are many examples, from such as those mentioned above to those involving the child’s health, the child’s right to a life in the family or examples of administrative or court proceedings.

In this brief paper I wish to demonstrate how the international law provides solutions for seemingly everyday, often “private” but also “public” situations in which it has to be determined what is in the best interest of the child: The Convention on the Rights of the Child proclaims the right of the child to have his or her best interest taken as a *primary consideration* and CRC’s Committee on the Rights of the Child has adopted a *General comment analysing in detail this right and offering an interpretation formula*. State Parties to the Convention are obligated to respect this right and implement it. Naturally, this is easier said than done, particularly in light of the specific nature of this right, or more precisely, the difficulty in determining its content. The Committee on the Rights of the Child itself recognises that there is no specific, pre-formulated solution to each situation which requires determining what is in the best interest of the child and that it is only possible to set the principles for determining such interests.

The best interests of the child under the CRC

The principle of the best interests of the child (hereinafter: BIC) has been enshrined in many national laws for a long time. The BIC is proclaimed in article 3, paragraph 1 of the Convention on the Rights of the Child. The formulation of paragraph 1 of article 3 of the CRC is really the most innovative, explicitly recognising the principle within the framework of a special provision. Paragraph 2 lays the foundations for the protection of children and the obligation of States Parties to take all legal and administrative measures to ensure enjoyment of that right and paragraph 3 contains a provision ensuring quality standards for all services involving children, including institutional services.

The Committee on the Rights of the Child proclaims this right of the child as one of the four principles of the CRC, in addition to the right to life, survival and development, the right to have their views respected and the right to non-discrimination.¹ In other words, the Committee says: all rights are important but the significance of the four listed rights for the realisation of all the rights envisaged under the Convention raises them to the level of *the core principles of the CRC*. In essence, this principle is based on the obligation of the government and competent institutions to take into consideration the BIC in all procedures concerning children. In most international treaties, this principle sets a framework in which this right may be formulated rather than seeking to constitute the right itself.

Even though the BIC principle is formulated on the basis of international legal norm, it should be observed as a rule in itself. The provisions of article 3 of the CRC do not define how exactly to apply this principle, nor do they impose obligations and precise rules for its implementation. They only establish the principle that *“the best interests of the child shall be a primary consideration”*.²

One can say that the term of the best interest of the child, as defined by the Convention or the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption,³ has dual standard roles, the role of monitoring and the solution-finding role.⁴ Under the monitoring criterion, the best interest of the child is used in this case to determine that the rights of and the obligations towards children are properly implemented, while the solution-finding criterion imposes the obligation of determining what is in the best interest of the child, committing the persons that make decisions on a child to consider all the possible solutions for a specific case and to promote and find a solution that is in the best interest of the child.

The term of the best interest of the child is therefore subject to change.⁵ This means that this term needs considerable developing both by in terms of the doctrine and court practice. One of the

1 UN Doc: CRC/C/5, 1991: General guidelines regarding the form and content of initial reports to be submitted by States parties under article 44, paragraph 1(a), of the Convention, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/5&Lang=en

2 Verschraegen, B. *Die Kinderrechtekonvention*. Wien: Manz Verlag, 1996, p. 5

3 The Hague Conference on International Private Law, *the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*, 29 May 1993.

4 Fulchiron, H. *De l'intérêt de l'enfant aux droits de l'enfant in Une Convention, plusieurs regards. Les droits de l'enfant entre théorie et pratique*. Sion: IDE, 1997, p. 30.

5 Vučković Šahović; N, Doek E; J, Zermatten, J. *The Rights of the Child In International Law*, Bern, Staempfli Publishers, 2012, p. 98.

advantages of this principle is its flexibility and adjustment to cultural, social and economic differences of different legal systems both in spatial and time-related terms. It is exactly the reason why it is universally acceptable and useful. Some authors accurately term this principle as the “servant of the Convention”.⁶

» *The principle of the best interests of the child is one of the four principles of the CRC (together with articles 2, 6 and 12).*

- *It represents one of the most explicit rights (together with article 12) designating the new status of the child as the right holder.*
- *Under this right the child has to be placed in the centre of all decisions which concern the child.*
- *The best interests of the child are also mentioned in other articles of the CRC:*
 - *article 9: separation from parents;*
 - *article 10: family reunification;*
 - *article 18: parental responsibility;*
 - *article 20: a child deprived of his or her family environment;*
 - *article 21: adoption;*
 - *article 37: deprivation of liberty - separation from adults;*
 - *article 40, paragraph 2 b) iii: procedural guarantees*
 - *article 8 OPSC + preamble;*
 - *article 2 and 3 OPIC.*

General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (article 3, paragraph 1)

Due to the obvious lack of definite form, the principle of the best interests of the child under the CRC is not always clear to States, although they have all enshrined them in their national laws. With this in view, the Committee on the Rights of the Child finally adopted in 2013 *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (article 3, paragraph 1)* (hereinafter: General comment).⁷ This comment refers only to paragraph 1 of article 3 and not to the whole article. In the opening lines of the General comment, the Committee stresses “The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child”. The Committee has already pointed out that “an adult’s judgement of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.” This is to remind us that there is no hierarchy of rights under the Convention; all the rights envisaged therein are “in the best interests of the child”. (paragraph 3). Furthermore, the Committee stresses that “The full application of the concept of the child’s best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.”

⁶ Ibid, p. 30.

⁷ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11

The objectives of the General comment

In addition to the already described general objective of the General comment which is to explain the BIC as a principle, right and procedural rule to States and all those working with and for children, the General comment also proclaims the objective that *the countries implement and respect this principle*. As regards judicial and administrative decisions, the General comment *defines the conditions for adequate assessment* of all the circumstances for determining the BIC. Adequate assessment is paramount also in all other decisions concerning children, such as for instance those made in educational and health care systems as well as in all other decisions critical for the child, including those of general character such as adoption procedures, amendments to laws and subordinate legislation, guidelines, strategies, plans, budgets, i.e. all the measures for the implementation of the CRC. Therefore, the General comment provides guidelines and a framework for assessing and determining the child's best interests and "it does not attempt to prescribe what is best for the child in any given situation at any point in time" (paragraph 11).

One of the objectives is to "*strengthen the understanding and application of the right of children to have their best interests assessed and taken as a primary consideration or in some cases, the paramount consideration.*" (paragraph 12). The achievement of these objectives would not be possible without a change in attitudes leading to the full respect of children as rights holders.

► *The objectives of the General comment on the BIC:*

- *to serve as the basis for the elaboration of all implementation measures taken by governments;*
- *to serve as a basis for individual decisions made by judicial or administrative authorities or public entities through their agents that concern one or more identified children;*
- *to serve as a basis for decisions made by civil society entities and the private sector, including profit and non profit organizations, which provide services concerning or impacting on children;*
- *to provide guidelines for actions undertaken by persons working with and for children, including parents and caregivers.*

Links with the general principles of the CRC

In the assessment of and compliance with the BIC, States must take legislative and administrative measures to ensure compliance with this right in line with the compliance with the other three core principles. Firstly, States and all others who make decisions on children or work with or for children must ensure equal opportunities for all children and *prevent discrimination* on any basis. When determining the BIC, no measure discriminating against the child may be considered a measure that ensures the fulfilment of this principle. Clearly, account should be taken of limitations arising from the need to introduce the principle of positive discrimination or affirmative action which may, by their nature, lead to conflict of interest but may also serve to rectify injustices frequently repeated in the past.

There is a close link between determining the BIC and *the right of the child to life, survival and development*, and States must ensure full respect of this inherent right of the child. For instance, when faced with a dilemma whether to refuse transfusion in the interest of the family or the child, one has to assess the extent to which such a requirement is in the best interest of the child and give priority to the right to life and survival.

And last but not least, probably the most interesting link is that between the BIC and *the right of the child to be heard*, i.e. to have his or her views respected. One of the oldest questions at the focus of heated professional and public discussion since the introduction of the CRC is: “and in whose best interest?” Namely, each child should be able, in accordance with his/her development capacity, to formulate on his/her own what is in his/her best interest. In practice, such a view leads to disagreement, even within the family itself. The conservative approach to child-rearing still maintains, without proper examination of the approach that only adults know what is in the best interest of the child. The CRC introduces a new principle, in the form of the right of the child to have his/her view respected in all matters that affect him/her, from the selection of room furniture to the decision with whom he/she wants to live after the parents divorce. The Committee on the Rights of the Child stresses in the General comment the vital importance of the link between these two rights referred to in article 3 and article 12 of the CRC, emphasizing children’s key role in all decisions that affect their lives. That is why the comment requires that: “States Parties must ensure appropriate arrangements, including representation, when appropriate, for the assessment of their best interests; the same applies for children who are not able or willing to express a view.” (paragraph 44).

Nature and scope of the obligations of States Parties

Each States Party to the CRC must implement all the provisions of this international treaty, including the right of the child to have his/her interests assessed and taken into consideration and take all the necessary measures accordingly. In the General comment, the Committee identifies *three different types of obligations for States*: the obligation to ensure that the BIC principle is appropriately integrated and consistently applied in every action taken by a public institution; the obligation to ensure that all decisions and actions taken by the public sector can demonstrate that the procedure of assessment and determination of the BIC has been carried out and that it all also applies to the private sector (paragraph 14). In addition, to ensure full compliance by States with the BIC principles, the Committee identifies special measures that should be taken by States (paragraph 15).

» *The specific measures that the States Parties should undertake to ensure compliance with the BIC principles include:*

- *reviewing and, where necessary, amending domestic legislation;*
- *upholding the BIC in the coordination and implementation of policies at all levels, from central to local;*
- *establishing mechanisms and procedures for complaints, remedy or redress;*
- *upholding the BIC principles in the allocation of national resources, especially allocations aimed at implementing children’s rights;*
- *in data collection and data research, ensure that the BIC principles are complied with;*

- *providing training for all those working for and with children, with a particular emphasis on the BIC principle;*
- *providing information on the BIC principle to the children and their parents or caretakers so they can also adequately enjoy the right to participation;*
- *combating all negative attitudes which impede the full realization of the right of the child to have his or her best interests assessed (paragraph 15).*

Implementation: assessing and determining the BIC

As defined in the General comment: “Assessing the child’s best interests is a unique activity that should be undertaken in each individual case, in the light of the specific circumstances of each child or group of children or children in general.” Clearly, these circumstances relate to the individual characteristics of the child or children concerned, such as, inter alia, “age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context in which the child or children find themselves, such as the presence or absence of parents, whether the child lives with them, quality of the relationships between the child and his or her family or caregivers, the environment in relation to safety, the existence of quality alternative means available to the family, extended family or caregivers, etc.” (paragraph 48). To facilitate for the States this seemingly complicated procedure of determining the BIC, the Committee states in the General comment that it is very important that for each situation and for all the services working with or for children and all procedures relating to children a *non-exhaustive and non-hierarchical list of elements that could be included in a best-interests assessment by any decision-maker having to determine the BIC should be prepared*. Evidently, the elements that would contravene the rights of the child under the CRC or the effect of which would contravene the CRC may not be considered valid for BIC assessment. In the General comment, a list of elements is provided that is fully based on the list of the rights of the child and simply singles out those that might be of particular importance (paragraph 52).

► *The Committee considers that the following elements should be taken into account when assessing and determining the child’s best interests, as relevant to the situation in question:*

- *the child’s views;*
- *the child’s identity;*
- *preservation of the family environment and maintaining relations;*
- *care, protection and safety of the child;*
- *situation of vulnerability;*
- *the child’s right to health;*
- *the child’s right to education.*

Conflict of interest and balancing the elements

As mentioned earlier, sometimes it is difficult to deal with the situation in which there is a conflict of interest. This may be a conflict between the interests of the child and those of the parent or the interest of the child and that of the school or the health system or a conflict of various elements within a single situation. Obviously, not all the elements for the assessment mentioned previously will always be of the same relevance or be assessed at all. This will depend on the circumstances

of the given situation. Nevertheless, there are bound to be situations in which the responsible persons will be faced with the question of how to act. For example, preservation of the family environment may conflict with the need to protect the child from the risk of abuse or neglect. Or, for example, the right of the child to have a regular contact with the parents may be complicated or made impossible because one of the parents is out of the state or imprisoned. The General comment therefore suggests that the elements be compared and decisions found that are in line with the best interests of the child. The States Parties are particularly recommended to consider, in the assessment of the BIC, in situations of conflict of interests, the developmental capacity of the children to participate actively in the assessment of their best interests.

Procedural safeguards to guarantee implementation of the BIC

As in all procedures in which children participate or which involve children, some safeguards must be put in place. Parents cannot be expected to get acquainted with all those procedures nor is it necessary for them to follow them strictly in each situation where the BIC is being determined. Imposing or suggesting such a requirement would imply undue intervention into the privacy of the family and human relationships in general. But in each situation where the child is in a court, administrative or other procedure, public authorities must act in the manner which ensures that the best interests of the child are assessed and determined. As stated in the General comment: “States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children.”

►► *The Committee invites States and all persons who are in a position to assess and determine the child’s best interests to pay special attention to the following safeguards and guarantees:*

- *right of the child to express his or her own views;*
- *establishment of facts;*
- *time perception;*
- *qualified professionals;*
- *legal representation;*
- *legal reasoning;*
- *mechanisms to review or revise decisions;*
- *child-rights impact assessment (CRIIA).*

Conclusion

In conclusion, it should be noted that the General comment on the right of the child to have his or her best interests taken as a primary consideration provides an excellent basis which enables States, professionals, parents as well as children to better understand and be in a better position to determine what is in the best interest of the child in each situation. Unfortunately, the General comment does not provide a magic wand or a miraculous formula that could be easily applied to resolve each situation. The General comment, as we have demonstrated, offers solutions for a better understanding of the obligations relating to compliance with the BIC and for building capacities in the procedures involving the determination of this principle. The determination of the BIC is not

a goal in itself, but it is primarily the context in which all rights are harmoniously balanced and realised. The most important task of each State is to make immediate analysis of its efficiency in regard to the implementation of the BIC principles. The results of such an analysis would show what has been done, our understanding of the BIC and what needs to be done next to ensure guarantees to each child that his/her interests will always be taken into account and that this will be a priority and that the assessment of his/her interests will be fully in line with all the rights under the CRC, irrespective of the deep-rooted attitudes.

- *To ensure that the child's best interests are met to the fullest extent possible, the following parameters should be taken into account:*
- *the universal, indivisible, interdependent and interrelated nature of children's rights;*
 - *recognition of children as right holders;*
 - *the global nature and reach of the Convention;*
 - *the obligation of States Parties to respect, protect and fulfil all the rights in the Convention;*
 - *short-medium and long-term effects of actions related to the development of the child over time.*

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AN ASSESSMENT OF THE BEST INTEREST OF CHILDREN ON THE MOVE¹

International standards and instruments

The Convention on the Rights of the Child, adopted in 1989, is the key international instrument for child protection. The children's right to have their best interests treated as a primary consideration, one of the four principles of the Convention, in addition to the other three - the right to non-discrimination, the right to life, survival and development and the right to participation - is a general principle that in the most general sense leads to the realisation of the well-being of the child. Although not providing a precise definition of the best interest of the child, the Convention enables and provides guidance for the consideration of the position of every child in his/her specific context and calls for the establishment of a clear procedural framework which will enable taking the key factors into account in an assessment - the child's age, sex and maturity, the child's experiences, the presence/absence of parental and/or guardian care, the circumstances of the child's development and the circumstances of the implementation of protection programmes.

Such an individual approach requires the establishment of the guidelines for the work of the institutions and organisations that provide various forms of support to children. The Guidelines aim to address this requirement within the process of creating a sustainable and comprehensive system for the protection of children on the move.

The principle of the best interest of the child, as one of the key principles of the Convention, should, together with the other three principles, provide guidance for the application of other rights pursuant to the Convention as a driving force of the process of child rights programming². In addition to the

1 Adapted for the Proceedings according to: Galonja, A.: The Guidelines on Determining the Best Interest of the Child, NGO Atina, Belgrade, 2015.

2 *Child rights programming represents a framework for the analysis, planning, application monitoring and assessment of the approach of the development and protection programme. This approach involves the application of various practices, concepts and experiences related to the child's rights and development in a single framework. It is primarily based on the principles and standards of children's human rights, but also on the standards and practices of direct work with children and general successful development practices.* A Handbook for International Save the Children Alliance Members. Child Rights Programming - How to Apply Rights-Based Approaches to Programming. Lima, Perú, July 2005.

rights pursuant to the Convention, the Guidelines also take into account the standards prescribed by other international instruments³: the Optional Protocol on the sale of children, child prostitution and child pornography and the Optional Protocol on the involvement of children in armed conflict (2000) (the Optional Protocols to the Convention on the Rights of the Child); General Comment No. 6 (2005) released by the Committee on the Rights of the Child to address an increase in the number of unaccompanied children on the move for various reasons, including the search for better economic opportunities, conflicts and wars, trafficking in human beings, etc.; the Convention relating to the Status of Refugees (1951) and the associated Protocol on the Status of Refugees (1967); the Convention relating to the Status of Stateless Persons (1954); the Convention on the Reduction of Statelessness (1961); the Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the Convention against Transnational Organised Crime and the Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children (2000).

In addition to on the above-mentioned United Nations instruments, the Guidelines are also based on the specific standards for the protection of refugees, child refugees and unaccompanied children: the Guidelines for the Alternative Care of Children⁴, adopted by the UN General Assembly in 2010, regarding the provision of care for children who are deprived of parental care or who are at risk of being so; the UNHCR Policy on Refugee Children of 1993⁵ and the Interagency Guiding Principles on Unaccompanied Children and Separated Children⁶.

The European instruments used as a framework for the development of forms for assessing the best interest of the child include: the European Convention on the Exercise of Children's Rights (1996, came into force in 2000)⁷; the Convention on the Action against Trafficking in Human Beings⁸; the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse⁹; the EU Strategy on the Rights of the Child¹⁰; the EU Guidelines for the Promotion and Protection of the Rights of the Child (2007)¹¹; the EU Agenda for the Rights of the Child (2011)¹²; the Action Plan on Unaccompanied Minors (2010)¹³.

3 The international framework for the protection of children on the move is described in more detail in the previously cited publication *Children on the Move*.

4 The Guidelines for the Alternative Care of Children, Resolution 64/142.

5 The Policy on Refugee Children, UNHCR 1993, EC/SCP/82.

6 *The Inter Agency Guiding Principles*, available at: http://www.unicef.org/violencestudy/pdf/IAG_UASCs.pdf.

7 Serbia signed the Convention in 2009, but it did not ratify it. The text of the Convention is available at: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=160&CL=ENG>.

8 The Act on the Ratification of the Council of Europe Convention on the Action against Trafficking in Human Beings, Official Gazette of the RS, International Treaties, No. 19/2009.

9 Serbia ratified the Convention in 2010 and adopted the Act on the Ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Official Gazette of the RS, International Treaties, No. 1/2010.

10 Towards an EU Strategy on the Rights of the Child, COM (2006) 367.

11 The EU guidelines on the Promotion and Protection of the Rights of the Child, available at: http://www.consilium.europa.eu/uedocs/cms_data/librairie/PDF/QC8308123ENC.pdf.

12 The EU Agenda for the Rights of the Child, COM (2011) 60 final http://ec.europa.eu/justice/policies/children/docs/com_2011_60_en.pdf.

13 The EU Action Plan on Unaccompanied Minors, COM (2010) 213 final.

The instruments developed by Save the Children¹⁴, the UNHCR¹⁵, the CONNECT project¹⁶ and the Banja Luka citizens association “Zdravo da ste”¹⁷ were also used.

The best interest of the child assessment cycle

Every child on the move requiring additional protection and care during the stay in Serbia should be given special attention by the child protection system and all its participants. The best interests of each individual child should therefore first be determined through an individualised assessment process in order to ensure the best possible system response to the key needs of these boys and girls.

One of the prerequisites for a successful assessment of the best interest of the child is to strictly adhere to the participation principle, the child’s best interest being inseparable from and immanent to all adequate and successful processes for the protection of children, including children on the move. Children must be completely involved in the assessment process, depending on their age, development stage and identity. Their requirements and views should be heard and the context they come from must be understood by everyone coming into contact with a child.

An assessment of the best interest of the child must be performed on a regular basis and revised while implementing the support programme in order for the best and most adequate decisions to be adopted. In addition, direct work with children and parents/guardians should also include the ongoing monitoring/observance of bonds that children form so that they can be used as elements for further assessments. This process requires cooperation and exchange of information among all institutions and organisations dealing with a specific case to enable setting up adequate assistance and support programmes.

The assessment process can be broken down by into several phases: the assessment planning phase, the data collection phase, the data analysis and professional assessment phase, the decision making and intervention planning phase, the phase involving the provision of support and ongoing assessment and the monitoring and evaluation phase. (See Figure 1)

Using the terms of the national social protection system and the Rulebook on the organisation, norms and standards of operation of social welfare centres¹⁸, the assessment cycle could be broken down into several steps that are regarded as case management¹⁹:

The definitions of the terms used in the Rulebook (Article 2, paragraphs 8-12) provide more specific explanations and guidelines. (See Figure 2)

14 Best Interest Determination for Children on the Move: A Toolkit for Decision-Making, Save the Children UK South Africa Programme. September 2010.

15 The Field Handbook for the Implementation of UNHCR BID Guidelines, United Nations High Commissioner for Refugees, 2011.

16 Identifying good practices in, and improving, the connections between actors involved in reception, protection and integration of unaccompanied children in Europe, available at: <http://www.connectproject.eu/>

17 Kukoljac, A., Bajramović, M., Children on the Move in Bosnia and Herzegovina – an Overview of the Materials and the Form for the Complete Assessment of the Condition of Children on the Move in BiH with Regard to the Best Interest of the Child (OPNI).

18 Official Gazette of the RS, No. 59/2008, 37/2010, 39/2011 – amended by other Rulebook and 1/2012 – amended by other Rulebook.

19 “Case management” refers to a systemic approach in social work, which includes the activities of assessment, arranging the access to services, planning, coordination, supervision and evaluation of services that are supposed to meet the needs of a specific user. Ibid., Article 2.

Figure 1:
The best interest
of the child
assessment cycle

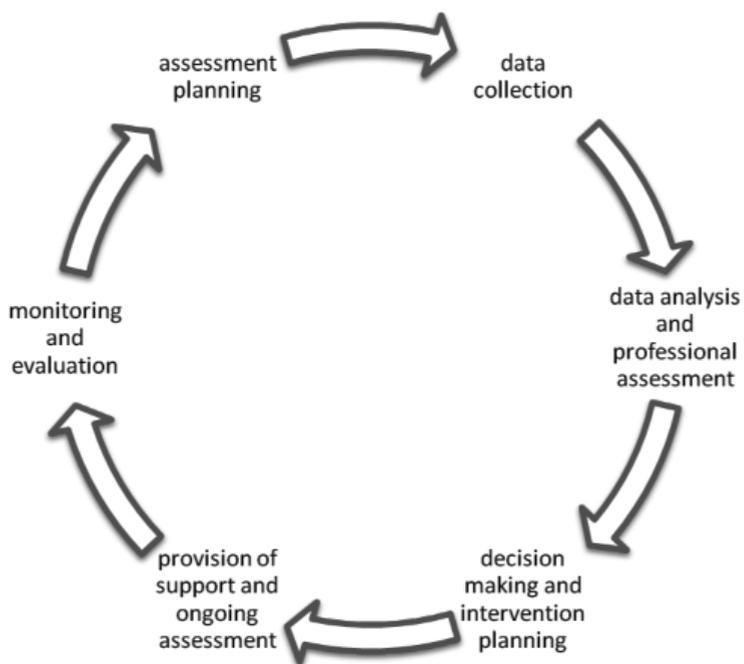
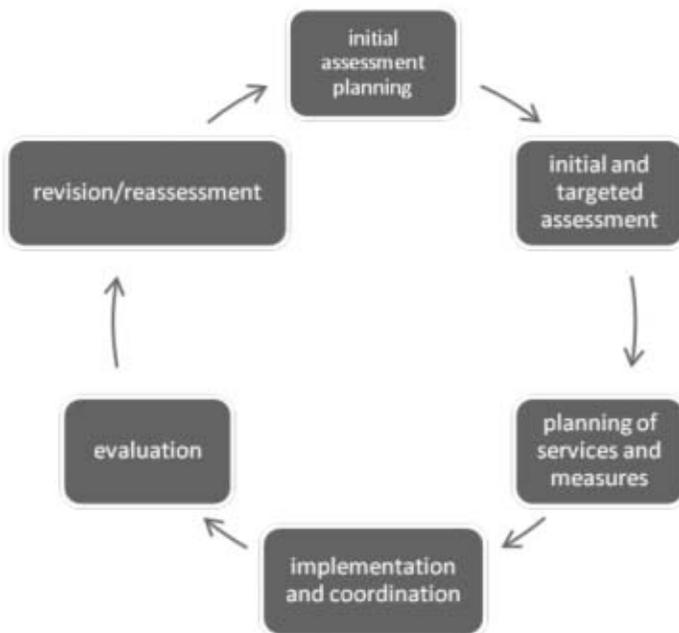


Figure 2:
The case management
assessment cycle -
the social protection
system
of the Republic of Serbia



8) “an assessment” refers to an organised process of data collection, identification and evaluation of the problems, needs, strengths and risks, the situation and persons involved, which is developed gradually to determine the goals of working with a beneficiary and the required services and measures;

9) “planning” refers to a process wherein, based on the information gained in the course of the assessment, a targeted, systematic and time-limited plan is developed in cooperation with the beneficiary, the family and other experts, services and persons involved;

10) “a plan of services and measures” defines a basic set of services, measures, tasks and activities required to achieve the desired goals and outcomes for the beneficiary by relating assessment findings to interventions, services and measures;

11) “an evaluation” refers to a procedure carried out within pre-defined time intervals to compare the planned outcomes with the current condition of the beneficiary and the family, with a view to analysing the adequacy of the assessment and the results achieved by the services and measures, that is, the extent to which the planned tasks have been performed and the outcomes leading to the final goal of the work realised;

12) “a revision” refers to a revision procedure based on the evaluation findings, which involves the reassessment of needs, strengths and weaknesses and the revision of the work plan to adjust services and measures to changes in the circumstances and functioning of the beneficiary and the family.²⁰

Each assessment must be thoroughly planned and coordinated and its aim must be transparent, clear and acceptable to all participants in the process. This is best achieved by doing the following during the planning phase: a) formulate a written statement on the aims of the assessment process, for each child on the move; b) identify the key elements of the assessment (the form offers the obligatory framework, leaving a possibility to map additional important elements), and c) the persons that should be included in the process; d) take into account all the resources available to the child - from those meeting his/her urgent needs to the resources for long-term support and inclusion (it should be kept in mind that in practice these are most often civil society organisation programmes).

Below are some of the questions that are important for this phase:

Who performs the initial assessment of the needs?

Will the family members be included and in what way?

Which data collection techniques will be used?

Which services and programmes are available?

Which emergency support and long-term programmes and services are available?

Is there a need for interpreting services?

Are there any other specific requirements/needs in the communication?

How does the assessment take into account cultural and other specificities of the child (religion, nationality, gender identity, disability...)?

²⁰ *Ibid.*, Article 2, paragraphs 8 - 12.

Figure 3: Planning the assessment of the best interests of the child



Which information is already available?

Who are the sources of information and how will they be included in the assessment process?

How to obtain approval from the child and the parent/guardian?

What are the time limits for the assessment?

How are they analysed and who participates in the analysis process?

How do the systems of communicating and exchanging information function?

Similarly, although in a more concise manner, the planning of the initial assessment of the functioning of social welfare centres should also include the answers to the following questions:

1. Who will be contacted?
2. Who will be interviewed?
3. Who else will be involved in the procedure? (e.g. the police, health service, another professional if necessary);
4. The required data collection method (interviews, documentation, tests, scales, questionnaires, home visits, school visits, visits to the workplace, etc.);
5. The time-frame for the implementation of the required activities.²¹

²¹ *Ibid.*, Article 54, paragraph 2

All the existing research suggests that a systematic approach to the collection of information/data is of the key importance for the subsequent professional assessment of the best interest of the child and taking well-informed and adequate decisions on the required measures and interventions. In this connection, a successful assessment is based on the three key areas of the assessment framework - the development needs of the child (health, education, emotional and behavioural development, identity, family and social relations, social representation, self protection skills), the capacities of parents/guardians (basic care, ensuring safety, emotional warmth, stimulation, leadership and limits, stability), the family and factors of the environment (community resources, the family's social integration, income, employment, housing, the extended family and the family history and functioning). An analysis of the interaction of the elements comprised by these three areas, including the specific aspects important for the understanding of the position of children on the move and the risks they are exposed to in Serbia (social exclusion, a potential exposure to violence, migration flow and dynamics, as well as other factors), in addition to the full participation of children, is a precondition for finding the most effective solutions for the protection of children on the move.

A framework for the assessment of the best interest of children on the move in the Republic of Serbia

In Serbia, there are over eighty acts relevant for the application of the rights of the child and the analysis of their execution. With the Children's Act not having been passed yet, the rules and standards for the protection of children, including children on the move, derive from a number of other acts in the areas of family law, criminal law or social protection, education, health care, border crossing regulation, etc. The key documents specifying the framework for the assessment of the best interest of the child and enabling its establishment at the national level include the following: the Constitution of the Republic of Serbia²², the Law on the Prohibition of Discrimination²³, the Social Security Law²⁴, the Family Law²⁵, the Law on Permanent and Temporary Residence of Citizens²⁶, the Health Law²⁷, the Law on the Foundations of Education and Upbringing²⁸, the Law on Aliens²⁹, the Law on Asylum³⁰, the Law on Refugees³¹, the Act on the Ratification of the Agreement between the Republic of Serbia and the European Union on the Readmission of Illegally Residing Persons³², the Law on Protection of State Border³³, the Criminal Code³⁴, the Law

22 Official Gazette of the RS, No. 98/06.

23 Official Gazette of the RS, No. 22/2009.

24 Official Gazette of the RS, No. 24/2011.

25 Official Gazette of the RS, Nos. 18/2005 and 72/2011.

26 Official Gazette of the RS, No. 87/2011.

27 Official Gazette of the RS, Nos. 107/2005, 72/2009, amended by other Law 88/2010, 99/2010 and 57/2011.

28 Official Gazette of the RS, No. 72/2009 and 52/2011.

29 Official Gazette of the RS, No. 97/2008.

30 Official Gazette of the RS, No. 109/2007.

31 Official Gazette of the RS, No. 18/92, Official Gazette of the SRY, No. 42/2002, FCC decision and the Official Gazette of the RS, No. 30/2010.

32 Official Gazette of the RS, International Treaties, No. 103/2007.

33 Official Gazette of the RS, No. 97/2008.

34 Official Gazette of the RS, Nos. 85/2005, 88/2005, amended, 107/2005, amended, 72/2009 and 111/2009.

on Juvenile Criminal Offenders and Criminal Protection of Juveniles³⁵, the National Action Plan for Children³⁶, the National Strategy for the Prevention and Protection of Children from Violence³⁷, the General Protocol on the Protection of Children from Abuse and Neglect³⁸, the Special Protocol on the Conduct of Police Officers in the Protection of Minors from Abuse and Neglect, the Special Protocol on the Protection of Children in Social Welfare Institutions from Abuse and Neglect, the Strategy to Combat Trafficking in Human Beings³⁹ and the Strategy of Returnees Reintegration under Readmission Agreements⁴⁰.

The findings and insights into the risks children on the move are exposed to are especially important for the understanding of the approach to the formulation of instruments for data collection and the assessment of the best interest of the child. In order to clarify the context of the instrument development, we present below the key insights that are analysed in more detail in the publication.⁴¹

Children on the move are an extremely vulnerable group of children. In all phases, these children are constantly exposed to risks of violence, abuse and maltreatment, exploitation and neglect. As they often avoid the inclusion in the identification and protection system, either in an aim to reach the desired destination or under pressure from adults, these children “fall out” of the protection and assistance framework provided by the official system and civil society organisations.

An adequate protection system therefore implies a basic participatory assessment of their needs and response to these needs, in a manner that is entirely appropriate with respect to the child’s age, sex and the specific context, in order to ensure a responsive and flexible, individualized approach, based on the principles of the right to non-discrimination, the best interest of the child, the right to participation, the right to life, survival and development as well as on the fundamental principles of the Convention on the Rights of the Child.

Based on the findings from the previous phase of the project and the views of professionals and children, the causes of vulnerability can be presented through a prism of social exclusion, as follows: (See Figure 4)

The assertion that children on the move are, as a rule, socially excluded, no matter which specific group they belong to, is among other things based on the following conditions: their exclusion from the education system, unresolved citizenship and legal status, language barrier (often the lack of knowledge or insufficient knowledge of the majority language), their hindered or completely prevented access to resources, such as health-care services, the education system, adequate lodging and financial resources, their lack of life skills, inability to enjoy basic rights, etc.

35 Official Gazette of the RS, No. 85/2005.

36 National Action Plan for Children, http://www.mpn.gov.rs/resursi/dokumenti/dok45-srp-Nacionalni_plan_akcije_za_decu.pdf.

37 Official Gazette of the RS, No. 122/2008.

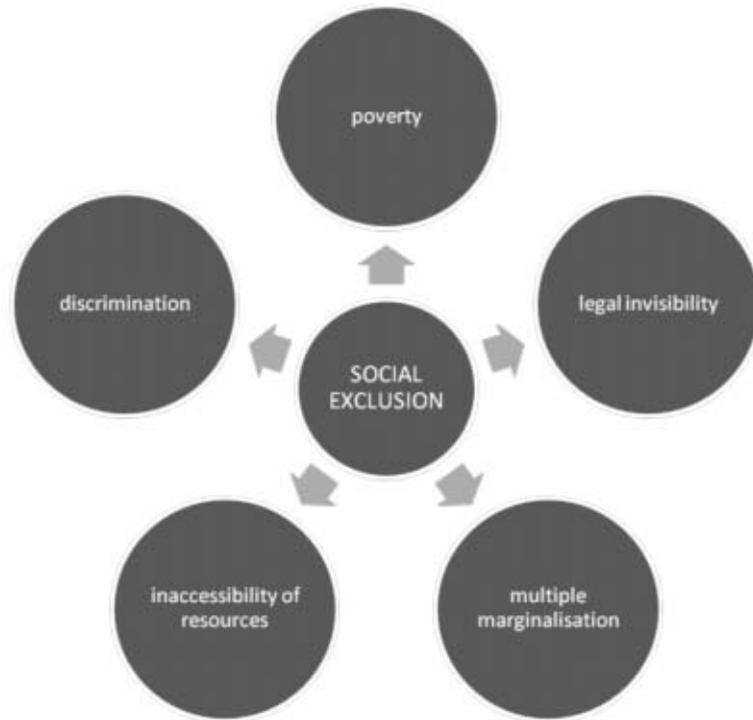
38 The Government of the Republic of Serbia, the General Protocol on the Protection of Children from Abuse and Neglect, Government Decision 05 No: 5196/2005 of 25 August 2005.

39 Official Gazette of the RS, No. 111/2006.

40 Official Gazette of the RS, No. 15/09.41 Galonja, op. cit, pp. 71-99.

41 Galonja, op. cit, pp. 71-99.

Figure 4:
Causes of vulnerability
of children on the move



In addition, poverty and inaccessibility of resources are the most often mentioned characteristics of children on the move dealt with by the professionals in the systems in Serbia. Furthermore, another significant characteristic of children on the move that has been thoroughly researched is their frequent “legal invisibility”, which on the one hand makes them completely socially excluded and on the other more exposed to maltreatment and exploitation (especially to committing crimes under duress).

Therefore, the key first step in providing adequate support and protection and implementing the assistance programme for children on the move is to resolve their citizenship and legal status, that is, to create the preconditions for their inclusion in the educational, social welfare and health-care systems. Previous discrimination, together with the frequent exposure to multiple marginalisation, which is in a large number of cases transgenerational, are frequent causes of vulnerability of children on the move. As regards child asylum seekers and refugees - persecution, conflicts, mass violation of human rights in the country of origin both force them to flee the country and increase their vulnerability. One should also take into account disrupted social networks, the change of social environment (often a stay in the countries that are very distant from the country of origin and different from it),

traumas caused by fleeing from their country of origin and their experiences while in the country, etc.

If they are not adequately addressed, these causes, as a rule, multiply further and may lead to even more serious consequences - violence, neglect and abuse as well as maltreatment/exploitation.

With regard to the creation and implementation of comprehensive support programmes, the length of social exclusion and exposure to violence, neglect, maltreatment and/or exploitation is very important for assessing the best interest of the child and designing adequate activities. In this context, the instrument envisages an assessment of these circumstances in all the phases - in the city/country of origin, during the journey and upon the completed identification.

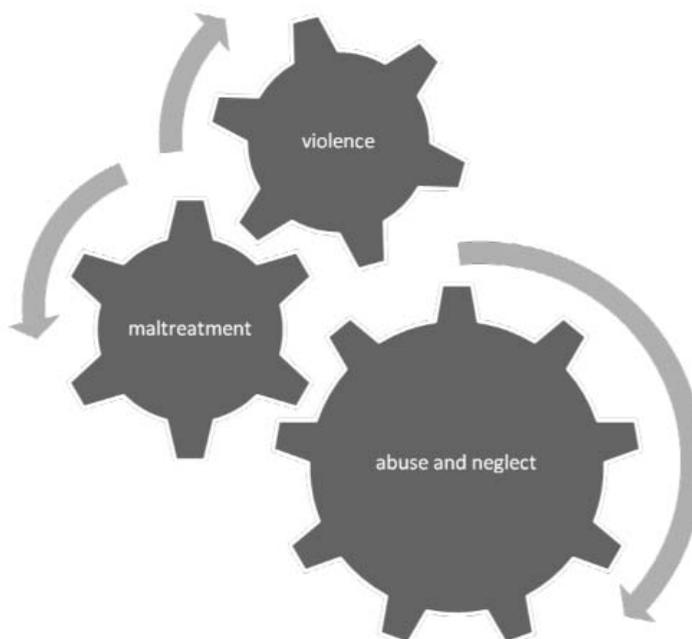


Figure 5:
The risks that children
on the move are exposed to

Protection system professionals, as well as children themselves, have specified some of the possible characteristics of children on the move, thus further contributing to establishing the course of action in the process of assessing the best interest of the child - they have indirectly provided guidance for interviewing techniques as well as for designing adequate programmes. Specifically, a consequence of inadequate institutional response to the needs of children on the move is children's (and their parents') strong distrust of institutions. Children are often instructed to avoid the representative of institutions, provide false identity information, etc.

Children from this group who are (or have been) victims of criminal offences (trafficking in human beings) are in an even more specific situation. They additionally have an intense fear of retaliation (notwithstanding whether the offender is a family member or not), condemnation or complete rejection by their families, stigmatisation and discrimination by their social community. They also feel shame and guilt owing to exploitation they have suffered, especially in the case of sexual exploitation.

Migrant children from any of the groups have a strong fear of the unknown and are insecure if they do not know the language of the community and are the beneficiaries of the programmes of a social protection system that lacks funds for interpreting services. Fear and insecurity are especially pronounced in migrant children living in collective centres.

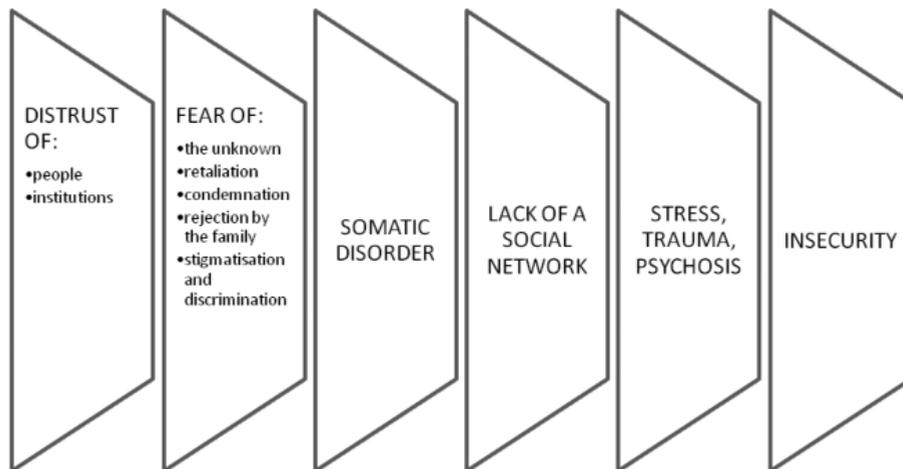
The lack of a social network has also been observed as a key disadvantage in the process leading to the full social inclusion of children from the group of internally displaced persons and returnees in the readmission process.

Professionals have stated that minor asylum seekers are under intense stress, that they are traumatised and sometimes even experience mental health difficulties. They also often suffer from somatic disorders and require urgent and ongoing health care and protection.

In establishing the key causes of vulnerability, and the risks to which children on the move are exposed, one should especially take into account the cognitive and gender dimensions of the phenomenon, in order to respond to the needs of the children as specifically and adequately as possible.

To sum up, the basic characteristics of children on the move in Serbia may be presented as follows:

Figure 6 The characteristics of children on the move



Valentina Otmačić

Head of UNICEF Office in Croatia

THE CRUCIAL ROLE OF OMBUDSPERSONS IN PRESERVING THE RIGHT OF A CHILD TO LIVE IN A FAMILY ENVIRONMENT

Preface

“Every child has the right to a family. Families must have the support they need to nurture and raise their children. In the few cases where children cannot be cared for by their family, alternatives that are family - and community-based must be found. Placing any child in an institution should be the very last resort”.¹

The recent (2014) evaluation of the child care systems in the countries of Central and Eastern Europe and Community of Independent States (CEE/CIS) indicates that the CEE/CIS region still has a high rate of children growing up in formal care. Some 1.2 million children grow up in formal care in the region of whom 501,000 children grow up in residential care. Of these children, some 200,000 have disabilities, and 26,000 are under the age of three years.²

Children who live in institutions are among the most vulnerable in the world. They are at increased risk of developmental delays, emotional and psychosocial problems, as well as abuse and neglect in many institutional settings. In particular children under three are exposed to the risk of permanent developmental damage as a result of the lack of family-based care, lack of adequate stimulation and lack of attachment with a primary care-giver. And for all children, long-term stays in institutions can have a lasting negative impact.³

1 Child Right Resource Package, European Commission, UNICEF, NGO Networks on Children’s Rights, 2005.

2 Multi-country evaluation of results achieved through child care system reform 2005-2012, UNICEF RO CEE/CIS RKLA1 Evaluation, 2014.

3 Keeping Children Out of Harmful Institutions, Why we should be investing in family-based care, Save the Children, 2009.

Family environment from a child rights perspective: the legal framework

The right of a child to live in a family environment is one of the fundamental child rights recognised in a number of international documents and conventions.

The Convention of the Right of the Child, above all, in its Preamble, recognises that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. The Article 9 further states that “a child shall not be separated from his or her parents against their will, except when competent authorities determine that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case especially when involving abuse or neglect of the child by the parents”. The convention also considers that “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”.

In addition, it outlines a range of children’s rights that, taken together, suggest that most children should live with and be cared for by their birth families (Articles 9 and 7). It is the primary responsibility of parents to raise their children and it is the responsibility of the state to support parents in order that they can fulfil that responsibility (Article 18). Children have the right to protection from harm and abuse (Article 19), to an education (Article 28) and to adequate healthcare (Article 24), but they simultaneously have the right to be raised by their family. Where their family cannot provide the care they need, despite the provision of adequate support by the state, the child has the right to substitute family care (Article 20). Children with intellectual or physical disabilities have a right to live in “conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community” (Article 23).⁴

The UN Guidelines for the Alternative Care of Children, that were adopted in 2009, enhance the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so. The Guidelines emphasise the importance of ensuring that residential care is only used when it is the most appropriate option (paragraph 21) and that alternative care for young children, especially those under three years, should be provided in family-based settings (paragraph 22).

The UN Guidelines were designed for wide dissemination among all sectors directly or indirectly concerned with issues relating to alternative care, seeking in particular:

- (a) To support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption and kafala of Islamic law;
- (b) To ensure that, while such permanent solutions are being sought, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative

⁴ Common European Guidelines on the Transition from Institutional to Community-based Care, European Expert Group on the Transition from Institutional to Community-based Care, November 2012.

- care are identified and provided, under conditions that promote the child's full and harmonious development;
- (c) To assist and encourage Governments to better implement their responsibilities and obligations in these respects, bearing in mind the economic, social and cultural conditions prevailing in each State;
 - (d) To guide policies, decisions and activities of all concerned with social protection and child welfare in both the public and the private sectors, including civil society.⁵

The UN Guidelines specifically elaborate on the importance of the family as a “fundamental group of society and the natural environment for the growth, well-being and protection of children”. In that regard they emphasise the “responsibility of the State to ensure that families have access to forms of support in the care-giving role”.

“Where the child's own family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care, with or through competent local authorities and duly authorized civil society organizations. It is the role of the State, through its competent authorities, to ensure the supervision of the safety, well-being and development of any child placed in alternative care and the regular review of the appropriateness of the care arrangement provided.”

The Committee on the Rights of the Child, in its General Comment No. 9, “urges States parties to use the placement in institutions only as a measure of last resort, when it is absolutely necessary and in the best interest of the child”.

The UN Convention on the Rights of Persons with Disabilities (CRPD, 2008) in its Article 19 emphasizes the importance of developing good quality and sustainable alternatives to institutional care, requiring the shift of government policies away from institutions towards in-home, residential and other community support services.

The Council of Europe Recommendation on deinstitutionalization and community living of children with disabilities [CM/Rec(2010)2] emphasises that placement of children in institutionalized forms of care “raises serious concerns as to its compatibility with the exercise of children's rights” and recommends that governments of member states “take all appropriate legislative, administrative and other measures adhering to the principles set out in the annex to this recommendation in order to replace institutional provision with community based services within a reasonable timeframe and through a comprehensive approach”.

Consequences of deprivation of family environment

The negative consequences of deprivation of family environment and placement of children in institutional care on the overall child's development have been widely documented since the early 20th century. The extensive scientific evidence shows that the institutional care has dam-

⁵ Guidelines for the Alternative Care of Children, Unated Nations General Assembly, 65th plenary meeting 18 December 2009.

aging effects on children. This is especially important in regard to the youngest children who suffer long-term consequences due to inability to develop secure attachment with a primary caregiver which leads to permanent effects on the emotional development and capacity of the child. In addition, deprivation of sensory, cognitive and motor stimulation has serious impact on brain development and prevents a child from developing to its full potential. Life in an institution leads also to social exclusion and prevents a child from developing or maintaining network of family and/or community support for life.

The impact of institutional care on specific areas of child's life and development was vividly presented by David K. Tolfree, in the table below⁶, by linking specific consequences of institutional care with relevant articles of the Convention on the Rights of the Child: (see the Table to the right)

Another very good example of the study that was conducted to identify consequences of the institutional placement on child's development was the **Bucharest Early Intervention Study** (2000).

It was conducted for five years in Bucharest, Romania. The study was an examination on the effect that institutionalization has on the cognitive and behavioural development of young children. The aim of the study was to assess whether foster care can remediate the effects of institutionalization, and whether foster care is the proper alternative⁷.

Key findings on children living outside of family care:

- Children living outside of family care should be placed into family care at the earliest age possible. Early placement into family care results in the best outcome for the child.
- Children living outside of family care suffer greatly from diminished development.
- Placement into family care at an early age significantly improves cognitive, emotional and behavioural development.

Children living outside of family care have a variety of social and behavioural problems:

- Aggressive behavioural problems.
- Inattention/hyperactivity.
- Delays in social/emotional development.
- Syndrome that mimics autism which disappears once the child is adopted.

Poor growth

- Children outside of family care lose one month of growth for every 3.0 months living in an institution.

Deficit IQ

- Children living outside of family care show diminished intellectual performance which borders on mental retardation.
- Children entering family care before 24 months of age display significant improvement in IQ.

⁶ Tolfree, David K., Community Based Care for Separated Children, Save the Children Sweden, 2003.

⁷ <http://www.bucharestearlyinterventionproject.org/index.html>

Institutional characteristic	Relevant articles from the CRC	Examples of child development impact	Illustration
1. Institutions tend to segregate children leading to a powerful sense of discrimination and stigma	The Principle of non-discrimination (Article 2)	Stigma and discrimination have a powerful effect on the growing child's identity and self-esteem	<i>"We always felt humiliated because of living in the home". "They would always treat us like orphans"</i>
2. The placement of the child in an institution is frequently driven by the wishes of the family, not the best interests of the child	The principle of the child's best interests (3)	Placement in an institution may be perceived by the child as a form of rejection by the family, resulting in feelings of abandonment and loss of self-esteem	<i>"Admission was sought partly because their children were assured of a good diet and access to a quality of education unavailable in refugee camps"</i>
3. Even if the child has one or both parents, the evidence suggests that contact with parents and the wider family decays over time	The right to maintain contact with both parents on a regular basis (9.3). The right to preserve his or her identity (8) and to family reunification (10)	Loss of personal and family identity, of a sense of belonging to a community and consequent loss of support networks for the future	<i>"I felt I needed my family, even though I always had other people around me". "We didn't have any relatives visit"</i>
4. The lack of individual and personal care, attention and affection, with institutional needs taking precedence over those of individual children	The right to grow up in an atmosphere of happiness, love and understanding (Preamble). The right to express an opinion (12)	Opportunities for attachment and for reasonably continuous relationships with parental figures are fundamental to child development, especially in the early years.	<i>"We never had any affection; we had all the material things - a bed, food, clothing - but we never had love"</i>
5. Many institutions do not provide adequate stimulation and purposeful activity for children	The right of leisure, play and recreational activities appropriate to the age of the child (31)	Stimulation is vital for the development of motor skills, intellectual capacity and social skills. Deprivation can have profound and long-term effects	<i>"It was like a prison". "The babies... were left in their cots most of the day"</i>

6. Children who grow up in institutions may be denied opportunities to learn about the roles of adults within the particular culture	The child should be fully prepared to live an individual life in society (Preamble)	Childhood experiences are partly aimed at equipping the child with the knowledge and skills required of adulthood	<i>"I have no idea what it is like to live in a family"</i> <i>"We called the director 'Daddy'... but he really had little time for us"</i>
7. Institutions frequently provide little or no opportunity for mixing with children outside of the institution	The right of freedom of association (15)	A variety of peer-group relationships and exposure to "normal" family life are important for children's development	<i>"A large children's village... has the appearance of a homely fortress surrounded by a high barbed-wire fence"</i>
8. Child abuse of various kinds is common in institutions – even in well-resourced institutions in the industrialised nations – and often persists for years without being revealed to the outside world	The right of protection from all forms of abuse and neglect (19) and from sexual exploitation (34)	Child abuse has been demonstrated to have a devastating impact on children's development and well-being, often with long-term implications	<i>"They would beat us even with the iron, with no clothes on"</i> <i>"The priest... started to touch my stomach and private parts... Several others said he had sexually abused them"</i>
9. Residential institutions often fail to respond adequately to the psychological needs of children	The right to rehabilitative care (39) which specifically includes recovery from the effects of armed conflict	Experiences such as separation, loss and exposure to frightening events can have a seriously negative impact on children's development	<i>"They told me I should try to forget everything. And I told them 'How can I forget this? Could you forget your own child's death?'"</i>
10. Many institutionalised children experience considerable problems in adjusting to life outside the institution. Many end up in prisons or psychiatric institutions	The right to assistance to enable the child to fully assume his or her responsibilities within the community (Preamble and 18)	Institutions tend to encourage dependence and discourage children from thinking and solving problems themselves, leaving them ill-equipped to live independently	<i>"They don't give proper tools to survive in society"</i> <i>"They throw you out into society with no kind of structure to survive"</i>

- Children entering family care after 24 months of age display only a slight improvement in IQ.

Brain activity

- Children living outside of family care have lower levels of brain activity across all regions of the brain.
- Children living outside of family care who are placed into family care demonstrate an increase in IQ and brain development.

Emotional reactivity

- Children living outside of family care demonstrate a significant deficiency in sensory perception including responses to and understanding facial emotion.

As one of the leading European experts in child protection, Professor Kevin Browne from the University of Birmingham emphasises the influence of the institutional care on the young child's brain development.

Comparative brain scans show impact of severe neglect on brain and development of empathy and social behaviour. They demonstrate the difference in the brain activity of a child who grew up in a family environment and of a Romanian child who was placed in the institution shortly after birth.⁸

Based on the extensive scientific evidence, he demonstrates "that young children who are institutionalised before the age of six months suffer long term developmental delay. Those who are placed in a caring family environment by the age of 6 months will probably recover and catch up on their physical and cognitive development. Improvements are seen in cognitive ability when children are removed from institutional care at an early age and placed in a family. However, difficulties with social behaviour and attachments may persist, leading to a greater chance of anti-social behaviour and mental health problems. Consequently, it is recommended that children aged less than 3 years old, with or without disability, should not be placed in residential care without a parent or primary caregiver"⁹.

Key current challenges in the realization of the right of a child to live in a family environment

During 2013 and 2014 UNICEF CEE/CIS conducted a comprehensive independent multi-country evaluation of the child care systems in 11 countries in the CEE/CIS region (Azerbaijan, Belarus, Bulgaria, Croatia, Georgia, Moldova, Montenegro, Romania, Serbia, Turkey and Ukraine), for the period 2005-2012. While recognising the overall progress towards more child-friendly child care systems, the evaluation has identified several key challenges in the realization of the right of a child to live in a family environment:

Social norms

The evaluation results showed that social norms of general public, professionals and policy makers are slow to change or even resistant in the short and medium term. Besides the parents' general perception that children are their "property" and decisions about children's lives are only of their

⁸ Professor Kevin Browne, Presentation at the European Summer School of Social Pediatrics, Šibenik, Croatia, 2007.

⁹ Johnson, R., Browne, K., Hamilton-Giachritsis, C. (2006.) *Young Children in Institutional Care at Risk of Harm: A Review. Trauma, Violence and Abuse, Sage.*

concern and professionals' belief that poor living conditions and poor parenting capacity are good enough reasons for separating a child from their family, there is also the continued prevalence of a medical model of disability. A significant proportion of medical staff, particularly doctors, continues to believe that children with disabilities may be better off in institutions where specialist medical support facilities may all be immediately available.

Legislation and policy

In regard to the *normative framework* the evaluation showed that there is a significant discrepancy between developing legislation and policy supportive for the development of services and aimed at prevention of child separation and their operationalisation and realisation in practice.

Budgeting

The evaluation identified a lack of clear information on changes to *financial flows and budgets, as well as* ineffective use of the budgetary funds to secure improved child well-being through investments in children and improved child protection services, due to lack of an evidence-based budgeting.

Supply

While recognising that significant progress has been made in terms of the *development of new services* as an alternative to large-scale residential care (e.g. foster care), there is still insufficient development of services intended to prevent separation of a child from the family. Also, the evaluation clearly indicate that new services are not always available country-wide, especially in remote, poor areas of the countries.

Demand

The evaluation results indicate that for the most vulnerable families is the most difficult to express demand for services due to lack of awareness on their rights. There is also a lack of coherence with other child care policy measures/instruments (related to service supply or to case management).

Equity gaps

In most of the countries in the evaluation, it is generally ***children with disabilities, very young children and children from rural or deprived areas*** who are the most disadvantaged and where the greatest equity gaps still remain. Although the number of children with disability decreased in residential care in most of the countries in the evaluation and they have been a target for awareness raising campaigns and for preventive services, there is a widespread recognition, by UNICEF, Governments, and other stakeholders, that much more needs to be done for this group.

Another group where equity gaps appear not to have narrowed during the reference period is the group of ***single parents in difficult 'circumstances' and their children*** as well as ***children leaving care***, in part as a symptom of the failure of the system to respond to their needs in terms of reintegration into society.

A key equity issue in relation to child care reforms in some of the countries in the study relates to the ***Roma minority***. Although the social inclusion of Roma was seen as important throughout the

reform in a number of countries in South East Europe, the issue of the risk of Roma children being over-represented in public care has tended not to be an important public policy issue.¹⁰

Role of ombudspersons in preserving the right of all children to live in a family environment: why is it crucial?

In accordance to the general role of the ombudspersons for children in the protection and promotion of the rights of children and young people, the involvement and active engagement of the ombudspersons is absolutely crucial in promotion and protection of the child's right to grow up in the family environment, both in policy and in practice.

As mentioned above, since the most vulnerable children and families are often not aware of their rights and are often deprived and stigmatized, it is crucial to put additional efforts in providing them with information and supporting them to claim their rights to family support services and to family-based care.

Furthermore, keeping in mind the persistent social norms favouring institutional care, especially in regard to children with disabilities, it is of a vital importance to put additional efforts in raising awareness of the general public, but especially health and social welfare professionals, on the negative consequences of institutionalization

The recommendations identified through the Evaluation of the child care systems in CEE/CIS region could serve as useful guidance to ombudspersons for children in their efforts to promote the right of every child to live in a caring family environment. Those include:

1. ***A stronger focus on preventing family separation*** -- bringing together cash transfers, access to services and social work/case management is crucial for the future of child care systems.
2. ***Advocating for appropriate budget allocations*** – engaging in meaningful interventions in the area of Public Finance Management seeking to influence all stages of the budgetary planning process, at national and regional levels, including a commitment to Multi-annual Budgeting, to ensure improved outcomes for children
3. ***Stronger and systematic focus on children with disabilities, children below three years*** and on addressing ***discrimination issues*** (especially in regard to Roma).
4. ***Social work development*** – of relevant competences in child protection, case management, social work ethics and, crucially, modern management
5. ***Putting into place mechanisms for coordinating multi-sectoral responses*** – National and sub-national Governments in the region need to commit to a clear identification of the role of 'case management' within the child care system, through the elaboration of clear procedures and protocols among ministries and concerned services.
6. ***Addressing social norms/behaviour change*** should be part of the implementation of key social policies.

¹⁰ Multi-country evaluation of results achieved through child care system reform 2005-2012, UNICEF RO CEE/CIS RKL11 Evaluation.

7. **Increasing the awareness of the medical professionals** on child protection and child rights issues, to change professional behaviours, believes, working protocols of the staff working in health sector.
8. **Measurement means and proper indicators** should be developed in order to better capture the impact of reforms on the quality of life for concerned children and families.
9. **Decentralisation reforms need to clarify core accountabilities** at central and level, including proper budget allocations and mechanisms for supporting poorer districts or provinces.
10. A more sustained and effective commitment needs to be offered to **strengthening the voice of children and adolescents** within the care system.
11. **Child care system in situation of emergency:** countries need to develop the capacity of child care systems to respond in a timely, flexible and yet also consistent manner to challenges such as: the economic and financial crisis, ecological disasters (e.g. flooding, earthquakes); large-scale labour migration of adult family members leaving children behind; and, new inter-ethnic and military conflicts.
12. **Improving baseline data for evidence-based policies** is a key priority for the future should be the development of harmonized indicators reflecting the situation of children in need of care.¹¹

¹¹ Multi-country evaluation of results achieved through child care system reform 2005-2012, UNICEF RO CEE/CIS RKLA1 Evaluation.

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PROTECTING THE BEST INTEREST OF THE CHILD IN PARENTAL DIVORCE: DOES THE SYSTEM ENCOURAGE THE MANIPULATIVE BEHAVIOUR OF PARENTS?

Nowadays many children experience the process of parental divorce. The divorce ends the parents' marriage, but it does not break up the child's family. Children's needs during and after the divorce are extremely important, and what they need is stability, continuity and the involvement and availability of both parents (Sandler et al, 2008). The best interest of the child during and after the parental divorce involves the availability and support of both parents, the child's right to have a relationship with and express an opinion to his/her parents, the parents' cooperation in jointly making important decisions concerning the child, a positive attitude towards the child's relationship with the other parent and an active encouragement of their relationship as well as an adequate protection of the child from partner conflicts.

The evidence so far suggests that a divorce in itself need not have long-term consequences on the child, that is, the issue of whether the divorce is a high-conflict one is more important than the fact that the parents are getting divorced (Amato and Keith, 1991). A number of research papers has consistently demonstrated that the exposure to risk of the children whose parents are getting divorced stems from the degree of parental conflict, rather than from the divorce itself (Amato and Afifi, 2006; Sandler *et al.*, 2008). The two most important factors determining the child's adjustment after the divorce are his/her exposure to parental conflict and parenting quality (Kelly and Emery, 2003). Children's exposure to chronic, open and unresolved conflicts increases the risk that they will experience long-term difficulties (Amato and Afifi, 2006), with the manipulative behaviours of the parents carrying an especially high risk.

The manipulation of the child in the divorce process involves a number of behaviours, including negative verbal and nonverbal messages about the other parent communicated to the child in an

aim to exclude that parent from the child's life although there are no valid reasons for their relationship to be terminated stemming from the relationship itself (Bilić, Buljan Flander and Hrpka, 2012). The alienating parent's motives and actions contain both conscious and unconscious components. Apart from a parent, other family members can also contribute to alienation by their actions, as well as persons outside the child's primary family, such as lawyers or mental health experts (Baker, 2008; Darnall, 1997).

Manipulative behaviours that one parent (or another person) engages in to disrupt the child's relationship with the other parent can cause a series of direct and long-term consequences for the well-being of the child and are considered as emotional abuse of the child. The strategies employed can result in the child feeling: "worthless, bad, unwanted, threatened and worthy only if fulfilling someone else's needs", which is a generally accepted definition of emotional abuse (Binggeli, Hart and Brassard, 2001, p. 6).

While working with children experiencing parental divorce one should take heed of numerous, often subtle strategies parents use to undermine the child's relationship with the other parent, as an incorrect assessment can result in the child protection system becoming a participant in the violation of the rights of the child and the possible long-term impairment of the child's well-being.

Alienation strategies

Parental alienation strategies are defined as a set of parental behaviours that intentionally or in any other way damage the child's relationship with the other parent (Baker and Ben-Ami, 2011). These strategies are manifold, but their common characteristic is that they directly convey or corroborate the message that the other parent is unsafe, unavailable or unloving (Baker, 2007). Indirect strategies may include limiting positive experiences that the child has with the other parent, creating a false belief that the child has been abandoned by the other parent, initiating a conflict between the child and the other parent as well as creating a strong bond and interdependence between the child and the parent engaging in such behaviours. It should be borne in mind that children tend to develop alliances with the parent on whom they depend and whose approval they want to win and not necessarily with the parent who is more sensitive to their needs (Baker, 2008).

While working with children of high-conflict divorcing parents it is important to pay attention to the following behaviours (Warshak, 2008):

- disparaging comments about the other parent;
- degrading and insulting the other parent;
- exaggerating and overemphasising the mistakes the other parent makes;
- withholding positive comments, stories and memories about the other parent;
- making false accusations of abuse by the other parent;
- polarization (one parent presents himself/herself as ideal and the other parent as extremely negative);
- thwarting or prohibiting the child's contact with the members of the other parent's family;
- exercising excessive control over the time the child spends with the other parent or interfering with it;

- organising trips to the cinema, theatre, etc. that coincide with the other parent's parenting time;
- making a sad face and/or verbally expressing unhappiness when the child leaves to meet the other parent;
- encouraging the exploitation of the other parent;
- overindulging the child to win his/her favour.

How to recognize the manipulation of the child in the process of divorce?

Bone and Walsh (1999) state four basic criteria to recognise a potential parental alienation syndrome, which, in addition to identifying alienation strategies, also include a consideration of the nature of the child's relationship with the alienated parent and the psychological processes within the child:

1) Access and contact blocking

During the process of divorce and after its completion, some parents tend to block the other parent's contact with the child, thus reducing the length of time the child spends with the other parent, sending a message that the other parent is less important and reducing the opportunity for positive experiences and relationship building.

The parent can justify such behaviour by giving mundane, practical reasons (e.g. other activities or plans) or claim that seeing the other parent is unsettling to the child, question the competence of the other parent or even express concern over the child's safety when in the company of the other parent, which in extreme cases takes the form of allegations of child abuse.

According to expert evaluations of children's adjustment to parental divorce, conducted at the Child Protection Center of Zagreb in 2014, the contact and relationship with the other parent were actively and passively blocked in 33.7% and 29% of high-conflict divorces respectively by one or both parents.

2) Unfounded abuse allegations

An analysis of the cases of families that have reported alleged child sexual abuse to the Child Protection Center shows that the probability that multidisciplinary expertise will establish that an allegation is unfounded or false is significantly higher when such an allegation is made during the divorce process (Buljan-Flander, 2012). In the cases when parents reported an allegation to the Child Protection Center during the divorce process, the findings of multidisciplinary expertise indicated that sexual abuse occurred in only 11% of the cases, compared with 51% in the families where the divorce was finalised and 44.8% in whole families.

Bone and Walsh (1999) consider unfounded abuse allegations as the second criterion for establishing parental alienation. The authors demonstrate a higher frequency of the allegations of the forms of violence against children that do not leave physical marks and that occur without witnesses, such as emotional or sexual abuse, which makes them more difficult to confirm or refute.

	Parental divorce (finalised)	Parental divorce process underway	Parents are not divorced
Confirmed sexual abuse	51.9%	11%	44.8%
Unproven allegation of sexual abuse	11.1%	33%	22.4%
No sexual abuse	37%	55.6%	32.8%

Table 1 An analysis of multidisciplinary expertise in the cases of alleged sexual abuse in relation to the partnership status of the parents (N=27) (Buljan Flander, 2013)

3) *A deterioration in the relationship following the separation of the parents*

The quality relationship between the parent and the child does not cease due to the fact that the child no longer lives with the parent. If the child had a close and positive relationship with the parent prior to the separation, a sudden deterioration in their relationship in the period following the separation may suggest the alienation process. Therefore, the absence of a thorough analysis of the child's relationship with the parent before the separation may contribute to making an incorrect assessment.

4) *Intensive fear reactions by children*

According to Bone and Walsh (1999), the last criterion for the identification of parental alienation relates to fear reaction on the part of the child of displeasing the alienating parent, who indirectly conditions his/her love on the rejection of the other parent. As the child's choice of contact with the non-residential parent is in fact a test of the loyalty to the alienating parent, children tend to develop an ability to detect subtle signals of approval or disapproval communicated by alienating parents and adjust to their expectations, even when they are not expressed explicitly or when their explicit statements contravene their implicit expectations, communicated non-verbally.

Resisting one parent - a clear sign of manipulation?

Does the child's resistance of one of the parents during the divorce process necessarily imply manipulation? The authors agree that alienation can be said to exist only if there are no real reasons for a deterioration in the child's relationship with the non-residential parent, that is, if there are no indications that the child is exposed to abusive or neglecting behaviour from the parent (Bone and Walsh, 1999; Gardner, 1998). Strong negative experiences with the parent are among the causes that are rooted in the child's relationship with the alienated parent and can legitimately lead to the refusal of contact.

Furthermore, during the normal course of growing up every child occasionally expresses a negative attitude towards a parent, but without completely rejecting that parent. Negative emotions diminish with time and do not result in the break-up of the relationship between the child and the parent (Bilić, Buljan Flander and Hrpka, 2012).

An alienated child is defined as a child who persistently expresses negative attitudes and feelings towards a parent, such as anger, hatred, rejection and/or fear, that are disproportionate to the child's actual experience with that parent (Kelly and Johnston, 2001).

Gardner (1998) provides a number of symptoms suggesting that the child's alienation from a parent is primarily caused by manipulation:

- 1) *The campaign of denigration* – children express hatred towards one parent and deny any positive experiences they had with that parent, although they used to love him/her.
- 2) *Absurd arguments and rationalisations for the rejection of a parent* – children often give weak reasons for the rejection of a parent.
- 3) *The idealisation of the manipulative parent* – children perceive one parent as perfect and faultless, and the other as absolutely bad.
- 4) *The “independent thinker phenomenon”* – children claim that their decisions are entirely their own, stating that they make decisions and act towards the parent being rejected out of their own free will and denying that they are influenced by anyone.
- 5) *The absence of compassion or remorse for the parent being rejected.*
- 6) *The reflexive support of the alienating parent in the parental conflict* – children always side with the alienating parent, regardless of how unfounded or absurd that parent's arguments might be, refusing to hear the other parent's arguments.
- 7) *The presence of borrowed scenarios* – children often utilise phrases adopted from the alienating parent, they use expressions they do not understand or describe events that cannot be supported with detail.
- 8) *The rejection of the alienated parent's extended family.*

What makes some relationships between the child and the parents more vulnerable?

The manipulation of the child in the process of divorce may be mild and subtle, but it can also run very deep, with the child completely rejecting a parent and being engrossed in hatred. The intensity of hatred varies along a wide continuum, depending on the level of the alienating parent's distress, the child's vulnerability, the alienated parent's response, as well as on the reactions of the external support system (including other family members, lawyers, the legal system and mental health experts) (Ward and Harvey, 1993).

The rejected parent may contribute to the impairment of the relationship with the child by passivity and withdrawal, by a harsh and rigid parenting style, by exhibiting critical and demanding behaviours and by the lack of empathy towards the child (Kelly and Johnston, 2001), as well as by relying on inadequate strategies for coping with the children's resistance and the alienating parent's behaviour (Warshak, 2008).

One of the key factors in preserving the relationship with the other parent is the length of time spent with the child, during which this relationship is fostered and developed, while the child is provided with an opportunity to refute the negative messages coming from the alienating parent. Therefore, the long duration of the custody procedure, wherein the child is exposed to parental alienation strategies, is a significant risk factor and may lead to the impairment of the relation-

ship with the other parent at a level that is inaccessible to the interventions of experts and thus potentially permanent and irreversible. As shown by the research conducted by the Child Protection Center of Zagreb, in the high-conflict divorces, which underwent expert evaluation in the institution, the period from the separation of the parents to the expert evaluation of parental care lasts on average 3.1 years, ranging from 5 months to as long as 11 years (Buljan Flander and Štimac, 2014).

The consequences of the manipulation of the child in the process of parental divorce

The rejection of the other parent due to the pressure imposed on the child causes a number of psychological processes, which impair the child's emotional development and the development of the child's image of self, with possible consequences, as shown by the research, continuing until adulthood (Steinberg, 2006).

This primarily involves the loss of the parental figure. The sense of loss in the child need not be immediately visible, but it is definitely present and may influence many aspects of the adjustment (Waldron and Joanis, 1996). This type of loss is especially difficult as the child is not allowed to grieve for the lost parent.

Alienating strategies send a message to the child that the alienated parent is inaccessible and unloving. The child experiences this perceived denial of parental love as a consequence of his/her own inadequacy (Peck, 1983, according to Bilić, Buljan Flander and Hrpka, 2012) and becomes convinced that he/she is unworthy of being loved. Furthermore, our self-acceptance also implies the acceptance of the aspects of our identity that bear resemblance to our parents' identities. By rejecting the other parent the child also rejects the aspects of his/her own identity related to this parent and in this way denies a part of himself/herself, consciously or unconsciously regarding it as contemptible.

In order to overcome the anxiety stemming from the conflict of loyalties to the parents both of which they love and in order to reconcile conflicting perceptions of reality expressed by the alienating parent with their own feelings towards the other parent, these children often suppress their emotions and distort their own experience of reality. As adults, they may have difficulties in recognising and understanding their own emotions (Bilić, Buljan Flander and Hrpka, 2012) and may develop a profound distrust of their own judgements and of other people (Baker, 2005).

Children exposed to parental manipulation often idealise one parent and completely reject the other, which is a result of parental conflicts and causes their confusion and anxiety. Children perceive the world as black and white, rather than seeing the balance of good and bad in people and situations, and they transpose this perception to their future relationships (Bilić, Buljan Flander and Hrpka, 2012).

Due to the fact that the relationship with the custodian provides us with the basic patterns of our relationships later in life, the manipulation of the child during the divorce process often has con-

sequences for other relationships. Specifically, when feeling rejected, the child develops a distrust of others and in subsequent relationships harbours a latent expectation of rejection. In addition, by observing the manipulative behaviours of the parent with whom he/she has developed an alliance, with whom he/she identifies and whom he/she completely idealises, the child learns that hostile behaviours are acceptable and that manipulation is a normal part of relationships (Waldron and Joanis, 1996).

Lowenstein (2002) states that manipulated children may often experience the following difficulties:

- anger at the “alienated” parent;
- loss of impulse control in conduct (which may sometimes turn to delinquent behaviour);
- lowered self-esteem;
- clinging and separation anxiety (often induced by the manipulating parent);
- fears and phobias;
- depression and suicidal ideation;
- sleep disorders;
- eating disorders;
- educational problems;
- enuresis and encopresis;
- drug abuse and self destructive behaviour;
- obsessive compulsive behaviour;
- anxiety and panic attacks;
- poor peer relationships (they are either withdrawn or aggressive);
- excessive feelings of guilt.

Conclusion

Many children experience the process of parental divorce, and in estimating the consequences of divorce for children, it is crucial to assess the level of parental conflict during and after divorce. The best interests of the child during and after divorce include the protection of children from exposure to parental conflict that represents a high risk for developing emotional difficulties in children. In this context, from the child protection system perspective, recognizing and responding to the manipulative behaviour of parents is of great importance. The manipulation of the children within the divorce comprises conscious and unconscious efforts to disrupt the relationship with the other parent and his/her exclusion for which there is no valid reason resulting from concerns about the child’s well-being. Previous findings confirm that such a violation of parental responsibility represents a great risk to the mental health of the child. Given that it takes many, often subtle forms of manipulation, this phenomenon requires education and responsibility of experts who provide support to families in divorce. Incorrect assessments in these cases can reaffirm parental manipulative schemes and thus contribute to long-term disruption of the child’s rights and well-being.

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HOW IS THE SUBJECTIVE EXPERIENCE OF PARENTING CONNECTED TO PARENTAL BEHAVIOUR AND THE BEST INTEREST OF THE CHILD?

Social changes and the context of modern-day parenting have grown ever more complex. They require us to re-examine traditional values and adjust to new values and goals in order to avoid jeopardising the integrity of children and youth. Numerous recommendations have been adopted with a view to protect children and families. Parents have the primary responsibility for the upbringing and development of their children. The best interests of the child should be their basic concern (Convention on the Rights of the Child, article 18). How to find their way around these changes, ensure the rights of children and protect their best interests is a challenge faced by both society and parents alike, especially when the values and interests of parents are in contrast with the interests of children and the responsibilities of the state in protecting the welfare of children. What parents think and how they feel about their parenting, and how the subjective experience of parenting is connected to parental behaviour and the best interest of the child, as well as to the protection of emotional, psychological and social welfare of children and youth is in the focus of this paper.

Changing a parent's experience of parenting may alter a parent's behaviour towards a child and improve the quality of the parent-child relationship, thus yielding favourable effects on the development of the child. However, the experience of parenting is important not only for the functioning of a person in his or her role as a parent but also for their subjective wellbeing. How parents perceive themselves in the role as parents and how they perceive their relationship with their children has been in the focus of research for over two decades. In the last fifteen years, extensive research has been carried out in Croatia as well, examining different aspects of the experience of parenting (Delale, 2011; Keresteš and Brković, 2014, Pećnik, 2013).

Building a close and efficient relationship between a parent and a child requires a high level of parental involvement, the readiness of a parent to be available for the child and to hear the child, the capability to

cater to the needs of the child and own needs at the same time. This is a challenge that requires effort, coordination, planning, sacrifice, motivation and resources. Parents differ substantially in their capabilities and capacities to mobilise all of these and consequently they differ in their efficacy (Maccoby, 2003). The Convention on the Rights of the Child of 1989 (the Convention) changed the context of parenting and re-directed attention to children: their rights and active role in their life and development. Parenting is not described in terms of parental authority but rather of parental responsibility. When authoritative parenting is compared with the principles of parenting with the best interest of the child in mind, the two overlap in the aspects of parental care, warmth, structure and boundaries. However, parenting with the best interest of the child in mind rests on acknowledging and respecting children and on enabling their empowerment and influence. Children are no longer viewed as passive objects of upbringing. They are recognised as subjects of their own life and development (Schaffer, 2003). The key role has been played by the recommendations of the Convention on the joint protection by adults of the interest of the child. This has been underlined by international documents pertaining to the exercise of children's rights, such as the Recommendation 19 of the Council of Europe on the policy to support positive parenting (Pećnik, 2007).

Parenting encompasses an array of processes consisting of tasks, roles, rules and interpersonal relationships that adults develop with their children. Parenting is also related both to the subjective experience of parenting but also to different behaviours and skills used by parents in their communication with their children. In addition to enabling children to satisfy their physiological needs, parents are expected to provide encouragement and guidance in the course of development, as complex as it might be, in its cognitive, physical, social, emotional, moral, sexual, spiritual, cultural and educational aspects (Arendell, 1997).

In describing the term of parenting Čudina-Obradović and Obradović (2006) differentiate among the experience of parenting, parental care, parental practices, activities and behaviour, and parenting styles. The characteristics of a parent, of a child and of their environment, or rather the situational sources of stress and support in the social environment, determine how parents function and make up the determinants of parenting (Belsky, 1984). However, a responsible parent caters both to the needs of a child and also to its own needs. Direct experience with children but also the way in which a parent takes care of him- or herself is important in forming parental attitudes and behaviour (Juul, 1996; Bornstein, 1998). Maccoby (2003) argues that parenting also shapes the development of a parent as an adult, while Palkovitz and associates (2003) argue that active participation in the role of a parent and behaviours determine relationships, interactions, roles, social support and challenges that mark significant periods in the lives of parents. Parents change as a result, face new challenges and have the opportunity to demonstrate different competencies.

Specifics of parenting in view of different developmental characteristics of parents and children

Parenting and the parent-child relationship may be viewed in the context of a lifetime and the changes experienced during that time. The experience and practice of parenting changes parents. Active involvement in the role of a parent and parenting behaviour creates a different and layered context for relationships, interactions, roles, social support and challenges that consume much of the time of parents' lives (Palkovitz et al., 2003). Although the role of a parent is a sign of adulthood, parenting can be quite a challenging experience. Parents alter their behaviour over time in

accordance with the age and capabilities of the child, fulfilment of a child's needs and by forming their own expectations increase their insight into a child's behaviour but also their awareness of their own strengths and weaknesses (Baldwin, 1955, in Maccoby, 1984). Maccoby (1984) also examined the consequences of developmental changes on socialisation processes within the family and specified several parental functions that change in accordance with developmental changes and thus impact the interaction between parents and children. The first phase is the nurturing phase in which the parent helps a child to regulate its bodily functions. Then, at a preschool age children learn how to control emotions and parents participate by being faced with their emotions but also by determining the level of a child's exposure to new experiences and by monitoring a child. At the school age, monitoring occurs from a greater distance and relates to the monitoring of a child's self-control, while in adolescence the parent directs and supports the child when it enters the broader society.

Galinsky (1987, in Martin and Colbert, 1997) describes six stages of development that parents experience in relation to the development of their children. The process begins with pregnancy and *the stage of image-making* and picturing of their future child. Stage two is the *nurturing stage*. This stage begins at birth and goes on throughout the baby stage. The parent and the baby have bonded emotionally, whereby the parent learns how to take care of physical and emotional needs of a child, balancing his or her own needs at the same time. The next stage is the *authoritative stage* which lasts during the preschool age of the child. It is when parents transition from caring to controlling and when they tackle the issue of boundaries and rules. The *interpretive stage* encompasses school years. Parents interpret the outside world to their children, teach them values and morals, re-examining their own views in the process. The *interdependent stage* has to do with the parent-child relationship during adolescence. This is a stage during which a child develops competencies for sharing control with the parent. The last stage is *departure*, a period of reflexion for the parent. After the child becomes independent the parent evaluates his or her success and failures in the process of raising his or her child and accepts separation, whereby many maintain a relationship with their adult children.

The contemporary understanding of parenting defines parental responsibilities as parental tasks tailored to the age of a child. Parker and associates (1991, in Aldgate *et al.*, 2006) give seven dimensions important for a child's health and development: health, education, emotional and behavioural development, identity, family and social relationships, social presentation and self-care skills. In order to act in accordance with a child's needs, a parent needs to take care of the child's basic needs, ensure its safety, provide emotional warmth, adequate stimuli, direct a child, set boundaries and ensure stability. All of these tasks change in accordance with the changes in the development of the child (Aldgate *et al.*, 2006). For instance, when ensuring stability, a parent balances consistent boundary-setting in accordance with the changes in behaviour appropriate to developmental changes and needs of a child. While consistency of behaviour is a common subject of research (Straus and Fauchier, 2007), such subtle forms of parental behaviour are difficult to cover empirically. Changes in developmental tasks of parents in the function of a child's age pose a great challenge for parents and researchers alike since the needs of children and functions of parents change and are difficult to compare.

Authors Martin and Colbert (1997) argue that we all form our own “parenting theories”. Theoretical explanations of causes and effects of parental behaviour are influenced by general developmental, normative and individual beliefs regarding children of different ages, as well as of parental behaviours developed through experience or observation. Čudina-Obradović and Obradović (2002) argue that the presence of a child in a family changes the behaviour and activities of parents, causes strong positive and negative emotions. The child changes parents’ opinions, emotions and behaviour, their self-image and their image in the environment. The subjective experience of parenting represents a substantial change for the overall identity of an individual. It plays an important role in determining “the climate of the child’s development” and has a strong effect on developmental results. Čudina-Obradović and Obradović (2002, 2006) describe them in three dimensions: (1) parental satisfaction (2) challenges and the stress of being a parent (3) the feeling of parenting competency.

Parental satisfaction encompasses satisfaction with the support of the spouse, satisfaction with the parent-child relationship and own success in the role of a parent. *The challenges and the stress of being a parent* relate to external pressures on a person in the sense of fulfilling the role of a parent in accordance with the expectations and norms of one’s surrounding, while parental stress is the internal perception of an individual that it is not able to fulfil the role of a parent in accordance with own expectations and norms. In this context, marital relationship, social network and work environment are the primary sources of support or stress.

Deater-Deckard (1998) states that parenting stress is experienced as a negative emotion toward oneself or a child/children and represents a complex process that links the challenges of parenting, behaviour and psychological state of the parent, the quality of the parent-child relationship and a child’s psycho-social adaptation. Pursuant to extensive research thus far, parenting stress is a distressing feeling linked with the challenges of being a parent and is qualitatively different from the stress in other aspects of life (Profaca, 2002; Profaca and Arambašić, 2004). A survey of mothers of preschool children has established that mothers with more children experience a higher intensity of parenting stress. Mothers that are less satisfied with the fulfilment of their parental role are more prone to expressing unpleasant emotions (Delale, 2011). A detailed overview of the research of parenting experience in Croatia by the age of children whose parents participated in the research has been given by Keresteš and Brković (2014). *Subjective parenting competency* refers to a parent’s feeling of capability and success as a parent. It is defined either as a feeling of difficulty in raising a child in its different developmental stages or as a self-assessment of knowledge, skills, self-efficacy and self-respect, or as a feeling by the parent that it has control of the process of a child’s upbringing (Čudina-Obradović and Obradović, 2002).

Self-assessment of parenting competency

Parenting competency is a multi-dimensional construct that contains different components: behavioural, emotional and cognitive (Coleman and Hildebrandt Karraker, 2000). Most often parenting competency includes self-efficacy, the central cognitive element, defined by Coleman and Hildebrandt Karraker (2000) as the parental self-assessment of competency as a parent or competence to positively affect the behaviour and development of their children. Parents who believe they are competent participate in different behaviours and expect their impact on the development

of their child to be positive, despite the process being slow at times or their actions being based on trial and error. From the aspect of cognitive social learning theories (Bandura, 1997; Grusec and Ungerer, 2003), self-efficacy represents the belief about capabilities that influence behaviour and determine what people try to accomplish, as well as efforts that they are prepared to invest in desired activities. Other analyses of parenting efficacy arise from attribution theories (Bugental and Johnston, 2000) and are related to explanations and attribution of causes to own motives and actions. Parents with unrealistic images of own efficacy as parents are deprived of the capability of socialising their children, most often because they do not take into consideration the personality of the child, the individuality of the child and changing circumstances but also because they are pre-occupied with themselves and own unpleasant emotions (Grusec and Ungerer, 2003).

A parent's feeling of competence (Gibaud-Walston and Wandersman, 1978; Sanders and Woolley, 2005) encompasses a parent's assessment of efficacy (self-efficacy) as a parent and the assessment of satisfaction experienced when fulfilling the role of a parent. Self-efficacy refers to "a parent's belief in his or her own capability to efficiently tackle different tasks and challenges of parenting" (Sanders and Woolley, 2005, p. 65). A mother's high self-efficacy is connected with her sensitivity and warmth, being responsive to the demands of a child (Stifter and Bono, 1998) and is a protective factor against the development of behavioural problems in children and adolescents. Sanders and Woolley (2005) established a strong relationship between maternal depression, exposure to stress and lower level of self-efficacy and high level of dysfunctional parenting practices.

Coleman and Hildebrandt Karraker (2000) researched the relationship between efficacy as parents and satisfaction with the fulfilment of the role as a parent, and assumed that these two variables were connected because an efficient parent feels empowered in his or her role as a parent. Satisfaction with the fulfilment of the role as a parent is a sort of consequence of the experience of efficacy that encourages parents to manage numerous and simultaneous tasks, as well as to enjoy the parenting process. One of the most common feelings of competence is precisely the satisfaction with the achieved. According to Bandura's (1997) social cognitive theory, personal satisfaction with the achieved overlaps with self-efficacy mechanisms. People feel fulfilled and get personally involved in activities in which they are efficient and from which can derive satisfaction. Behaviours linked to personal standards activate the feeling of satisfaction (or dissatisfaction) even in relation to behaviours which on their own are not a source of pleasure, thereby creating a feeling of accomplishment, so the behaviour is self-evaluated as worth the effort.

Sanders and Woolley (2005) assessed the self-efficacy in parenting tasks of mothers of 2- to 8-year-old children in the general population and in a clinic group of children with conduct problems. Two subscales measured parents' confidence in dealing with difficult child behaviours and parents' confidence in dealing with difficult behaviour in different settings. They established five situations in which mothers reported feeling least confident in handling: "child refuses to do as told", "child gets upset when does not get own way", "child behaves defiant when asked to do something", "child refuses to eat food", "child throws a tantrum". These situations are very similar but were ranked differently by the general population and the clinical group: in the clinical group the first place was held by the "child whining or whingeing", and "child refuses to eat food" was not among the first five behaviours in this group.

As for the setting, when devising the scale setting was identified as the most problematic setting for a child's behaviour. Mothers from both groups reported that they felt least efficacious in handling very similar behaviours and settings. Problematic settings typically involved situations where there were competing demands on the mother. Both groups listed the same five settings but ranked them differently: "while talking on the telephone", "while busy with chores", "while speaking with another adult", "shopping with the child", "while preparing meals". Dealing with difficult child behaviour is a predictor for different parenting styles examined in the research, while the subscale was not. This indicates the importance of developing parenting strategies that enable parents to generalise their parenting skills to a diverse range of parenting contexts, for instance at home or in the community.

A parent who feels efficient in his or her role as a parent will be more motivated to get involved in future interactions with the child. The feeling of efficacy provides for additional understanding of the child and may favourably affect the treatment of the child. However, the question is what happens at the time of parallel exposure to parenting stress.

Recent research on parenting stress underline that parents are faced with every-day stressors and that negative effects of these daily requirements may accumulate and impact the quality of parenting and of the parent-child relationship. The stress arising from every-day demands and difficulties is linked to outcomes for the child but also to parenting practices (Deater-Deckard, 2005).

The relationship between subjective experience of parenting and parental behaviour

The objective of the research by Delale (2009) was to establish the psycho-social determinants of child-rearing practices employed by mothers of six-year-old children and verify the mediation (mediation effect) of their chosen individual characteristics to the connection between the intensity of maternal parenting stress and their parenting practices. Building on the assumptions of the process model of parenting (Belsky, 1984) and the stress model, it could be assumed that it is precisely the individual characteristics of parents that will mediate between parental stress and parental child-rearing practices. The characteristics of parents are theoretically the most important determinants of parenting because they affect parental behaviour, both directly and indirectly, through a broader context in which the parent-child relationship is set. Support and sources of stress often function as least stable components of parental surrounding in contrast to a more stable and durable nature of parental characteristics and the nature of a child. The chosen individual characteristics of parents were their attitude towards corporal punishment, self-assessment of parenting competence and maternal emotion expression. Two forms of parenting competence were included, the perceived parenting efficiency and satisfaction with the fulfilment of the role as a parent (Gibaud-Walston and Wandersman, 1978; Sanders, 2005) as potential predictors of different parental child-rearing practices and as potential mediators between parenting stress and parenting practices. Mothers of 329 six-year-old children participated in the research, 190 were mothers of children attending the regular programmes provided by preschool facilities of the City of Zagreb and 139 were mothers of children who attended no preschool institutions. Parental child-rearing practices referred to the frequency of individual parental child-rearing practices: *corrective*, as reaction to a child's difficult behaviour (*punishment* and *alternative to punishment*) and *preventive* practices (stimulating desired behaviour in children). Corrective practices of punishment included corporal punishment

and psychological aggression, while the examples of alternative to punishment included rewarding a child, explaining/teaching a child and monitoring a child (control).

A significant correlation was established between the selected set of variables, which include socio-demographic variables, stress intensity and the selected individual characteristics of mothers with all parental child-rearing practices. The used predictor variables explained 44.1% of the variance of punishment, 20.7% of the variance of preventive practices and 20.2% of the variance of practices that represent an alternative to punishment. Alternative to punishment is also positively related to parenting stress, the significance of religion in the life of the mother and maternal positive emotional expression.

Parenting stress is directly linked to both corrective parental practices: punishment and alternative to punishment, while alternative to punishment is also directly and positively connected to parenting stress, the significance of religion in the life of the mother and maternal positive emotional expression. It has been established that higher intensity of parental stress and unfavourable individual characteristics of a parent are linked to *punishment practices*. More frequent maternal *negative emotion expression*, *positive attitude to spanking* and *corporal punishment* are linked to more frequent reliance on *punishment practices*. The attitude to spanking is directly linked only to punishment practices. However, an unexpected result was that *high income* and greater *feeling of self efficacy as a parent* is linked to more frequent punishment.

The connection of stress to punishment is mediated by negative emotional expression and maternal feelings of efficacy as a parent, whereby it was established that the mediation between negative emotional expression and parental efficacy, and stress and punishment practices is partial. Parenting stress is directly, but also indirectly, via these two individual parental characteristic, linked to punishment practices because the share of stress in the explained variance of punishment practices was lower than in the previous step (Figure 1).

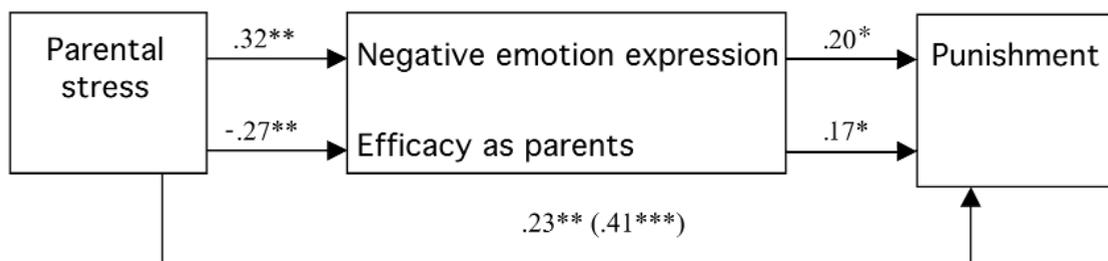


Figure 1: Mediating effects of individual parental characteristics between parental stress and punishment practices

Negative emotional expression such as threats, criticism, expression of worries or anger is positively correlated to both stress ($r=0.32$, $p<0.01$) and punishment ($r=0.20$, $p<0.05$). Mothers exposed to parenting stress punish their children more ($r=0.41$, $p<0.001$, directly correlated) and express negative emotions and mothers who express negative emotions more often employ

punishment practices. For mothers who express negative emotions the correlation between stress and punishment decreases ($r=0.23$, $p<0.05$), due to the obtained indirect correlation between stress and punishment practices through expression of negative emotions. Maternal negative emotional expressions partially reduce stress since a direct correlation between stress and punishment practices is still present. The situation is similar in relation to maternal feeling of efficacy as a parent. As expected, mothers under more stress feel less efficacious as parents ($r= -0.27$, $p<0.01$) and mothers exposed to higher degree of stress punish children more frequently ($r=0.41$, $p<0.001$). However, it was determined that mothers who feel more efficacious as parents punish their children more ($r=0.17$, $p<0.05$). In addition, the mediation of the maternal feeling of efficacy between stress and punishment reduces the correlation between stress and maternal punishment practices ($r=0.23$, $p<0.01$). This direction of correlation is worrying since it is possible that punishing a child evokes the maternal feeling of efficacy as a parent and that more frequent punishment of a child serves as incentive for achieving balance and maternal feeling of efficacy.

Stress is connected to punishment through the *maternal feeling of efficacy as a parent*, which means that the maternal feeling of efficacy mediates between parenting stress and punishment practices. Unexpectedly, the correlation between the maternal feeling of efficacy and punishment practices was positive and more frequent punishment was correlated to greater maternal feeling of efficacy as a parent, i.e. mothers who felt more efficacious as parents punished their children more.

Although methodological insufficiencies related to correlation research make it difficult to interpret the relationship among the said selected variables, the findings obtained may be interpreted that parents possibly feel more efficacious as parents when they treat their children so as to punish them and that this at the same time reduces their stress.

Commonly research findings indicate that the feeling of parental efficacy is linked to positive elements of parental behaviour and positive outcome for children and that it develops regardless of the current parenting experience or childhood experiences and the cultural and social context (Bugental and Johnston, 2002). The findings obtained by this research were opposite. This means that the maternal feeling of efficacy was found to be positively correlated to punishment practices. Mothers under a great deal of stress make an effort to react to inappropriate behaviour of their children. They feel more efficacious as parents regardless of using unfavourable practices that are not beneficial for their children.

Favourable maternal characteristics mediate between unfavourable stress conditions and unfavourable outcome so as to increase the unfavourable outcome. This was an unexpected effect of favourable parental characteristics (maternal efficacy). The expected relationship among the variables stress \rightarrow mediation (protective factors) \rightarrow punishment was not confirmed. In this research the effect of the feeling of efficacy in unfavourable conditions confirms unfavourable outcome. It is possible that mothers reduce their own experience of stress and increase their feeling of efficacy by punishing a child. The results of a research of parental practices on the outcome for children (Gershoff, 2002) indicate that direct obedience by a child is the only positive outcome of the cor-

poral punishment of children, although it does not lead to a child's internalisation of targeted behaviour. Although this requires further research, it is possible that mothers feel efficacious because they achieved the direct obedience of a child. However, this does not ensure long-term, internalised and desirable consequences for children which are at the same time in their best interest.

The results support the process model of parenting (Belsky, 1984) and the assumption that it is precisely the individual characteristics of a child that mediate between parenting stress and parental child-rearing practices. The understanding of mediation effects of the maternal feeling of efficacy and emotional expression derived from this research can contribute to understanding of the difficulties in the changing of the learned practice patterns in mothers of preschool children and to the development of psycho-social programmes and interventions for practitioners in their work with parents and children.

The obtained results (Delale, 2009) established wider psychosocial determinants of parental punishment practices that have been the subject of research for decades. However, the established different nature of preventive practices vis-a-vis corrective practices of alternative to punishment and the difference of punishment vis-a-vis alternative parental practices actually pointed towards the importance of departing from a decade of judging the use of spanking and underlined the importance of extending the knowledge on alternatives to punishment and preventive practices aiming to broaden, in addition to the message "what not to do", the repertoire of acceptable parental practices and options. There is also a need to select additional individual characteristics of children and other predictors to explain to a greater extent the alternatives to punishment and, in particular, preventive parental child-rearing practices.

Practical implications of the research on mediating variables between parental stress and parental practices

By utilising the findings of this research on mediating variables between parental stress and parental practices and factors of risk and protection for parental practices, one can act on almost all levels of the intervention process (universal, selective and indicated prevention). The primary, universal prevention includes proactive programmes of raising awareness about issues, changing attitudes, behaviours and social norms. Within this framework it remains important to influence public opinion. For example, corporal punishment of children continues to be debated regardless of extensive research that established the negative outcome of corporal punishment for children, from which it can be derived that corporal punishment compromises the integrity of children and that it is not in the best interest of the child. The guidance to parents within the framework of such programs and monitoring of own emotional expressions and own feelings of efficacy as parents, as well as satisfaction with the fulfilment of their role as parents may favourably affect parents exposed to parenting stress and their treatment of their children. A positive impact will also be achieved by informing parents how they can change intergenerational behaviour patterns and how their personal experiences of corporal punishment do not have a decisive role in the treatment of their children, in contrast to the importance they awarded to their own experience of corporal punishment, the feeling of efficacy as parents, the attitude they have to corporal punishment and the way in which they express emotions (Delale, 2009). This can contribute to their reinterpretation and reval-

uation of the efficacy of their own experiences of corporal punishment in childhood, as well as the way in which they treat their own children. Informing and educating parents on parenting practices may widen their range of parenting practices they use, reduce the quantity of corrective practices of punishment and stimulate parents to use alternatives to punishment and preventive practices.

Carefully designed education, information and training on parenting skills associated with desirable parental child-rearing practices of preventive behaviour and alternatives to punishment, and their determinants may enable change. However, it is noteworthy that focusing only on mediating processes between parenting stress and parental practices may remain inefficient if the primary prevention is not also directed at devising social policies and programmes that enable the reduction of stressors linked to poor economic circumstances that are the source of stress. This can for instance be related to providing child care and ensuring systematic solutions enabling parents to take good care of their own children (e.g. ensuring sufficient capacity of affordable preschool facilities for employed parents, ensuring entitlement to sick leave and adequate care within the system for children with developmental difficulties).

Increasing the knowledge and options of parents for reducing stress will also reduce the employment of less desirable parental practices such as punishment.

At the level of induced and selective intervention, the objective is to ensure support to parents that need it, in order to reduce the use of less favourable parental practices and improve the quality of care for children, as well as the parent-child relationship. Apart from parents that need help and support, systematic training should also be provided to practitioners in order to be able to ensure the protection of children and youth and develop intervention processes to help and support parents in acting in the best interest of children. It is necessary to train experts working with parents and children at schools, health care and social welfare institutions and in the judiciary. Non-governmental organisations and community initiatives oftentimes address selected groups of parents susceptible to the improvement of parenting practices, while prevention and different forms of prevention require systematic action.

There are numerous carefully prepared sophisticated forms of intervention processes, founded on models of social learning that are aimed at parents. They are efficient in making parents aware of emotional difficulties of children and difficulties in behaviour of children. The programmes of practicing parenting skills (behaviour modelling, providing feedback to the child) that help parents improve their relationship with their children and improve their daily interaction, as well as teach them how to use efficient practices and parenting strategies, contribute to improvement in the behaviour of children, reduce the use of coercive practices, parental stress and depression, and reduce marital conflicts (Sanders and Wooley, 2005). In addition, training aimed at parents enhances their feelings of efficacy as parents. The principles of positive parenting and basic parenting skills include observation, learning of new skills and practices, prevention of difficulties and high risk situations, self-regulation skills, management of emotions and confrontation skills, as well as supporting one's life partners and communicational skills.

Similar programmes for parents enable the implementation of principles recommended by the Council of Europe (Pećnik, 2007) as guidelines for parents. In order to meet a child's developmen-

tal needs the most important responsibility of parents is to satisfy the basic needs of the child, ensure its safety, provide emotional warmth, create stimulating conditions for development, set boundaries and provide stability (Cleaver, 2006; Pećnik, 2007).

Evaluations of other programmes aimed at parents report best results when work with children is combined with the work with parents. Webster-Stratton and Hammond (1997) established that groups combining training for parents or providing training only to parents had substantially more positive effects on children than training that included only children.

A one-year evaluation after completed training process showed that the combination of training for parents and for children had the most efficient effect on child behaviour (Webster-Stratton et al., 2004). These authors expanded the intervention process and improved it by providing parallel training to teachers, thus including all those directly involved in the upbringing and education of children. Accordingly, parenting research should be made an integral part of programmes aimed at parents. There are only a few similar examples of systematic programmes in the Republic of Croatia. An example of good practice is surely the programme *Let's grow together* (Rastimo zajedno) by Pećnik and Starc (2010).

The interconnectedness of the subjective experience of parenting with the best interest of the child

The opinions and emotions of parents regarding their parenting impact their behaviour towards children, the quality of the parent-child relationship and the child's development. The higher the perception of parental stress, the more expressed unfavourable practices of parents towards children, such as corporal punishment, which are not in the best interest of the child. In addition, parents that punish children may feel more efficient in their educational role, although this does not mean that this is beneficial for their children.

Therefore, it is important to:

- provide support to parents in developing preventive and stimulating child-rearing practices;
- make parents aware of the existence of different child-rearing practices such as preventive and corrective, since during a child's life they will numerous times opt for corrective;
- raise awareness and widen the scope of using alternatives to punishment that belong among the corrective parenting practices;
- raise awareness and take into account the consequences of parenting stress, especially in connection with the role of the parent as a member of the workforce;
- educate parents that although they might feel efficacious and effective regarding their parenting practices this does not necessarily mean that they are beneficial to their children.

It is important to raise awareness of parents that their attitudes, decisions and actions may protect but also jeopardise their children, as well as inform them that their perception of parenting, their opinions and feelings regarding their parenting impact their behaviour towards their children, the quality of their parent-child relationship and their children's development. However, systematic efforts are necessary for efficient preventive actions, ongoing education of parents regarding children's rights and best interests of children. The success of such efforts relies on having parents as active participants in systems that connect them with children such as the system of health care or education.

The conclusions of the Annual CRONSEE Conference: The Rights of the Child - between the Interests of the Parents and the Obligations of the State organised by the Office of the Ombudsman for Children, held on 28 May 2015, thus completely coincide with the results of research and recommendations made by experts in this area.

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VACCINATION - THE RIGHT OF EVERY CHILD

In recent years, we have been witness to the recurring dilemma faced by parents when it is time to have their children vaccinated. Until recently we have all been vaccinated and this was considered good, normal and desirable for our health. And then all of a sudden, some odd stories have appeared, negative experiences, reports by so-called experts telling us that this is not so, that vaccines are dangerous. Is this true? Should we have our children vaccinated or not?

The experts are clear - vaccination is one of the greatest achievements of modern medicine, immediately after hand-washing. Vaccination can eradicate diseases that were lethal until not so long ago and save countless lives. However, it is precisely the benefits of vaccination that make us, both as individuals and as a society, forget the devastating effects that some diseases may have.

Prior to the introduction of vaccination, up to 550 children per year suffered from poliomyelitis (polio) in the Republic of Croatia alone; 1 400 suffered from diphtheria, 10 000 from pertussis (whooping cough), 14 000 from mumps, and as much as over 20 000 from measles and rubella. Many of them lost the battle against disease or it left permanent consequences, including disability.

Numerous organisations all over the world invest great efforts in making vaccines more accessible and ensuring as many people as possible enjoy the benefits of vaccination, regardless of where they have been born or live. The UNICEF thus adopted a Global Vaccine Action Plan 2011-2020¹ with a mission to improve health by broadening the scope of vaccination benefits; the UN set Millennium Development Goals 2000² with the reduction of mortality in children as one of its priorities, primarily through vaccination as one of the most successful and cost-effective health interventions. The World Health Assembly adopted the Global Vaccine Action Plan 2011-2020 and proclaimed a World Immunisation Week³, raising awareness on immunisation each year. The EU Commission has continuously encouraged Member States to ensure the vaccination of as many

1 http://www.unicef.org/videoaudio/PDFs/GVAP_single-pages_PRINT.pdf.

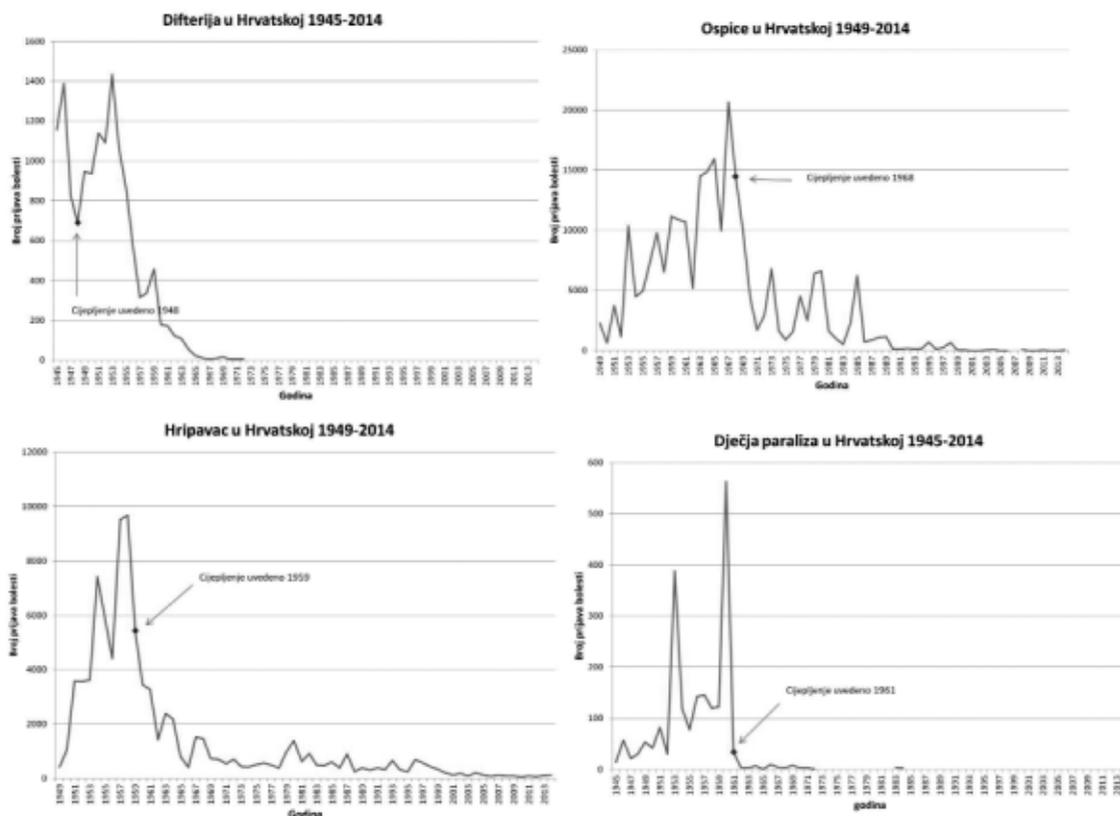
2 <https://www.un.org/millenniumgoals/>.

3 <http://www.who.int/campaigns/immunization-week/2015/en/>.

children as possible by most important vaccinations for children, and the EU Council adopted conclusions on vaccination of children⁴ which underlined the efficiency of vaccination in preventing communicable diseases and encouraged Member States to commit to ensure vaccination.

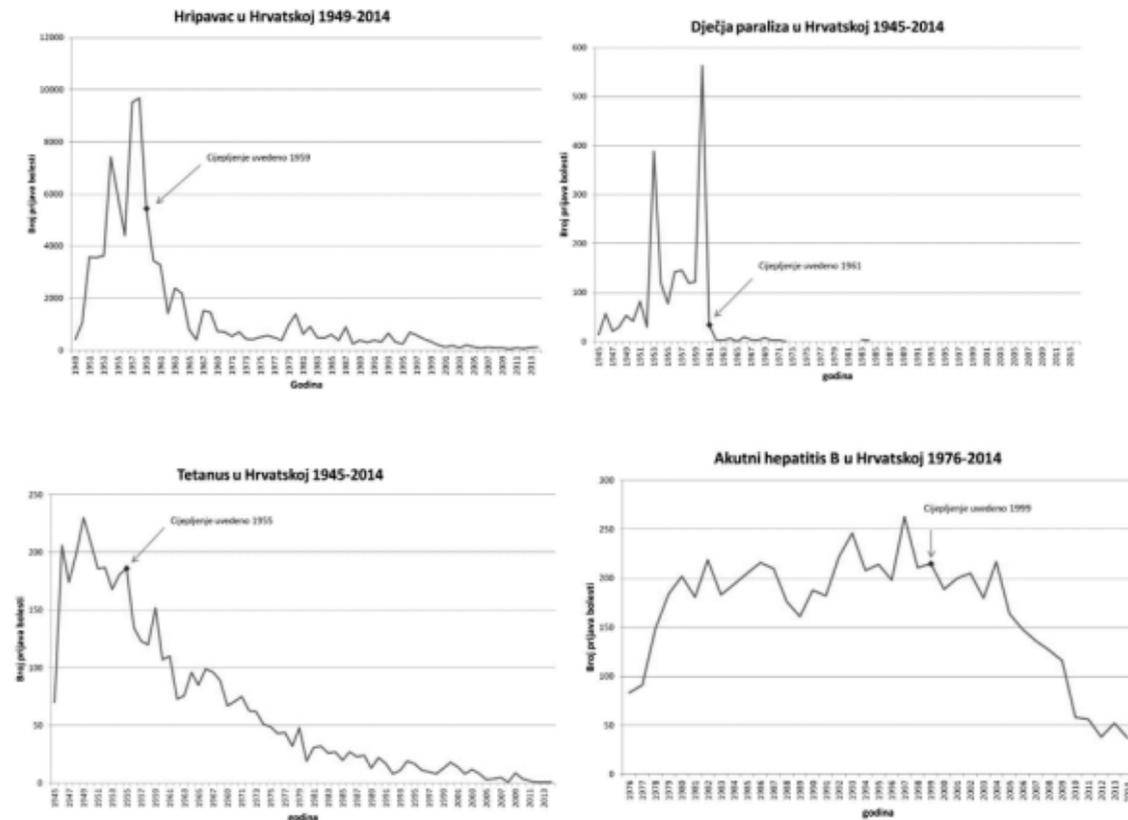
The dedication and efforts invested by experts in this area have yielded exceptional results. The reduction in the number of affected population in the Republic of Croatia in relation to the introduction of vaccination to the regular vaccination schedule for diseases such as tetanus, whooping cough, polio, measles, rubella, mumps and hepatitis B is shown in Figure 1.

Figure 1 Decrease in the incidence of communicable diseases in relation to the introduction of mandatory vaccination in the Republic of Croatia (explanation in Croatian: difterija/diphtheria, ospice/measles, hripavac/whooping cough, dječja paraliza/polio, tetanus/tetanus, akutni hepatitis B/hepatitis B, rubella/rubella, mumps/mumps)



4 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:202:0004:0006:EN:PDF>

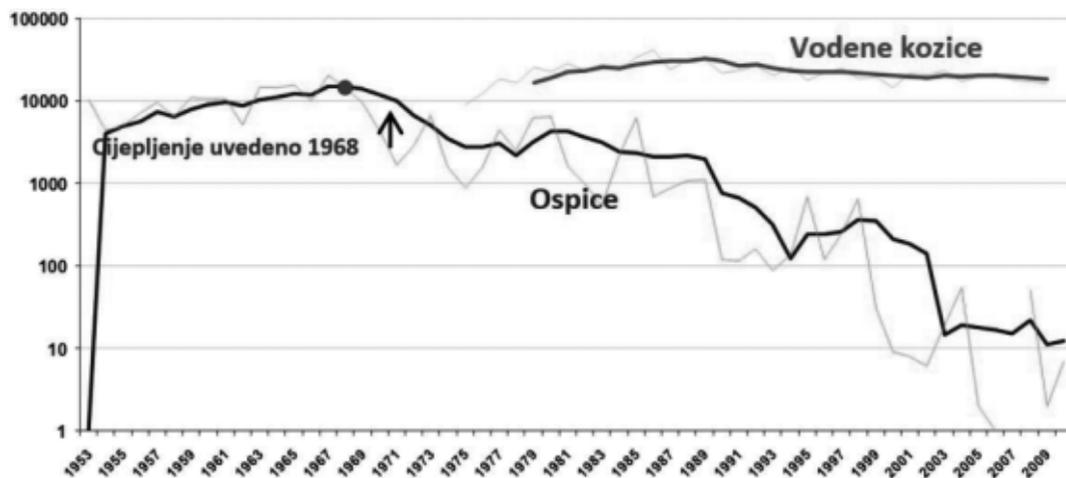
Figure 1 (Continuing)



The first vaccines introduced to the mandatory vaccination programme were those against diphtheria and tuberculosis back in 1948. As the development of safer vaccines against other diseases progressed, the programme was extended over time to cater for the needs of the population, in accordance with the availability of efficient and safe vaccines and the resources available. The vaccination against tetanus was thus introduced in 1955, against pertussis in 1959, against polio in 1961, against measles in 1968, against rubella in 1975, against mumps in 1976, against hepatitis B in 1999 and against Haemophilus influenzae type B in 2002. Instead of several hundreds or thousands of persons affected, a few years after the introduction of vaccination these diseases almost disappeared. Tetanus occurs in only several cases a year, while measles and rubella have been eliminated to only several imported cases per year. The incidence of pertussis has been reduced by 99% compared to the period before the mandatory vaccination. The incidence of hepatitis B has reduced substantially, while polio and diphtheria have been eradicated.

Occasionally we can hear an opinion that the improvements in the standard of living have actually led to the reduction in the number of patients afflicted with these diseases and not vacci-

Kretanje ospica i vodenih kozica u Hrvatskoj



Dječja paraliza i hepatitis A u Hrvatskoj

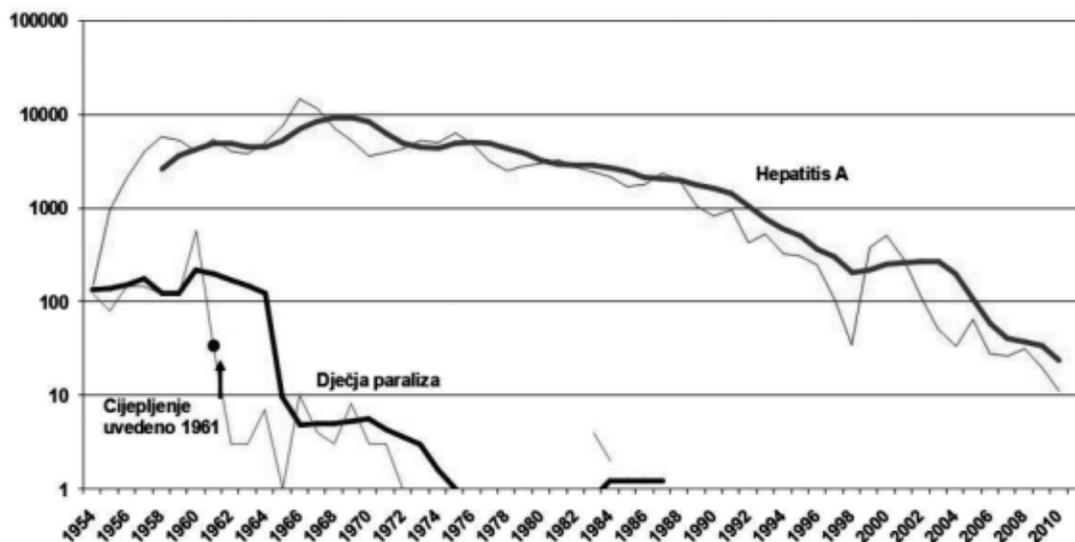


Figure 2 A comparison of the incidence of communicable diseases that spread in the same way relative to the introduction of mandatory vaccination in the Republic of Croatia (explanation in Croatian: ospice/measles, vodene kozice/chickenpox (varicella), dječja paraliza/polio, hepatitis A/hepatitis A)

nation. Figure 2 shows comparisons in the number of persons infected by measles/chickenpox and polio/hepatitis A in the Republic of Croatia. Those are groups of diseases that spread in the same way. However, while the vaccination of the entire population against measles and polio is mandatory, vaccination against chickenpox (varicella) and hepatitis A is carried out only in isolated cases.

In the case of measles and chickenpox it is evident that while the number of cases of measles drastically reduced with the introduction of vaccination the number of cases of chickenpox stagnated until the present day. As for the comparison between polio and hepatitis A, bearing in mind that their transmission is faecal-oral, the decline is visible in both cases. However, in the case of hepatitis A it is gradual and in line with the improvement of sanitary and housing conditions. In the case of polio, complete eradication was achieved decades earlier, only a few years after the onset of vaccination, thus saving dozens of lives and avoiding hundreds of people becoming disabled.

Pursuant to the Health Care Act and the Act on the Protection of the Population against Communicable Diseases vaccination is mandatory for all children in the Republic of Croatia. The Programme of protection of children's health, hygiene and healthy nutrition of pre-school children ensures a healthy environment by making it an admission requirement that the child is vaccinated in accordance with the Mandatory vaccination programme. This, of course, excludes cases in which a vaccine might be contraindicated for an individual child. The Family Act stipulates that parents are obligated and responsible to take care of a child's health and provide it with access to measures aimed at protecting and improving its health in case a child falls ill, while the Constitution itself guarantees the right to health care and the right of the child to full and harmonious development of its personality.

In the Republic of Croatia vaccination is carried out in accordance with the Annual programme of mandatory vaccination adopted by the Ministry of Health at the recommendation of the Croatian Institute of Public Health⁵. Thus, according to the vaccination schedule⁶ it is mandatory to have children vaccinated against the following: diphtheria, tetanus, pertussis, polio, mumps, rubella, tuberculosis hepatitis B and diseases caused by *Haemophilus influenzae* type B. Comprehensive vaccination coverage is needed to prevent the spreading of the diseases that the population is vaccinated against. For the time being the Republic of Croatia manages to achieve the required coverage through the mechanism of mandatory vaccination⁷ (BCG - against tuberculosis >98%, Hepatitis B >96%, against diphtheria, tetanus, pertussis - DTP >95%, against polio >95%, against *H. influenzae* type B >94%, against measles, rubella and mumps >95%). Cases of parents refusing to have their children vaccinated are still sporadic. As a result, the Directorate for Sanitary Inspection of the Ministry of Health received less than 200 justified doctor's reports in 2014. It is noteworthy that vaccination coverage in Croatia has declined slightly in the last five years. However, it has not declined to a degree where this would pose a danger of diseases returning to their epidemic form for diseases that we have successfully managed to suppress through vaccination. During the winter of

5 http://www.hzjz.hr/wp-content/uploads/2013/11/trogodisnji-okruznica-2014-2016-vs4-_2_.pdf.

6 <http://www.hzjz.hr/sluzbe/sluzba-za-epidemiologiju/odjel-za-prewenciju-zaraznih-bolesti-i-cijepljenje/>.

7 <http://www.hzjz.hr/wp-content/uploads/2013/11/nuspojave-2013zlvvv-bk.pdf>.

2014/2015 the neighbouring countries registered a large epidemic of measles with several thousand of persons afflicted. During that time there were numerous imported cases of measles from the neighbouring countries via the members of the population whose vaccination coverage is traditionally poor and numerous contacts with neighbouring countries. The disease started spreading in December 2014 within this clearly defined population under low vaccination coverage (the Roma population) and resulted in over 200 diseased until June 2015. Of the afflicted patients, fifty were hospitalised and several had complications such as middle ear infection and lung infection. Given that the persons afflicted visited health care institutions at the stage when they were most contagious (in many cases the disease was not immediately diagnosed as measles so the persons affected visited several health care institutions and spent time in crowded waiting rooms) and came into contact with population in the work place, schools and pre-school institutions the epidemic had ample opportunity to spill over to the general population. Thanks to the high vaccination coverage this was not the case and the incidence of the disease in the general public remained limited to a few sporadic cases.

Nevertheless, the increase in the number of parents opting against having their children vaccinated would increase the risk of diseases spreading and jeopardise not only their own children but the community in general. By achieving community immunity even individuals that are prevented from being vaccinated (children suffering from acute infections, children who are allergic to some of some of vaccination ingredients, or in relation to some vaccinations those who are allergic to eggs, children with compromised immunity and diseases or conditions affecting the central nervous system) are protected because they live in a community where there is no sufficient individuals that would fall ill from the disease and transfer it to persons they come in contact with.

It is a well known fact that no vaccine can protect a 100% of those who have been vaccinated, given that the body's immune response to the vaccine that results in protection from the disease largely depends on the characteristics of a person vaccinated, and there are persons who do not develop an adequate immune response to vaccination. The majority of vaccinations used in routine vaccination programmes protect some 90% to 95% of the persons vaccinated. If the sufficient vaccination coverage is attained and the level of community vaccination reaches the threshold that prevents the transfer of disease agents within the community, everyone in the community will be protected, including those who due to their individual characteristics do not develop a satisfactory immune response and those who have not been vaccinated because of contraindications to vaccination. Accordingly, high vaccination coverage achieves a 100% efficiency of a vaccination within a community although on an individual level the efficiency of the vaccination might be below 100%. All individuals within a community that has achieved the recommended vaccination coverage for a particular disease are protected from the disease. Nevertheless, high alert is needed if persons who are not vaccinated travel to other countries and other communities were the situation might not be the same.

Vaccination is not mandatory in all member states of the European Union and especially not in all countries of the world. In some third-world countries it is not even sufficiently accessible. The consequence is the existence of ongoing or occasional epidemics of diseases that Croatia's population is vaccinated against.

The influence of the insufficient implementation of vaccination and of the campaigns against vaccination is also discussed in the reports of the World Health Organisation⁸, of the European Centre for Disease Control⁹ and numerous other health care and independent organisations, such as the Global Health Programme of the Council on Foreign Relations¹⁰.

Measles are a highly infectious disease that can be successfully prevented through vaccination. However, it is globally still one of the leading causes of mortality in children. Rubella is an infection that normally passes as a mild disease. However, if a woman is infected in the first months of her pregnancy, it causes difficult, sometimes even life-threatening damages to the foetus. Given that an efficient and safe vaccination is available in all countries of the WHO's European Region, the vision of the World Health Organisation is to eradicate the said diseases in the region by 2015.

In 2014, there were 16.156 cases of afflicted persons in 40 countries of the WHO's European Region, of which 90% were in Russia, Georgia, the Ukraine, Bosnia and Herzegovina, Italy, Turkey, Germany, Kyrgyzstan, Kirgizstan, Kazakhstan and France, that is 23% in the countries of the European Union.

In the period from 1993 to 2007 the number of affected persons reduced by 98%, from more than 340.000 to 7.075, to rise again in the period from 2007 to 2013 by 348%. Big-scale epidemics were seen in Bulgaria, France, the Ukraine, Georgia and Russia in the period since 2010 until today¹¹. Complications from measles include ear infections and diarrhea in one out of ten cases, pneumonia (in 1 out of 20 affected), encephalitis (in 1 out of 1000 affected) with hearing loss, intellectual disability or convulsions as consequences, while 0.1-0.2% of affected persons die.

The 20 countries of the WHO's European Region reported 6.516 cases of rubella in 2014, of which 91% was in Poland. After the number of persons affected reduced by 98%, from more than 62.000 to 9.464 in the period between 2000 and 2011, due to the epidemic in Poland and Romania, the number of persons affected climbed to almost 40.000 in 2013. Rubella is normally a mild communicable disease. However, when the patient is a pregnant woman, in 90% of cases it causes the congenital rubella syndrome which is linked to high foetal mortality and births where children suffer numerous physical abnormalities.

As it has been discussed earlier, vaccination is not mandatory in all European countries. However, countries strive to ensure vaccination in other ways such as making it a requirement for enrolment in public kindergartens, eligibility for social benefits, etc.¹² In addition, countries invest considerable resources in positive vaccination campaigns, striving to raise awareness of their citizens to the benefits of vaccination.

8 http://www.euro.who.int/__data/assets/pdf_file/0010/278443/EpiBrief-No-1-2015-en.pdf.

9 <http://ecdc.europa.eu/en/publications/Publications/AER-VPD-IBD-2014.pdf>.

10 http://www.cfr.org/interactives/GH_Vaccine_Map/index.html?cid=nlc-news_release-news_release—link2-20141023&spmid=47257856&sp-rid=ZWFuZHIld0BsYWJ4LmNvbQS2#map.

11 http://www.euro.who.int/__data/assets/pdf_file/0019/256231/measles-cases-2007-2013-Eng.pdf?ua=1.

12 Haverkate M, D'Ancona F, Giambi C, Johansen K, Lopalco PL, Cozza V, Appelgren E. Mandatory and recommended vaccination in the EU, Iceland and Norway: results of the VENICE 2010 survey on the ways of implementing national vaccination programmes. *Euro Surveill.* 2012;31;17(22).

Often listed as the main reason for fear of vaccination are its side-effects. They exist, as in all medicines, and may, although mostly mild and harmless, occasionally be a reason for concern among young parents. Although the list of possible side-effects linked to vaccines is longer, the side effects that occur in most cases and can often be seen are local reactions. The most common local adverse reactions are local sensitivity, swelling or redness. In some cases fever may occur, while all other side-effects are individual and very rare. According to official data, there are altogether some 150-200 reported cases of side-effects from the vaccines administered within the framework of the mandatory vaccination programme¹³. When some other medicines are concerned, nobody even thinks about the possible consequences of their consumption. The overuse of antibiotics is the cause of the ever more present antimicrobial resistance, a dangerous state of microorganisms becoming insusceptible to medicines that were thus far very efficient, which jeopardises the treatment of common communicable diseases, resulting in disability or death of individuals who until not so long ago would have continued about their normal lives after suffering such infections. The number of side-effects of analgetics, medicines for fever or pain relief is also not negligible¹⁴. Even in the case of paracetamol, considered one of the safest analgetics, even for pregnant women, serious side effects are possible, such as the generalised bullous skin disease - Stevens-Johnsons syndrome or bullous necrolysis.¹⁵

However, as far as side-effects are concerned the question is whether the benefits of a medicine/vaccination exceed the potential unwanted side-effects of its application, and in the case of vaccination we can claim with great certainty that this is the case.

Still, the issue of mandatory vaccination is clearly not only a health issue because it has numerous ethical, social, legal and other aspects. When analysing the pros and cons of vaccination we must ask ourselves the following:

- Is a parent entitled to decide against having his or her child vaccinated even when this is harmful for the child or the community (it wants to be a part of)?
- Is the state entitled to prescribe that parents are legally bound to have their children vaccinated when all scientific and expert evidence speaks exclusively in favour of vaccination and when this is the only way to protect all members of the society (including those who are prevented from being vaccinated or have not developed immunity from vaccination)?
- Do parents also accept responsibility for all possible damaging consequence of the decision not to have their child vaccinated and do they expect to enjoy the support of the community should such consequences arise?
- Can the society allow for opportunistic vaccination without protective mechanisms?
- What are the consequences of repealing the statutory vaccination requirement on vaccination levels given the attained health care literacy and the recognition of preventive interventions?
- If we want to be a part of society, should we not have to accept the norms that benefit all?

13 <http://www.hzjz.hr/wp-content/uploads/2013/11/nuspojave-2013zlvvv-bk.pdf>

14 <http://www.almp.hr/?ln=hr&w=lijekovi>

15 <http://misc.medscape.com/pi/android/medscapeapp/html/A1062790-business.html>

- When a child is truly ill, who do we turn to? A paediatrician? The same one that had recommended you to have your child vaccinated?

Conclusion

In the last few decades vaccination achieved numerous successes, saved numerous lives and reduced the global incidence of polio by 99% and the incidence of diphtheria, tetanus, whooping cough and measles, as well as the incidence of disability and death caused by these diseases. Some diseases have been eradicated worldwide, such as smallpox. In countries like ours polio and diphtheria have been eliminated and other diseases are on the way of being eliminated. Vaccination is therefore, and rightfully so, considered as one of the greatest achievements of modern medicine helping us to avoid numerous diseases and protect many children from consequences that would often-times last a life time or even jeopardise their life. Although side-effects are possible, benefits by far outweigh the possible negative effects and can thus not be the reason for refusing vaccination.

Have your children vaccinated and provide them with the best thing that modern medicine has to offer!

Gabrijela Martić

The Croatian Debate Society, Croatia

ABOUT THE CROATIAN DEBATE SOCIETY AND PREPARATION OF DEBATES

Continuing its long-standing and successful cooperation with the Office of the Ombudsman for Children, the Croatian Debate Society participated in the opening of the Conference of the Children's Rights Ombudspersons' Network in South and Eastern Europe held in the Old City Hall in Zagreb.

Each debate starts with an analysis of the topic that is being discussed. In each debate, there are two opposing sides, the *affirmative* and the *negative* side, objectively supporting and negating a thesis, respectively. Each side has three students.

In the thesis "This house considers that personal rights of the child are more important than the parental rights to freedom of education", the *affirmative* side upheld the view that the personal rights of the child are more important because the parental right to freedom of education is a mechanism for the implementation of the personal rights of the child while the *negative* side maintained that the personal rights of the child and the parental rights to freedom of education are equally important since they have to be equally evaluated to achieve the common objective - the well-being of the child.

The issues discussed included the scope of parental rights to freedom of education in cases of vaccination, accepting and refusing transfusion and upbringing in the context of parental worldview and the authority of the state to interfere in the child's upbringing. Both the *affirmative* and *negative* sides agreed that elementary and secondary schools are an important element in the child's upbringing and that they should place greater emphasis on their upbringing function, taking into account the opinion of the parents.

The responsibility of the *affirmative* side was to define the terms, accepted by the *negative* side. The following terms were defined in the debate: the personal rights of the child under the Convention on the Rights of the Child, which imply the right to survival (right to life, adequate standard of living, food, hygiene, accommodation and health care), the right to development (education, play, free time, information), the right to protection (protection from drugs, alcohol, tobacco, protection of refugee children and children in armed conflicts), and the right to partici-

pation. The *affirmative* side also noted and explained why parents were not the only party with priority rights over children, stating the example where the court is obligated to inform the social welfare centre about a violation of a child's rights and particularly about all forms of physical and psychological violence, sexual abuse, neglect, negligence, abuse or exploitation of children. Also defined was the term of the parental rights to freedom of education which implies that the parents had the responsibility and the right to take care of the health, education, socialising, free activities and support, that they are responsible for ensuring the child's right to a full and harmonious development of his/her personality and that the parents have the right to decide independently on their children.

The main argument on which the *affirmative* and *negative* side disagreed concerned the assumption of the *affirmative* side that parental rights arise from the rights of the child and are therefore more important since they are a precondition and represent the child's rights since the child is not in a position to do it himself/herself - if the parent acts contrary to the interests of the child and threatens his/her rights, the state has the right to intervene and protect the child's rights, while the *negative* side maintained that parental rights and the rights of the child are equally important and an equal precondition for the well-being of the child.

The *negative* side upheld the view that the parents are those that can best exercise the child's rights and that without their rights to freedom of education, the child's rights would not be complete so they stressed the need to have parents' voices heard even in educational institutions of the state.

Attempting to rebut the thesis, the students introduced into the debate the issue of the position of government bodies and differences in the approach to the rights of the child from the perspective of the parental right to education and the official state policy. Some of the examples given included the right to determine the child's worldview as the right of the parent, anti-vaccination climate and the child's right to vaccination, refusal to accept transfusion for religious reasons, the introduction of health and citizenship education in educational institutions, the right to information and the issue of priority holders (the state, the child or the parent), legal issues concerning the child's care in case of divorce or family violence and the protection of children of celebrities and relations with the media.

The debate is an argued discussion which aims to present the pros and cons of a given topic, and although competitive in character, its main purpose is to encourage those engaged in a debate to objectively examine the issues presented and to come up with a conclusions, through a dialogue and consideration of all views that will be applied by both sides.

The debate that took place at the Conference of the Children's Rights Ombudspersons' Network in South and Eastern Europe accomplished exactly that - exchange of views and proposals of how to make as big as possible improvements for children, and the young participants, despite a highly complex and multi-layered thesis worked on the analysis and built their arguments independently. The trainers of the Croatian Debate Society only provided argument-related advice and guided the students through the process, while the Office of the Ombudsman for Children provided students with study materials on key issues for the debate. We consider the note made here

very important because it shows how it is possible to engage students in topics which are only slightly, if at all, related to their education and which do not fall within the standard sphere of interest of young people.

About the debate and students involved in the debate

The Croatian Debate Society is a non-governmental organisation dealing with young people and education. For over twenty years it has been coordinating the work of the educators and volunteers in primary and secondary schools through work in debate clubs and various trainings aimed at volunteers and teaching staff. The focus is on networking of the informal and formal education so debate clubs work in primary and secondary schools in cooperation with teachers and volunteers acting as trainers for the Croatian Debate Society.

The cooperation started with the Office of the Ombudsman back in 2006 through participation in discussions of the ombudsman for children. It intensified on the occasion of the 25th anniversary of the adoption of the Convention on the Rights of the Child on 20 November 2014 when a debate was held in the Office of the Ombudsman for Children entitled “This house finds that the Convention on the Rights of the Child has fulfilled its role in the Republic of Croatia”.

The Debate Club of the secondary school “II. Gimnazija”, called “Bušmani” has for years been the most numerous debate club in Croatia and one of the most successful ones. Debaters who took part in the debate at the conference were: Tin Puljić, Eta Krpanec, Luka Petrović and Marija Jarnjak. They, together with Luka Ignac and Igor Frasn, also participated in a 2015 World Schools Debating Championships in Singapore where they won the first place. Gabrijela Martić and Manuel Kralj are their trainers.

At regular meetings of the debate clubs held throughout the year, the leaders of debate clubs and debaters work on and learn about a wide range of topics through theme workshops and lectures on the economy, geopolitics, international relations, human rights, women’s rights and the rights of the child, ecology, as well as about presentation skills and style, debate strategy and most importantly, argumentation.

The Thematic Meeting of the Children's Rights Ombudpersons' Network in South and Eastern Europe – CRONSEE

THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON A COMMUNICATIONS PROCEDURE – THE ROLE OF THE OMBUDSMAN FOR CHILDREN

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THE THIRD OPTIONAL PROTOCOL - THE COLLECTIVE PROTECTION OF CHILDREN'S RIGHTS

1 Introduction

The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, adopted in 2011¹ (hereinafter: the Third Optional Protocol) allows children to submit complaints regarding violations of human rights to the Committee on the Rights of the Child². Until 7 October 2015, the Third Optional Protocol had been signed by 50 states, including the Republic of Croatia (hereinafter: the RC) and ratified by 19 state.³ In the States parties that had ratified the Third Optional Protocol it came into force on 14 April 2014.

The system of procedural mechanisms established within the national legal systems of the States that have ratified the Third Optional Protocol is considered as the basis of the system guaranteeing the protection of human rights, while the complaint mechanism provided for by the Third Optional Protocol is an additional opportunity to be used in the event that this system fails. In addition to bringing a complaint on account of the violation of the rights guaranteed under the Convention on the Rights of the Child⁴, children can also submit a complaint for the protection against the violation of the Optional Protocol to the Convention on the Rights of the Child on the

1 The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, 2011, UN-Doc. A/HRC/17/L.8.

2 The Committee on the Rights of the Child, CRC, is a body of 18 international independent experts on human rights that monitors the implementation of the provisions of the Convention on the Rights of the Child and the Protocols to the Convention.

3 As of 7 August 2015, the Third Optional Protocol had been signed by 50 states: Albania, Andorra, Argentina, Austria, Belgium, Benin, Brazil, Cape Verde, Chile, Costa Rica, Côte d'Ivoire, the Republic of Croatia, Cyprus, the Czech Republic, Ecuador, El Salvador, Finland, France, the Federal Republic of Germany, Ghana, Guinea-Bissau, Ireland, Italy, Lichtenstein, Lithuania, Luxembourg, Madagascar, Maldives, Mali, Malta, Mauritius, Mongolia, Montenegro, Morocco, Paraguay, Peru, Poland, Portugal, Romania, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Spain, Thailand, former Yugoslav Republic of Macedonia, Turkey, Ukraine and Uruguay.

It had been ratified by Albania, Andorra, Argentina, Belgium, Bolivia, Chile, Costa Rica, El Salvador, Gabon, the Federal Republic of Germany, Ireland, Monaco, Mongolia, Montenegro, and Portugal. Slovakia, Spain, Thailand, and Uruguay.

4 The Convention on the Rights of the Child (OG SFRY 15/90; OG, IT, 12/93, 20/97).

involvement of children in armed conflict⁵ (hereinafter: the First Optional Protocol) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography⁶ (hereinafter: the Second Optional Protocol). The Third Optional Protocol provides for three separate procedures: the individual communications procedure, which allows complaints to be submitted by individuals or groups of individuals (or other persons on their behalf) claiming to be victims of a violation by a State Party of any of the rights set forth in the Convention on the Rights of the Child and two Optional Protocols thereto (arg. ex Art. 5), the inter-state communications procedure (arg. ex Art. 12) and the inquiry procedure for grave or systematic violations of the rights set forth in the Convention on the Rights of the Child and two Optional Protocols thereto, which may include a visit to the territory of a State Party (arg. ex Art. 13). However, a major objection to the solutions set forth concerns the lack of a possibility to submit a collective complaint as provided for in the draft Third Optional Protocol. In this context, the individual communications procedure is discussed first, followed by an attempt to examine the impact that a collective complaint might have in the realisation of the protection of children's rights pursuant to the Third Optional Protocol. Further analysis concerns the solutions of some States wherein the mechanisms for the realisation of the collective protection of children's rights are applied within their national legal systems. The conclusion is devoted to a comparison of the advantages and disadvantages of the complaint procedures pursuant to the Third Optional Protocol as a system that is expected to improve the protection of children's rights at the national and international levels relative to the procedure before the European Court of Human Rights (hereinafter: the ECtHR). Its contribution to the establishment of an efficient Croatian legislative framework and legal practice related to the violations of the rights of the child. will also be analysed.

2 The procedure for submitting an individual complaint by an individual or a group of individuals

The possibility to submit an individual complaint by an individual or a group of individuals provided for by Article 5 of the Third Optional Protocol should be interpreted bearing in mind that, as stated in the preamble of the Third Optional Protocol, it aims to reaffirm the status of the child as a subject of rights, as children's special status of dependence on their parents or other caregivers may have a limiting or adverse effect on the realisation of their rights. It should also be taken into account that the adoption of the Third Optional Protocol aimed to reinforce national legal systems in the area of protection of children's rights and offer procedural mechanisms complementing those that are in place at the national level. In addition, it is emphasised that in the procedures on the right of the child the best interest of the child must be taken into account (arg. ex Art. 2) and that such procedures should be child-sensitive (arg. ex Art. 3).

An individual complaint to the Committee on the Rights of the Child may be submitted by or on behalf of an individual or a group of individuals claiming to be victims of a violation by a State Party of any of any of the rights guaranteed by the Convention on the Rights of the Child and the First

5 The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2002, A/RES/54/263.

6 The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002, A/RES/54/263.

and Second Optional Protocols (arg. ex Art. 5, par. 1). Where a complaint is submitted on behalf of an individual or a group of individuals, this must be with their consent, unless the author can justify acting on their behalf without such consent (arg. ex Art. 5, par. 2). This is in compliance with the requirement that in the complaint procedure the well-being and the best interest of the child must be taken into account. The Committee on the Rights of the Child may even decline to examine any complaint that it considers not to be in the child's best interest.⁷ When acting upon a complaint, the Committee on the Rights of the Child establishes its admissibility by examining whether the complaint shows who is submitting it (arg. ex Art. 7, item (a)), whether it has been submitted in writing (arg. ex Art. 7, item (b)), whether it constitutes an abuse of the right of submission of such complaints or is incompatible with the provisions on the Convention on the Rights of the Child and the First and Second Optional Protocols, whether the same matter has already been examined by the Committee on the Rights of Child or has been or is being examined under another procedure of international investigation or settlement (arg. ex Art. 7, item (d)), whether all available domestic remedies have been exhausted (unless in the cases where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief (arg. ex Art. 7, item (e)), whether the complaint is well-founded and sufficiently substantiated (arg. ex Art. 7, item (f)); whether the facts that are the subject of the complaint occurred prior to the entry into force of the Third Optional Protocol for the State party concerned, unless those continued after that date (arg. ex Art. 7, item (g)); and whether the complaint is submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the complaint within that time limit (arg. ex Art. 7, item (h)).

In the procedures on the rights of the child, both in national legal systems and in European and international treaties, especially in European instruments in the area of family law and in the European Convention on the Exercise of Children's Rights⁸ the principle of acting speedily is a fundamental postulate. Accordingly, the Third Optional Protocol sets forth that, should the need arise to act speedily, the Committee on the Rights of the Child may at any time after the receipt of a complaint and before the determination on the merits has been reached transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations (arg. ex Art. 6, par. 1). Furthermore, during the complaints procedure, the Committee on the Rights of the Child will adopt a decision as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned. (arg. ex Art. 10, par. 1). In addition, where the Committee on the Rights of the Child has requested interim measures, it shall expedite the consideration of the complaint (arg. ex Art. 10, par. 3).

After examining a complaint, the Committee on the Rights of the Child transmits its views on the complaint, together with its recommendations, if any, to the parties concerned (arg. ex Art. 10, par.

7 See: Payandeh, Mehrdad, *The Individual Complaints Procedure under the United Nations Convention on the Rights of the Child-The Optional Protocol to the Convention on the Rights of the Child on a communications procedure from the German Legal Perspective*, National Coalition for the Implementation of the UN-Convention on the Rights of the Child in Germany and Kindemohilfe e. V., Berlin, 2013, p. 20.

8 The provision of Article 7 of the European Convention on the Exercise of Children's Rights (OG IT 1/10).

5). The State Party gives due consideration to the views and recommendations and submits a written response, including information on any action taken and envisaged in the light of the views and recommendations of the Committee on the Rights of the Child (arg. ex Art. 11, par. 1). The Committee on the Rights of the Child may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations or implementation of a friendly settlement agreement, if any, including, as deemed appropriate by the Committee on the Rights of the Child, in the State Party's subsequent reports under Article 44 of the Convention, Article 12 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child pornography and child prostitution or Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, where applicable (arg. ex Art. 11, par. 2).

As under the provision of Article 5, paragraph 1 of the Third Optional Protocol a claim may be submitted by or on behalf of an individual or a group of individuals claiming to be victims of a violation by a State Party, an attempt should be made to envisage the group of persons authorised to submit an individual complaint.

2.1 The right of submission of an individual complaint

Although the Convention on the Rights of the Child provides for the protection of the rights of the child (arg. ex Art. 1) so that a child or a group of children should also be authorised to submit an individual complaint, allowing for a possibility that an individual or a group of individuals submit an individual complaint, the group of authorised persons pursuant to the provision of Article 5, paragraph 1 of the Third Optional Protocol has been extended to include adults whose rights were violated before they reached 18 years of life.⁹ The legal literature emphasises the advantages of the authorisation to submit individual complaints postulated in such a way, corroborating this with the fact that the revised draft Third Optional Protocol¹⁰ allowed for the possibility that persons claiming that they “suffered a violation of rights as children” may also submit individual complaints.¹¹ However, this is not expressly stated in the final text.

Furthermore, as the provision of Article 5, paragraph 1 of the Third Optional Protocol does not expressly regulate the representation of a child or a group of children in the individual complaints procedure, the question remains of whether a child or a group of children should be represented by a legal representative, most often a parent. In this connection, already at the time of adoption of the Third Optional Protocol a discussion was held on whether the right of a child, or a group of children, could be adequately realised if the child was not provided assistance with expressing his/her opinion in the individual complaints procedure by his/her legal representative. Although those in favour of Article 5, paragraph 1 providing for obligatory legal representation of a child or a group of children pointed out the cases of infringement of procedural requirements due to the absence of adequate

⁹ See Payandeh, op.cit. (note 8), p. 23.

¹⁰ Article 6 of the revised draft Third Optional Protocol prepared by the rapporteur to the working group on the drafting of the Optional Protocol to the Convention on the Rights of the Child, UN-Doc. A/HRC/WG.7/2/4.

¹¹ Löhner, Tillmann, Die Individualbeschwerde zur Kinderrechtskonvention, Menschenrechtsmagazin, 2(2011), pp. 115-128. pp. 120-121.

representation, which were in legal theory assessed as a breach of an obligation to legal protection pursuant to the Convention on the Rights of the Child¹², the prevailing opinion was that the fact that such a requirement was regularly imposed in the national legislation was not a sufficiently strong argument. The parallel claim is that the omission of the requirement for the obligatory legal representation of a child or a group of children in the individual complaints procedure aims to regard children as holders of procedural rights and obligations, pursuant to the Convention on the Rights of the Child.^{13 14} Specifically, in addition to restricting the right of the child to submit an individual complaint, the insistence on legal representation overlooks the fact that the interests of the child are not always in line with the interest of the parents or legal representatives.¹⁵

However, in the individual complaints procedure, a child or a group of children can be represented by a third party (arg. ex Art. 5, par. 1). This form of representation of a child or a group of children is envisaged to protect the rights of children who are due to their age, the nature of the rights being violated or the circumstances of the case unable to represent their rights and interests on their own.¹⁶ In this regard, it is unclear who is considered as a third party in terms of the provision of Article 5, paragraph 2 and which prerequisites have to be met in order for the action of the third party submitting the complaint to be considered as justified.

Given the specification that such representation is possible only with the consent of a child or a group of children, except in exceptional circumstances when the party submitting the complaint can justify acting without such consent (arg. ex Art. 5, par. 2), the Committee on the Rights of the Child, when it has grounds to suspect that a child's consent was given under duress, may require additional information to be collected from the third parties or organisations not participating in the procedure (arg. ex Art. 13, par. 2 of the Rules of Procedure of the Committee on the Rights of the Child¹⁷; Article 3, paragraph 2 of the Third Optional Protocol). The exceptional circumstances justifying the representation without the consent of a child or a group of children are considered as those in which, due to the child's specific situation, age or maturity, he/she cannot provide consent (arg. ex Art. 13, par. 3 of The Rules of Procedure of the Committee on the Rights of the Child). This form of representation requires that, in the procedure, the Committee on the Rights of the Child takes into account the best interest of the child and, where possible, the child's opinion (arg. ex Art. 3, par. 2 of the Third Optional Protocol).

2.2 The absence of the right to submit a collective complaint

The extensive discussion on the incorporation of the provision to submit a collective complaint in the final text of the Third Optional Protocol was ended with a conclusion that those in favour of it had not given sufficiently plausible explanation of the manner of its implementation and application in rela-

12 Löhr, *ibid.*

13 Article 12 of the Convention on the Rights of the Child.

14 See Löhr, *op.cit.* (note 12), p. 120.

15 de Beco, Gauthier, *The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure: Good News?*, *Human Rights Law Review* 13(2013), pp. 367-387., p. 380.

16 See Payandeh, *op. cit.* (note 8), p. 24.

17 The Rules of Procedure of the Committee on the Rights of the Child, CRC/C/4/Rev 4, 2015.

tion to the existing mechanisms.¹⁸ The non-inclusion of a collective complaint in the Third Optional Protocol has been widely criticised. Some theoreticians claim that the efficiency of the procedures provided for in the Third Optional Protocol has considerably diminished as a result, given that collective complaints are effective in ensuring the right to submit complaints to children, including those who cannot submit a complaint or cannot be identified, such as child victims of armed conflicts or victims of child pornography.¹⁹ Some others view the omission of a collective complaint as the confirmation of the idea that children are “mini people with mini rights”.²⁰

More light on the views on the omission of a collective complaint from the final text of the Third Optional Protocol should be shed by comparing the individual complaints procedure with individual applications to institute proceedings before the ECtHR for the violation of human rights pursuant to the provision of Article 34 of the European Convention on Human Rights²¹ (hereinafter: the ECHR). Specifically, the ECtR may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the ECHR or the Protocols thereto (arg. ex Art. 34 of the ECHR). It is evident that the submission of the application to protect human rights pursuant to the ECHR should also be individualised, that is, it should be stated which individuals’ rights have been violated. The ECHR does not provide for making applications for the protection of rights *in abstracto*, nor in the form of an *actio popularis*.²² Although a survey was launched in 2009 on the impact of the application of a collective complaint as part of the envisaged new procedural rules and practice before the ECtR, the fact that no changes have been made to that effect so far suggests that the stance that the access to the ECtR should be allowed only to those suffering the violation of their subjective rights has been retained.

However, the absence of the possibility to submit a collective complaint pursuant to the Third Optional Protocol is justifiably considered as a disadvantage, given that such a complaint would be made against grave and systematic violations of children’s rights, without having to specifically name or identify child group members (*in abstracto*). The authority to submit a collective complaint would be vested in national institutions for the protection of human rights, non-governmental organisations and ombudsmen (arg. ex Art. 7, par. 2 of the draft Third Optional Protocol). Further arguments in favour of the possibility to submit a collective complaint include special vulnerability of children and the fact that children’s access to the judiciary is impeded by a number of factors already at the national level. In the cases where it is unlikely that children whose rights are violated have an interest in submitting an individual complaint, whether due to the nature of the violation (cases of sexual abuse or discrimination) or to the characteristics of the group (the children’s age or the

18 de Beco, op.cit. (note 16), p. 383.

19 Jensen, Lisbeth Dina, New Optional Protocol to the UN Convention on the Rights of the Child, <http://resourcecentre.savethechildren.se/node/3730>. See also: Gerber, Paula, The new Optional protocol to the Convention on the rights of the child: Ten things you should know, *Alternative Law Journal*, 37(2012)2, pp. 111-115., p. 114.

20 Jensen, *ibid*.

21 In full: Convention for the Protection of Human Rights and Fundamental Freedoms (OG IT 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10).

22 See also: *Open Door and Dublin Well Woman v. Ireland*, 14234/88, judgement of 29 October 1992.

fact that the children concerned are those with developmental disabilities), a collective complaint would ensure that the proceedings for the violations of rights on behalf of an indefinite number of group members can be instituted by a non-governmental organisation or an ombudsman. Additionally, the child or group of children would not have to be included or exposed to the complaints procedure, which is especially important in the cases of rights violations of a sensitive nature (fear of stigmatization, request for testimony). This would resolve the concerns regarding ensuring information confidentiality, an issue that some states have defined as requiring special consideration in the proceedings involving children. Finally, a collective complaint is of a preventive nature and may contribute to repealing an act that, for example, enables the exploitation of children's work or prevent the education of girls.²³

Despite the stated arguments, the existing solution enables national institutions for the protection of human rights, non-governmental organisations and ombudsmen only to submit an individual complaint with consent of a group of children.

However, before the idea of a collective complaint as an efficient mechanism for the protection of the rights of the child guaranteed by the Convention on the Rights of the Child is completely abandoned, one should consider the development of the collective protection of the rights of the child at the national level. Therefore, a comparison is made of the solutions provided by the legal systems of Austria, the Netherlands, England and Wales and the Republic of Croatia.

3 The procedure of collective protection of children's rights in some national legal systems

3.1 Austria

In contrast with the ECHR, which in Austria has the effect of a constitutional act, the UN Convention on the Rights of the Child, although ratified, does not have the effect of a constitutional act and it is not directly applicable. However, the Federal Constitutional Law on the Rights of the Child, adopted in 2011, provides for the key rights guaranteed by the UN Convention on the Rights of the Child. In the Austrian legal system the Convention on the Rights of the Child is not with respect to its legal effect above the law, but national laws are interpreted in accordance with the provisions of the Convention.

In the cases of violations of children's rights guaranteed by the Constitution of the Republic of Austria, the Federal Constitutional Law on the Rights of the Child or the Convention on the Rights of the Child requests for legal aid may be submitted. Specifically, if a right of a child has been violated by an action or a decision of an administrative authority, upon the completion of the proceedings before the administrative authority or a civil court, pursuant to Article 144 of the Constitution of the Republic of Austria a complaint may be submitted to the Constitutional Court. Austrian civil procedure law does not provide for any possibility to submit a complaint for the violation of rights if it is not evident in the complaint whose right has been violated. A complaint on behalf of a group of individuals may be submitted only in the form of multiparty litigation

²³ See also: Newell, Peter, *Collective communications – an essential element in the new Optional Protocol for the Convention on the Rights of the Child*, UN-Doc. A/HRC/WG.7/1/CRP.2, p. 5.

(*Streitgenossenschaft*). A non-governmental organisation may submit a claim for the violation of rights only based on a special authorisation.²⁴

3.2 England and Wales

In England and Wales, the Convention on the Rights of the Child, while ratified, is not with respect to its legal effect above the law; however, the provisions of the national law are interpreted in accordance with the provisions of the Convention. As the provisions of the Convention on the Rights of the Child have not yet been implemented into the national law, with the protection of children's rights within the human rights corpus transposed to the national law by the adoption of the Human Rights Act in 1998, it can be claimed that the protection of children's rights in the United Kingdom is not comprehensively regulated. A child and his/her representative may submit a complaint for the violation of the rights of the child in accordance with the rules of procedural law and contest a public body decision with the permission of the High Court. In the case of a breach of the provisions of the Human Rights Act, irrespective of which of the proceedings are initiated, they must be initiated within a year from the moment of violation of the right. Where an administrative authority decision is contested, neither the subject-matter of the dispute is required to be individualised nor is the child required to participate in the proceedings. Non-governmental organisations may initiate the proceedings contesting a decision of an administrative authority on their own behalf if they can prove that there is "sufficient interest" in conducting the proceeding.

Besides a representative claim brought by an individual demanding the protection of rights of a group of individuals "with a common interest", wherein each complainant must be specified, the court may permit a group litigation order which resolves a large number of individual complaints within the same procedure by consolidating common factual and legal issues.²⁵

3.3 Netherlands

In the Netherlands, the Convention on the Rights of the Child has been ratified and incorporated into the national legislation, with its legal effect being above the law. In the event of violation of the rights guaranteed by the Convention on the Rights of the Child that are directly applicable in the Dutch legal system, the court proceedings may be instituted by a child or the child's representative. Furthermore, in the case of rights violation due to an administrative authority decision, prior to initiating the proceeding before the administrative court, an objection must be lodged with the administrative authority.

The collective complaint procedure requires that all complainants be specified. Associations or foundations are authorised to initiate collective complaints procedure on behalf of other parties if they can adequately represent their interests. The court grants a declaratory judgement establishing the responsibility of the defendant for the violation of rights. Pursuant to the Dutch administrative law, non-governmental organisations may bring a complaint for the violation of

²⁴ Access to justice for children Challenging violations of children's rights: Complete access to justice reports, Austrija, <https://www.crin.org/en/home/law/access>.

²⁵ Access to justice for children Challenging violations of children's rights: Completed access to justice reports, England and Wales, <https://www.crin.org/en/home/law/access>.

the rights of a child due to an administrative authority decision if the decision has violated “a collective interest protected by these organisations”.²⁶

3.4 Republic of Croatia

The Convention on the Rights of the Child has been ratified and it is directly applicable in the Croatian legal system, with its legal effect being above the law. Children and their legal representatives are authorised to institute the procedure for the violation of the rights guaranteed by the Convention on the Rights of the Child before the court. The realisation of the rights pursuant to the Convention on the Rights of the Child is further guaranteed by the possibility to initiate the procedure by bringing a constitutional complaint to the Constitutional Court, which is independent of the judicial authorities in the RC. Where an individual act deciding on the rights and obligations has violated a fundamental human right or freedom granted by the Constitution of the Republic of Croatia²⁷ (hereinafter: the Constitution of the RC), the proceedings may be initiated before the Constitutional Court. The possibility for a child to institute the collective complaints procedure is not provided for in the special acts governing collective legal protection, the Consumer Protection Act of 2014²⁸ (hereinafter: 2014 CPA) or in the Anti-discrimination Act adopted in 2009²⁹, (hereinafter: 2009 ADA). However, as the Government Decree on determining the persons authorised to initiate proceedings for the protection of collective interests of consumers, enacted in 2009³⁰ (hereinafter: 2009 Decree) specified that, as regards the provision of Article 107, paragraph 2 of the 2014 Consumer Protection Act, the Ombudsman for Children was authorised to initiate the proceedings by submitting a collective complaint for the protection of consumers, this leads to the conclusion that the possibility for the collective legal protection of a group of children *in abstracto*, irrespective of whether their consumer rights have been threatened or violated, had been envisaged. The Government Decision on determining the persons authorised to initiate proceedings for the protection of collective interests of consumers, adopted in 2014³¹ (hereinafter: 2014 Decision), which replaced the 2009 Decree, however, does not provide for the authorisation of the Ombudsman for Children to initiate the collective complaints procedure. It might need to be considered whether the Ombudsman for Children would be authorised to initiate the procedure pursuant to the provision of Article 502, paragraph 1 of the Civil Procedure Act (CPA), which sets forth that associations, bodies, institutions and other organisations are authorised to submit a complaint for the protection of collective interests, or pursuant to the provision of Article 24, paragraph 1 of the ADA, which also provides for joint legal action for the protection against discrimination by associations, bodies, institutions or other organisations. It should be determined against which violations of the collective interests and rights of children the collective complaint may be submitted pursuant to the provision

26 Access to justice for children Challenging violations of children’s rights: Completed access to justice reports, Netherlands, <https://www.crin.org/en/home/law/access>.

27 The Constitution of the Republic of Croatia (OG 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14).

28 The Consumer Protection Act, 2014 (OG 41/14).

29 The Anti-discrimination Act, 2009 (OG 85/08).

30 The Government Decree on determining the persons authorised to initiate proceedings for the protection of collective interests of consumers, 2009 (OG 124/09).

31 The Decision on determining the persons authorised to initiate proceedings for the protection of collective interests of con-

of Article 502, paragraph 1 of the CPA, as Article 502, paragraph 2 of the CPA provides that collective interests may involve those related to the human natural and social environment, as well as moral, minority, consumer, anti-discriminatory and other interest, so that the group of violations could possibly be extended to include the violations of the rights of the child.

4 Conclusion

Despite the fact that the adoption of the Convention on the Rights of the Child has increased the guaranteed protection of children's rights, without an adequate complaints mechanism, given the (in)efficiency of the national legal systems, it is impossible to compel states to ensure the fulfilment of obligations accepted under the Convention. In this respect, an individual complaint that enables individuals, after all available domestic remedies have been exhausted, to institute the procedure before the Committee on the Rights of the Child, puts states under an obligation to establish adequate mechanism for the protection of children's rights pursuant to the Convention on the Rights of the Child. Furthermore, an individual complaint provides a possibility for identifying individual violations of the rights of the child in the national system, which may fall within systemic violations, so that additional efforts can be invested to eliminate them. However, it should be taken into account that in addition to the possibility of submitting an individual complaint pursuant to the Third Optional Protocol, there are also other mechanisms for the protection of children's rights. Once all available domestic legal remedies concerning the violation of fundamental human rights have been exhausted, a child can take recourse to the ECtHR. However, pursuant to the ECHR, the protection of children's rights before ECtHR is not treated differently from the protection of rights of persons of age. The ECHR does not incorporate any special provisions on the protection of children's rights that take into account the specific position as well as the vulnerability and dependence of children as parties in the proceedings. However, the ECtHR has repeatedly rendered a judgement, interpreting the ECHR, taking into account the guarantees for the rights of the child in the national legal systems provided for by the Convention on the Rights of the Child. It should therefore be examined whether the fact that the ECHR contains no special provisions on the protection of children's human rights is a sufficient enough reason for a child whose rights have been violated to institute the individual complaints procedure instead of the procedure before the ECtHR. It should also be taken into account that, in contrast with the formal action of the ECtHR, which conducts procedures based on individual claims and enacts decisions that are legally binding in all national systems wherein these decisions can necessitate a revision and amendment of a national court decision in breach of a right guaranteed by the ECHR, the action of the Committee on the Rights of the Child is considerably more informal and the guidelines issued are not binding for the states, although they are obligated to take them into consideration. Additionally, it should be examined whether, with regard to the duration of the procedure, expenses and a child's possibility of access to the ECtHR or the Committee on the Rights of the Child, it would be better for the child to initiate the procedure before the ECtHR or before the Committee on the Rights of the Child, which will be possible after the individual complaints procedure has been implemented for a certain (longer) period of time.

The analysis of the possibility to initiate the procedure for the collective protection of children's rights in the national legal systems of Austria, England and Wales, the Netherlands and the RC

has shown that national mechanisms for collective legal protection have not been recognised as efficient instruments for the legal protection of a group of children whose rights have been violated or threatened. In addition, Article 34 of the ECHR does not provide for the initiation of the procedure before the ECtHR on behalf of a group of individuals that have not been individually named or identified and whose rights have not actually been violated. In view of the insufficient application of collective protection mechanisms at the national level, and the restrictions for the initiation of the procedure before the ECtHR imposed by the ECHR, which permits this action only to a group of individuals whose rights have been violated, it appears that the collective complaint procedure enabling the Committee on the Rights of the Child to enact a decision instead of deciding in a large number of procedures on individual complaints (with the limitations already stated) within one procedure, by considering a collective complaint submitted due to a grave or systematic violations of the rights of a group of children, which is not predefined, but can be defined, could be a significant instrument, complementing the individual complaint, for ensuring adequate protection of children's rights when national systems fail to do so. This argument can be corroborated by the following:

- a) There are other international instruments providing for the submission of a collective complaint that have proved to be efficient for the realisation of individuals' rights. Special consideration should be given to the Additional Protocol to the European Social Charter, which establishes a system of collective complaints. Namely, a considerable number of complaints for the violations of children's rights, in the areas of discrimination, child labour, violence against children and special education have been submitted pursuant to the Additional Protocol to European Social Charter.³²
- b) International instruments for the protection of children's rights should take into account the position of a child as a weaker party in the proceedings and the collective complaints procedure would contribute to the realisation of the rights of the child to legal protection in the cases of grave and systemic violations, even if there is no interest in initiating the individual complaints procedure. The application of the collective complaint procedure would show whether there is any room for expanding the application of a collective claim to the violations of children's rights that are not grave or systematic, as repeatedly stated during the phase of drafting the Third Optional Protocol.³³
- c) In contrast with individual protection procedures that aim for repressive legal protection, the collective complaints procedure, involving legal protection *in abstracto*, is designed to achieve preventive legal protection. The procedure can result in removing or amending the normative framework or terminating the practice leading to the violations of children's rights guaranteed by the Convention on the Rights of the Child in national systems.
- d) The collective complaint procedure would have an impact on the stabilisation of the practice regarding the violations of the rights of the child whose protection is sought by submitting col-

32 A total of 118 collective complaints have been submitted so far (as at 22 October 2015). For more details see: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.

33 Newell, *op.cit.* (note 24), p. 6.

lective complaints. In turn, the states, while interpreting the views and recommendations of the Committee on the Rights of the Child in collective complaints procedures, would be able to harmonise their legislation and practice in the area of children's rights protection with the obligations assumed pursuant to the Convention on the Rights of the Child.

Finally, although the Third Optional Protocol does not provide for a possibility to initiate the collective complaints procedure, the very fact that such a possibility has been considered indicates that the importance this procedure might have as a mechanism for the protection of an undefined group of children has been recognised. A collective complaint would provide an efficient tool to associations, organisations and bodies engaged in the protection and promotion of children rights, including the Ombudsman for Children, for the elimination of deficiencies in the national legal system. From the point of view of the Croatian legal system, taking into account its scope of operations, the Ombudsman for Children would justifiably be authorised to initiate the collective complaints procedure before the Committee on the Rights of the Child, as the Ombudsman protects, monitors and promotes the rights and interest of children pursuant to the Constitution of the RC, international treaties and laws, and, within its scope of responsibilities, monitors the compliance of laws and other regulations of the RC relating to the protection of the rights and interest of children with the provisions of the Constitution of the RC, the Convention on the Rights of the Child and other international documents concerning the protection of the rights and interests of children, monitors the fulfilment of obligations of the RC assumed under the Convention on the Rights of the Child and other international documents related to the protection of the rights and interest of children, monitors the application of all regulations on the protection of rights and interest of children, monitors the violations of individual children's rights and analyses general occurrences and manner of the violation of children's rights and interests.

Despite the omission of the possibility to submit a collective claim, the Ombudsman for Children will definitely play an important role in the implementation of the Third Optional Protocol, as the dissemination of information on the possibilities of initiating the individual complaints procedure, constant monitoring of the work of the Committee on the Rights of the Child and recommendations issued on individual complaints, as well as the initiation of changes in the legislative framework or practice that leads to the violations of children's rights, can significantly contribute not only to raising the awareness of the obligations assumed under the Convention on the Rights of the Child and the Protocols thereto in the RC, but also to the honouring and regular fulfilment of these obligations.

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ACTIVITIES OF THE OMBUDSMAN FOR CHILDREN OF THE REPUBLIC OF CROATIA IN CONNECTION WITH THE ADOPTION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON A COMMUNICATIONS PROCEDURE

The UN Convention on the Rights of the Child, although an international document on human rights with the highest number of State Parties¹ had not provided for the procedure for submitting and hearing complaints. The UN Committee on the Rights of the Child (hereinafter: the Committee), as the body competent for monitoring the implementation of the Convention on the Rights of the Child, has since the beginning had the power to review reports of participating countries on measures they have undertaken and measures for realising children's rights recognised by the Convention on the Rights of the Child, as well as on progress achieved in the exercise of these rights. However, in contrast to other international documents on human rights, the Committee was not given the power to ensure help for children whose rights have been denied in case there were denied.

After marking the 10th anniversary of the Convention on the Rights of the Child in 1999, the Committee decided to open up a discussion on the Optional Protocol to the Convention on the Rights of the Child in order to provide for a mechanism to lodge individual complaints, ensure accessibility to legal remedy on the international level, spurring the participating countries to support these efforts.²

¹ Status of the Convention on the Rights of the Child: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

The activities that followed were the activities of non-governmental organisations, starting from the German non-governmental organisation *Kindernothilfe*, and the years-long campaign directed at setting up a complaints mechanism under the Convention on the Rights of the Child. The initiative was supported by the European Network of Ombudsperson for Children (ENOC), a member of which is also the Ombudsman for Children of the Republic of Croatia. Peter Newell, ENOC Expert Adviser and Yanghee Lee, Chairperson of the UN Committee on the Rights of the Child invited the members of the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRON-SEE), a member of which is also the Ombudsperson for children of the Republic of Croatia, to join the initiative for the adoption of a new Optional Protocol. At the Conference held on 19-20 May 2009 in Dubrovnik and organised by the Ombudsperson for Children of the Republic of Croatia the members of this network supported the idea as one more contribution to empowering children as subjects and holders of rights.

In June 2009, the UN Human Rights Council established an Open-ended Working Group on the Third Optional Protocol to the Convention of the Rights of the Child. The drafting and negotiations on the wording of the text followed soon thereafter. The European Network of Ombudsperson for Children (ENOC) submitted its comments to the wording of the draft Optional Protocol, supporting the initiative and advocating that members of the network to encourage their countries to support the inclusion of the provisions on collective complaints into the provisions of the Optional Protocol.

The Ombudsman for Children of the Republic of Croatia informed the Ministry of Foreign Affairs and European Integration on the progress of the procedure of drafting the Third Optional Protocol, recommending an active participation of the state in the Open-ended Working Group of the Human Rights Council and supporting the adoption of provisions that will take care of the special position of children, ensure procedures adjusted to children, their best interests, as well as provide for the submission of both individual and collective complaints regarding violations of children's rights.

In January 2011, the Ombudsman for Children informed the Ministry of Foreign and European Affairs on the revised draft of the Optional Protocol of 13 January 2011, providing for the possibility to submit collective complaints but in the form of an "optional" provision so that each country can, at the time of signing or ratifying the Protocol, or accession to the Protocol, declare that it recognises the competence of the Committee for hearing and reviewing collective complaints. According to the opinion of the Ombudsman for Children, after having consulted the international expert Peter Newelle, this was not the best solution because it was thought that different countries should make an effort to make this statement an integral part of the Protocol and not an option provided to each countries. We recommended the inclusion and participation of the representative of Croatia in the work of the Open-ended work group and support to our, afore-mentioned opinion, given the importance of designing this new instrument that would promote efficient implementation of the Convention on the Rights of the Child.

2 www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/ten.pdf p.14

After several years of negotiations and work on the wording of the Protocol, the General Assembly of the United Nations approved the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (hereinafter: the Protocol) on 19 December 2011, opening it for signing to every country that signed, ratified or acceded to the Convention on the Rights of the Child or any of its two preceding Optional Protocols.

In a joint letter with the UNICEF Office for Croatia of February 2012, the Ombudsman for Children notified the Government of the Republic of Croatia, the Ministry of Social Policy and Youth and the Ministry of Foreign and European Affairs on the adoption of the Protocol. Since the Republic of Croatia had already accepted international communications procedures and is a state party of the Convention on the Rights of the Child, we recommended to the Government of the Republic of Croatia to spur a national debate and proceedings with an aim to sign and ratify this new Protocol, whereby the Republic of Croatia would show its commitment to the protection of human rights by ensuring the possibility to submit complaints to the Committee. The Ministry of Foreign and European Affairs in its response of March 2012 stated that the Republic of Croatia had supported the creation and the adoption of the Protocol and in her address at the High-Level Segment of the UN Human Rights Council the Minister stressed that respecting the rights of children is a measure of a society's sensitivity to justice, and welcomed the opening of the Protocol for signing. The Ministry then sent a proposal to the Ministry of Social Policy and Youth, as the competent ministry, to initiate the signing and ratification procedure.

On several occasions thereafter during 2012 we have communicated with the competent ministry on the status of this document, hoping for it to be signed and ratified by the Republic of Croatia as well. In January 2013, we have been notified that the Ministry of Social Policy and Youth has started the preparatory activities connected with establishing a Workgroup for the preparation of the signing procedure and harmonisation of the translation of the Optional Protocol with Croatian terminology. The Ombudsman for Children participated in the work of this group at the invitation of the Ministry.

As part of participating in the work of the workgroup we were invited by the Ministry of Social Policy and Youth to give, pursuant to our competence and responsibilities, an assessment of the funds required for executing this international treaty. Since had such data available, we indicated the need to budget funds for the execution of obligations of the state relating to the distribution of the Protocol and its publication. We stressed that the full implementation of the Protocol would require interventions to the provisions of the Legal Aid Act so as to provide for legal assistance in the proceedings before the Committee and making the submission of complaints more accessible to children. We gave a more detailed explanation in the course of adopting the new Free Legal Aid Act in July 2013. As a result, according to Article 9 of the Free Legal Aid Act (Official Gazette 143/13), in force since 1 April 2014, primary legal aid (provided by state administration offices, authorised associations and legal clinics) includes: general legal information, legal advice and drafting of petitions to bodies established under public law, the European Court of Human Rights or international organisations in accordance with international treaties and rules on the work of these bodies, including the UN. We also proposed broadening the provisions, in particular due to the possibility of oral arguments before the Committee, which was not adopted.

The Republic of Croatia signed the Optional Protocol to the Convention on the Rights of the Child on a communications procedure on 27 December 2013 in New York. It has still not ratified it. However, we can derive from the responses obtained from competent ministries that the stance on this mechanism is positive. According to the announced normative activities of the Republic of Croatia, the ratification of the Protocol is planned in the course of 2016.

The Protocol entered into force on 13 April 2014, three months after the depositing of the tenth instrument of ratification or accession³. On several occasions thereafter, for instance, on the 25th Anniversary of the Convention on the Rights of the Child and on the 1st anniversary of the entry into force of the Protocol, we reminded the competent ministries of the importance of this mechanism, hoping that the Republic of Croatia would ratify it.

We notified the Croatian Parliament on our international activities and recommendations made in this regard in our annual reports, published on our web site, informing it about the links where available information on international level may be accessed, as well as links and child-friendly leaflets.

In addition to these activities by the Ombudsman for Children in advocating the participation of the state in the creation of the Protocol, its signing and ratification we have been following international activities and initiatives of different subjects, including the International Coalition for the OPCRC, leading UN experts on children's rights, of the Special Representative of the UN Secretary General for Children and Armed Conflict, for the Sale of Children, Child Prostitution and Child Pornography. A representative of the Office of the Ombudsman for Children participated in two international training sessions in the Hague, in June 2012, and in Brussels, in November 2012, in connection with the new Protocol and procedures under the Convention on the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.

In March 2013, the Ombudsman for Children became a member of the International Coalition for the OPCRC on a communications procedure (Ratify OP3 CRS). We find the membership in this Coalition that gathers international, regional and national non-governmental organisations and networks, human rights institutions and other non-governmental bodies very important, as it provides for the exchange of information on the efforts to protect children's rights in this segment.

In September 2015, we participated in the conference organised by the Association of Youth and Family Judges and Specialists on the topic of the Protocol, where we presented the significance of the Protocol from the perspective of the Ombudsman for Children, as well as the activities undertaken by the Ombudsman for Children.

As hosts of the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRON-SEE) in 2015, we organised a thematic meeting in Osijek on 28 October 2015, under the title: The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure -

³ Status of the Optional Protocol to the Convention on the Rights of the Child on Communications Procedure:
https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en

the Role of the Ombudsman for Children, where participants discussed the importance of this document and the role of ombudspersons.

In order to get acquainted with the activities undertaken by countries that have already ratified the Protocol and on the international level, we contacted the offices of ombudspersons in majority of these countries, the Committee and international non-governmental organisations we cooperate with.

In response to our inquiries regarding the role of ombudspersons, the preparation and organisation of work in competent authorities of the countries that have already ratified the Protocol and the activities they undertake, we have learned that their activities predominantly relate to the organisation of seminars and round tables for different entities and the promotion of the Protocol. Further promotions and trainings for experts, children and the wider public are planned.

The United Nations Committee on the Rights of the Child is the body of 18 Independent experts that monitors implementation of the convention on the Rights of the Child and the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict. The entry into force of the Third Optional Protocol enables for individual complaints to be brought before the Committee on violations by State parties of any rights established by the Convention of the Rights of the Child and its first two Optional Protocols.

Pursuant to the provisions of article 3 of the Protocol, the Committee adopted Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure to be followed when implementing tasks assigned to it under the Protocol.⁴

According to the information forwarded to us by the Office of the United Nations High Commissioner for Human Rights, the Committee also adopted Working Methods for handling complaints received under the Protocol, as well as the Model Complaint Form for submitting individual complaints.

The Committee has already started carrying out the tasks awarded to it under the Protocol. According to the data we obtained, the Committee has already received a large number of individual complaints, as well as two complaints to be heard within the framework of investigative proceedings. Due to the confidentiality of the proceedings, no additional information is available to us. For the time being one decision has been published and is available on the following web page. http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=17.

The Optional Protocol to the Convention on the Rights of the Child on a communications procedure has been recognised internationally as a turning point in the protection of children's rights.

⁴ <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>.

The new Protocol affirms the position of the child as the holder of rights and makes it easier for children to access international institutions of law if national systems have failed to provide it appropriate protection of its rights under the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict.

Last but not least, a quotation that sums it all up:

Children will now be able to join the ranks of other rights-holders who are empowered to bring their complaints about human rights violations before an international body.

UN High Commissioner for Human Rights Navi Pillay

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ANNEXES

CONCLUSIONS OF THE ANNUAL CRONSEE CONFERENCE: THE RIGHTS OF THE CHILD - BETWEEN THE INTERESTS OF THE PARENTS AND THE OBLIGATIONS OF THE STATE

(Zagreb, 28 - 29 May 2015)

The main aim of the Conference was to provide a platform for discussions on how to realise the rights and best interests of the child in cases when the interests of the parents appear to be in conflict with the interests of the child and the obligations of the state to protect the child's well-being. The choice of topic was motivated by the current strong opposition of some parents to mandatory vaccination of their children and an anti-vaccination "campaign" that has already led to negative consequences, as well as by debates on the introduction of sex and civic education in the regular education curriculum, positions on corporal punishment, manipulation of children in divorce proceedings and other current issues and dilemmas, including negative traditional and religious practices.

The conclusions, compiled based on the debate of a youth debate club, presentations and discussions, describe the current condition and suggest some ways to address the weaknesses in the system for attaining the well-being of the child.

Conclusions:

1. The main responsibility for protecting the best interests of the child lies with the child's parents, who, although predominantly living up to this responsibility, unfortunately also often violate their children's rights when they give priority to their own interests over children's needs. Some parents and parents' associations tend to put too much emphasis on the right of the parents to make decisions on behalf of their children as, for example, when they oppose vaccination or transfusion, thus violating the right of the child to the highest attainable standard of health, or when they object to the introduction of health and civic education into the school curriculum, violating the right of the child to access to information that is pertinent to his/her well-being. Their actions are sometimes caused by the lack of parenting capacity.

According to the UN Committee on the Rights of the Child the rights of children are not in conflict with but are complementary to the interests of their parents. The lack of understanding of the Convention on the Rights of the Child often generates misunderstandings and misinterpretations, including the views that too much importance is given to children's rights and that this undermines the stability of the family. Campaigns have been launched to protect the family as a unit, with the result that such protection is given preference over the protection of family members' rights and the best interest of the child.

The debate of a youth debate club showed the potential power and persuasiveness of the advocates of parents' right to freedom of education. Therefore, the concerns that the conflict with parents could escalate increase the obligation and responsibility of all institutions for the protection of children's rights, and especially of ombudsmen, to emphasise the importance of raising parents' awareness of when and how their attitudes and actions actually protect their children and when and in what way they can put them at risk.

It is therefore necessary to:

- *raise parents' awareness that they can both protect their children and put them at risk by their attitudes and decisions;*
 - *regularly inform parents of the risks and dangers some of their decisions may cause;*
 - *continuously raise parents' awareness of their obligation to respect the rights of the child (and explain to them what this means in specific life situations) and of the fact that the best interest of the child must be given priority in all child-related actions and decisions, both in the public and private spheres.*
2. The Third Optional Protocol of the Convention on the Rights of the Child on a communications procedure, which allows children to submit complaints regarding specific violations of their rights, puts an additional emphasis on the importance and obligatory respect and realisation of children's rights and their well-being. The Third Optional Protocol has been ratified by 17 countries so far.

It is therefore necessary to:

- *launch an initiative for the ratification of the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure.*
3. According to General Comment No. 14 of the UN Committee on the Rights of the Child, the right of the child is to have his or her interests taken as a primary consideration in all actions. It is important to understand that this right imposes clearly defined obligations on the state in a range of specific situations, for example, in the parents' divorce proceedings, in the protection of the child's health, etc. Special consideration must be given to the protection of vulnerable groups, including children with developmental disabilities, minority group members, poor children, migrant children (children on the move) and others. As it can neither be determined in advance what the child's best interests are in a multitude of life situations nor foresee the variety of these situations, there is a need to develop the criteria for the evaluation of the child's best interest in all vulnerable situations. In addition, mechanisms have to be foreseen to ensure that the right of the child referred to in Article 3 of the Convention on the Rights of the Child is actually taken into account when adopting child-related decisions.

It is therefore necessary to:

- *ensure that in adopting decisions that affect a particular child or children in general the decision-making procedure includes an evaluation of their possible impact and a determination of the child's/children's best interests, as well as an explanation of which interests are considered as the child's best interest in a specific situation and the criteria for the evaluation, while in the elaboration of the decision it must be shown that this right of the child has actually been taken into account;*
- *develop the criteria for the evaluation of the best interests of the child to enable an assessment of universal risks to which all children are exposed in every vulnerable situation and of potential risks threatening specific children or children groups;*
- *establish a structure for the collection of information on various children groups, that is, on the needs of individual children, in order to enable the system to intervene appropriately and provide adequate assistance to every child (a manual for the evaluation of the best interests of migrant children, which is to be published by Save the Children, could be a good model for other children groups);*

- *instruct the makers of decisions that affect a particular child or children in general in a decision-making procedure that must include an evaluation of their possible impact and a determination of the best interests of the child, while in the elaboration of the decision it must be shown that this right of the child is actually taken into account;*
 - *ensure that facts are established in every individual case, take into account the lapse of time and provide an adequate staff of qualified professionals;*
 - *instruct the makers of decisions that affect a particular child or children in general in a decision making procedure wherein the right of the child to have his or her best interest taken as a primary consideration is consistently respected.*
4. Institutional child care, in particular when children in an early age are concerned, has serious adverse consequences for the child and his or her overall cognitive, emotional and social development. Children with developmental disabilities are at an especially high risk of institutionalisation, as they are often separated from their families and placed in an institution to receive medical treatment or education, instead of being enabled to obtain the required services and conditions in their place of residence so as not to be unnecessarily separated from their parents. The access of children with developmental disabilities to certain services is highly unequal across regions due to decentralised financing.

It is therefore necessary to:

- *strengthen the prevention of institutionalisation of children as well as the competencies and capacities of foster families for the care of children who, given the non-stimulating and harmful experience of living with their primary family, require additional psychosocial support and assistance;*
 - *guarantee funding for a certain level of services in all local communities in order to provide access to family environment to all children irrespective of their place of residence and the social and economic status of their parents and their parenting capacity.*
5. It is very common for the parents to manipulate the child in disputed divorces by intentionally impairing the child's relationship with the other parent in order to alienate him or her from that parent, which is emotional abuse seriously harming the child. In most cases, the state fails to sanction such behaviour and even sustains it by delaying the enactment of decisions and solutions. The right of the child to express an opinion is also misused in such situations, sometimes due to parental pressure, and the system, due to the excessive length of procedures and other reasons, often protects the interests of the parents manipulating the child rather than the child's best interests.

The lapse of time caused by the long duration of court proceedings, repeated processing and delays in providing expert evaluation, has remained the most serious threat to the realisation of the right of the child.

It is therefore necessary to:

- *increase the pace of adoption of evaluations and decisions by competent and executive institutions in situations when parents lack capacity, when they are inaccessible due to some other reasons or unwilling to change their behaviour;*
- *strengthen parents' access to and improve their coverage by family mediation;*
- *ensure budgetary funds for expert evaluation of parents and children in the early stages of*

manipulation in order to adopt decisions resulting in the best possible protection of the child; data from literature show that communication problems and conflict of parents persist in 8-12% of divorces (this may provide a basis for the planning of expenses for the so-called combined psychological-psychiatric expert evaluation).

6. Parents' thoughts and feelings about their own parenting reflect on their behaviour towards the child, on the quality of the parent-child relationship and on the child's development. Parenting stress has a negative impact on parents' actions; research has shown that parents who punish their children feel more efficient in their educational role, although this does not mean that they act to the benefit of the child.

It is therefore necessary to:

- *provide support to parents in the development of preventive, stimulating education activities and in the critical assessment of their own actions;*
 - *take account of parenting stress, especially of its relation to the working role;*
 - *make parents aware that, if they feel effective and efficient in their parenting activities, this does not always mean that they act to the benefit of the child.*
7. The tendency to consider vaccination as belonging to the area of parental choice, rather than as the right of the child, has given a cause for concern. Another worrying fact is that media give coverage to some opponents of vaccination, thus creating a false impression that the medical profession is also divided over these issues, which adds to the confusion of parents. Only a high coverage by vaccination provides protection from disease; the reappearance of measles in some European countries, in addition to being an indication of a decrease in the vaccination coverage, raises further concerns because it primarily affects vulnerable groups.

It is therefore necessary to:

- *provide better quality and more comprehensive information on vaccination to parents, as well as to school principals and health-care professionals in pre-school institutions, in which paediatricians and public health experts play a very important role;*
- *ensure that the decision on a possible change of the modality (from mandatory to the one that leaves more room for choice) is enacted based on serious, comprehensive and several year-long research, when it is assessed that a change of the modality would ensure a high vaccination coverage, and by no means under pressure from parents;*
- *in discussions on whether our society has reached a level of maturity that would leave room for a possible introduction of different modalities of mandatory vaccination always keep in mind that this is above all the right of the child and that it must remain a free service accessible to every child.*

CONCLUSIONS OF THE CRONSEE THEMATIC MEETING: THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON A COMMUNICATIONS PROCEDURE - THE ROLE OF THE OMBUDSMAN FOR CHILDREN

(Osijek, 28 October 2015)

The representatives of the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE) and the organisation Save the Children International (SCI) held a Thematic Meeting to discuss and exchange ideas on the position and role of ombudsmen for children concerning the implementation of the Third Optional Protocol to the Convention on the Rights of the Child. In addition to the Protocol, also discussed were the experiences and practice of the members of the CRONSEE network and the SCI regarding the current refugee crisis and its impact on the protection of the rights of refugee children.

The Conclusions, based on presentations and discussions, present the conditions in the member countries of the CRONSEE network and the current social situation, including the proposals for the protection of the best interests of children.

Conclusions

1) The Third Optional Protocol to the Convention on the Rights of the Child allows children from the states that have ratified it to submit complaints regarding violations of their rights to the UN Committee on the Rights of the Child in cases when they have not been provided adequate protection at the national level. The Protocol came into force in April 2014 and as at the date of this Meeting it had been signed by 50 and ratified by 20 states (including Albania and Montenegro as members of the CRONSEE network). The Republic of Croatia signed the Protocol on 27 December 2013, but it has not ratified it. The representatives of the CRONSEE network agreed to continue to encourage the governments of their countries to sign and ratify the Third Optional Protocol as well as to implement it in line with the best interest of the child.

Therefore, ombudsman institutions should:

- *encourage the governments of the member countries of the CRONSEE network to ratify the Third Optional Protocol;*
- *promote and educate children and adults on children's rights and the ways to protect them, which also concerns the Third Optional Protocol;*
- *develop the possibility to implement and provide free legal aid to children;*
- *examine methods of cooperation with the Committee on the Rights of the Child and of balancing the practice in cases when the Committee requests consultations with an ombudsman regarding a specific complaint submitted by a child.*

2) The second half of 2015 was marked by the exodus of large numbers of refugees from Syria, Afghanistan, Pakistan and other countries and their crossing through South East Europe. For that reason, discussed at the Meeting were the current refugee crisis and the activities and experiences of ombudsman institutions in this regards, as well as the activities of the organisation Save the Children International, which invested significant efforts in the protection of the rights of migrant children. The participants of the Meeting agreed that children were the most vulnerable group in the refugee crisis and the one that was exposed to the highest risk. The representatives of ombudsman for children's offices from member countries of the CRONSEE network through which refugees travel and the representatives of the organisation Save the Children International that visit refuge reception centres raised their concerns regarding the insufficient coordination of activities of the countries on the refugee route.

It is therefore necessary:

- *that all countries facing this huge problem invest the strongest possible efforts in children protection;*
- *to recommend to the governments of the member countries of the CRONSEE network on the refuge route to improve the exchange of information and coordination in protecting the rights and fulfilling the needs of refugees and providing timely assistance and protection to children.*

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Committee on the Rights of the Child

**General comment No. 14 (2013) on the right of the child to have
his or her best interests taken as a primary consideration
(art. 3, para. 1)^{1*}**

^{1*} Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Convention on the Rights of the Child (art. 3, para. 1)

I. Introduction

A. *The best interests of the child: a right, a principle and a rule of procedure*

1. Article 3, paragraph 1, of the Convention on the Rights of the Child gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Moreover, it expresses one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 3, paragraph 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child,² and applies it as a dynamic concept that requires an assessment appropriate to the specific context.
2. The concept of the “child’s best interests” is not new. Indeed, it pre-dates the Convention and was already enshrined in the 1959 Declaration of the Rights of the Child (para. 2), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 5 (b) and 16, para. 1 (d)), as well as in regional instruments and many national and international laws.
3. The Convention also explicitly refers to the child’s best interests in other articles: article 9: separation from parents; article 10: family reunification; article 18: parental responsibilities; article 20: deprivation of family environment and alternative care; article 21: adoption; article 37(c): separation from adults in detention; article 40, paragraph 2 (b) (iii): procedural guarantees, including presence of parents at court hearings for penal matters involving children in conflict with the law. Reference is also made to the child’s best interests in the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (preamble and art. 8) and in the Optional Protocol to the Convention on a communications procedure (preamble and arts. 2 and 3).
4. The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.³ The Committee has already pointed out⁴ that “an adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.” It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the “child’s best interests” and no right could be compromised by a negative interpretation of the child’s best interests.
5. The full application of the concept of the child’s best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.

² The Committee’s general comment No. 5 (2003) on the general measures of implementation of the Convention on the Rights of the Child, para. 12; and No. 12 (2009) on the right of the child to be heard, para. 2.

³ The Committee expects States to interpret development as a “holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development” (general comment No. 5, para. 12).

⁴ General comment No. 13 (2011) on the right to protection from all forms of violence, para. 61.

6. The Committee underlines that the child's best interests is a threefold concept:
 - (a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.
 - (b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.
 - (c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.
7. In the present general comment, the expression "the child's best interests" or "the best interests of the child" covers the three dimensions developed above.

B. Structure

8. The scope of the present general comment is limited to article 3, paragraph 1, of the Convention and does not cover article 3, paragraph 2, which pertains to the well-being of the child, nor article 3, paragraph 3, which concerns the obligation of States parties to ensure that institutions, services and facilities for children comply with the established standards, and that mechanisms are in place to ensure that the standards are respected.
9. The Committee states the objectives (chapter II) of the present general comment and presents the nature and scope of the obligation of States parties (chapter III). It also provides a legal analysis of article 3, paragraph 1 (chapter IV), showing the links to other general principles of the Convention. Chapter V is dedicated to the implementation, in practice, of the principle of best interests of the child, while chapter VI provides guidelines on disseminating the general comment.

II. Objectives

10. The present general comment seeks to ensure the application of and respect for the best interests of the child by the States parties to the Convention. It defines the requirements for due consideration, especially in judicial and administrative decisions as well as in other actions concerning the child as an individual, and at all stages of the adoption of laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives and guidelines - that is, all implementation measures - concerning children in general or as a specific group. The Committee expects that this general comment will guide decisions by all those concerned with children, including parents and caregivers.

11. The best interests of the child is a dynamic concept that encompasses various issues which are continuously evolving. The present general comment provides a framework for assessing and determining the child's best interests; it does not attempt to prescribe what is best for the child in any given situation at any point in time.
12. The main objective of this general comment is to strengthen the understanding and application of the right of children to have their best interests assessed and taken as a primary consideration or, in some cases, the paramount consideration (see paragraph 38 below). Its overall objective is to promote a real change in attitudes leading to the full respect of children as rights holders. More specifically, this has implications for:
 - (a) The elaboration of all implementation measures taken by governments;
 - (b) Individual decisions made by judicial or administrative authorities or public entities through their agents that concern one or more identified children;
 - (c) Decisions made by civil society entities and the private sector, including profit and non-profit organizations, which provide services concerning or impacting on children;
 - (d) Guidelines for actions undertaken by persons working with and for children, including parents and caregivers.

III. Nature and scope of the obligations of States parties

13. Each State party must respect and implement the right of the child to have his or her best interests assessed and taken as a primary consideration, and is under the obligation to take all necessary, deliberate and concrete measures for the full implementation of this right.
14. Article 3, paragraph 1, establishes a framework with three different types of obligations for States parties:
 - (a) The obligation to ensure that the child's best interests are appropriately integrated and consistently applied in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children;
 - (b) The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.
 - (c) The obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child.
15. To ensure compliance, States parties should undertake a number of implementation measures in accordance with articles 4, 42 and 44, paragraph 6, of the Convention, and ensure that the best interests of the child are a primary consideration in all actions, including:
 - (a) Reviewing and, where necessary, amending domestic legislation and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child's best interests is reflected and implemented in all national laws and regulations, provincial or territorial legislation, rules governing the operation of private or public institutions providing services or impacting on children, and judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure;
 - (b) Upholding the child's best interests in the coordination and implementation of policies at the national, regional and local levels;

- (c) Establishing mechanisms and procedures for complaints, remedy or redress in order to fully realize the right of the child to have his or her best interests appropriately integrated and consistently applied in all implementation measures, administrative and judicial proceedings relevant to and with an impact on him or her;
 - (d) Upholding the child's best interests in the allocation of national resources for programmes and measures aimed at implementing children's rights, and in activities receiving international assistance or development aid;
 - (e) When establishing, monitoring and evaluating data collection, ensure that the child's best interests are explicitly spelled out and, where required, support research on children's rights issues;
 - (f) Providing information and training on article 3, paragraph 1, and its application in practice to all those making decisions that directly or indirectly impact on children, including professionals and other people working for and with children;
 - (g) Providing appropriate information to children in a language they can understand, and to their families and caregivers, so that they understand the scope of the right protected under article 3, paragraph 1, as well as creating the necessary conditions for children to express their point of view and ensuring that their opinions are given due weight;
 - (h) Combating all negative attitudes and perceptions which impede the full realization of the right of the child to have his or her best interests assessed and taken as a primary consideration, through communication programmes involving mass media and social networks as well as children, in order to have children recognized as rights holders.
16. In giving full effect to the child's best interests, the following parameters should be borne in mind:
- (a) The universal, indivisible, interdependent and interrelated nature of children's rights;
 - (b) Recognition of children as right holders;
 - (c) The global nature and reach of the Convention;
 - (d) The obligation of States parties to respect, protect and fulfill all the rights in the Convention;
 - (e) Short-, medium- and long-term effects of actions related to the development of the child over time.

IV. Legal analysis and links with the general principles of the Convention

A. Legal analysis of article 3, paragraph 1

1. "In all actions concerning children"

(a) "in all actions"

17. Article 3, paragraph 1 seeks to ensure that the right is guaranteed in all decisions and actions concerning children. This means that every action relating to a child or children has to take into account their best interests as a primary consideration. The word "action" does not only include decisions, but also all acts, conduct, proposals, services, procedures and other measures.
18. Inaction or failure to take action and omissions are also "actions", for example, when social welfare authorities fail to take action to protect children from neglect or abuse.

(b) "concerning"

19. The legal duty applies to all decisions and actions that directly or indirectly affect children. Thus, the term "concerning" refers first of all, to measures and decisions directly concerning a child, children as a group

or children in general, and secondly, to other measures that have an effect on an individual child, children as a group or children in general, even if they are not the direct targets of the measure. As stated in the Committee's general comment No. 7 (2005), such actions include those aimed at children (e.g. related to health, care or education), as well as actions which include children and other population groups (e.g. related to the environment, housing or transport) (para. 13 (b)). Therefore, "concerning" must be understood in a very broad sense.

20. Indeed, all actions taken by a State affect children in one way or another. This does not mean that every action taken by the State needs to incorporate a full and formal process of assessing and determining the best interests of the child. However, where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures to consider their best interests is appropriate.

Thus, in relation to measures that are not directly aimed at the child or children, the term "concerning" would need to be clarified in the light of the circumstances of each case in order to be able to appreciate the impact of the action on the child or children.

(c) "children"

21. The term "children" refers to all persons under the age of 18 within the jurisdiction of a State party, without discrimination of any kind, in line with articles 1 and 2 of the Convention.
22. Article 3, paragraph 1, applies to children as individuals and places an obligation on States parties to assess and take the child's best interests as a primary consideration in individual decisions.
23. However, the term "children" implies that the right to have their best interests duly considered applies to children not only as individuals, but also in general or as a group. Accordingly, States have the obligation to assess and take as a primary consideration the best interests of children as a group or in general in all actions concerning them. This is particularly evident for all implementation measures. The Committee⁵ underlines that the child's best interests is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights.
24. That is not to say that in a decision concerning an individual child, his or her interests must be understood as being the same as those of children in general. Rather, article 3, paragraph 1, implies that the best interests of a child must be assessed individually. Procedures for establishing the best interests of children individually and as a group can be found in chapter V below.

2. *"By public or private social welfare institutions, courts of law, administrative authorities or legislative bodies"*

25. The obligation of the States to duly consider the child's best interests is a comprehensive obligation encompassing all public and private social welfare institutions, courts of law, administrative authorities and legislative bodies involving or concerning children. Although parents are not explicitly mentioned in article 3, paragraph 1, the best interests of the child "will be their basic concern" (art. 18, para. 1).

(a) "public or private social welfare institutions"

26. These terms should not be narrowly construed or limited to social institutions *stricto sensu*, but should be understood to mean all institutions whose work and decisions impact on children and the

⁵ General comment No.11 (2009) on indigenous children and their rights under the Convention, para. 30.

realization of their rights. Such institutions include not only those related to economic, social and cultural rights (e.g. care, health, environment, education, business, leisure and play, etc.), but also institutions dealing with civil rights and freedoms (e.g. birth registration, protection against violence in all settings, etc.). Private social welfare institutions include private sector organizations - either for-profit or non-profit - which play a role in the provision of services that are critical to children's enjoyment of their rights, and which act on behalf of or alongside Government services as an alternative.

(b) "courts of law"

27. The Committee underlines that "courts" refer to all judicial proceedings, in all instances - whether staffed by professional judges or lay persons - and all relevant procedures concerning children, without restriction. This includes conciliation, mediation and arbitration processes.
28. In criminal cases, the best interests principle applies to children in conflict (i.e. alleged, accused or recognized as having infringed) or in contact (as victims or witnesses) with the law, as well as children affected by the situation of their parents in conflict with the law. The Committee⁶ underlines that protecting the child's best interests means that the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives, when dealing with child offenders.
29. In civil cases, the child may be defending his or her interests directly or through a representative, in the case of paternity, child abuse or neglect, family reunification, accommodation, etc. The child may be affected by the trial, for example in procedures concerning adoption or divorce, decisions regarding custody, residence, contact or other issues which have an important impact on the life and development of the child, as well as child abuse or neglect proceedings. The courts must provide for the best interests of the child to be considered in all such situations and decisions, whether of a procedural or substantive nature, and must demonstrate that they have effectively done so.

(c) "administrative authorities"

30. The Committee emphasizes that the scope of decisions made by administrative authorities at all levels is very broad, covering decisions concerning education, care, health, the environment, living conditions, protection, asylum, immigration, access to nationality, among others. Individual decisions taken by administrative authorities in these areas must be assessed and guided by the best interests of the child, as for all implementation measures.

(d) "legislative bodies"

31. The extension of States parties' obligation to their "legislative bodies" shows clearly that article 3, paragraph 1, relates to children in general, not only to children as individuals. The adoption of any law or regulation as well as collective agreements - such as bilateral or multilateral trade or peace treaties which affect children - should be governed by the best interests of the child. The right of the child to have his or her best interests assessed and taken as a primary consideration should be explicitly included in all relevant legislation, not only in laws that specifically concern children. This obligation extends also to the approval of budgets, the preparation and development of which require the adoption of a best-interests-of-the-child perspective for it to be child-rights sensitive.

6 General comment No. 10 (2007) on children's rights in juvenile justice, para. 10.

3. “The best interests of the child”

32. The concept of the child’s best interests is complex and its content must be determined on a case-by-case basis. It is through the interpretation and implementation of article 3, paragraph 1, in line with the other provisions of the Convention, that the legislator, judge, administrative, social or educational authority will be able to clarify the concept and make concrete use thereof. Accordingly, the concept of the child’s best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child’s best interests must be assessed and determined in light of the specific circumstances of the particular child. For collective decisions - such as by the legislator -, the best interests of children in general must be assessed and determined in light of the circumstances of the particular group and/or children in general. In both cases, assessment and determination should be carried out with full respect for the rights contained in the Convention and its Optional Protocols.
33. The child’s best interests shall be applied to all matters concerning the child or children, and taken into account to resolve any possible conflicts among the rights enshrined in the Convention or other human rights treaties. Attention must be placed on identifying possible solutions which are in the child’s best interests. This implies that States are under the obligation to clarify the best interests of all children, including those in vulnerable situations, when adopting implementation measures.
34. The flexibility of the concept of the child’s best interests allows it to be responsive to the situation of individual children and to evolve knowledge about child development. However, it may also leave room for manipulation; the concept of the child’s best interests has been abused by Governments and other State authorities to justify racist policies, for example; by parents to defend their own interests in custody disputes; by professionals who could not be bothered, and who dismiss the assessment of the child’s best interests as irrelevant or unimportant.
35. With regard to implementation measures, ensuring that the best interests of the child are a primary consideration in legislation and policy development and delivery at all levels of Government demands a continuous process of child rights impact assessment (CRIA) to predict the impact of any proposed law, policy or budgetary allocation on children and the enjoyment of their rights, and child rights impact evaluation to evaluate the actual impact of implementation.⁷

4. “*Shall be a primary consideration*”

36. The best interests of a child shall be a primary consideration in the adoption of all measures of implementation. The words “shall be” place a strong legal obligation on States and mean that States may not exercise discretion as to whether children’s best interests are to be assessed and ascribed the proper weight as a primary consideration in any action undertaken.
37. The expression “primary consideration” means that the child’s best interests may not be considered on the same level as all other considerations. This strong position is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked.

⁷ General comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 45.

38. In respect of adoption (art. 21), the right of best interests is further strengthened; it is not simply to be “a primary consideration” but “the paramount consideration”. Indeed, the best interests of the child are to be the determining factor when taking a decision on adoption, but also on other issues.
39. However, since article 3, paragraph 1, covers a wide range of situations, the Committee recognizes the need for a degree of flexibility in its application. The best interests of the child - once assessed and determined - might conflict with other interests or rights (e.g. of other children, the public, parents, etc.). Potential conflicts between the best interests of a child, considered individually, and those of a group of children or children in general have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child’s best interests. If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child’s interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.
40. Viewing the best interests of the child as “primary” requires a consciousness about the place that children’s interests must occupy in all actions and a willingness to give priority to those interests in all circumstances, but especially when an action has an undeniable impact on the children concerned.

B. The best interests of the child and links with other general principles of the Convention

1. *The child’s best interests and the right to non-discrimination (art. 2)*
41. The right to non-discrimination is not a passive obligation, prohibiting all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality.
2. *The child’s best interests and the right to life, survival and development (art. 6)*
42. States must create an environment that respects human dignity and ensures the holistic development of every child. In the assessment and determination of the child’s best interests, the State must ensure full respect for his or her inherent right to life, survival and development.
3. *The child’s best interests and the right to be heard (art. 12)*
43. Assessment of a child’s best interests must include respect for the child’s right to express his or her views freely and due weight given to said views in all matters affecting the child. This is clearly set out in the Committee’s general comment No. 12 which also highlights the inextricable links between articles 3, paragraph 1, and 12. The two articles have complementary roles: the first aims to realize the child’s best interests, and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests. Article 3, paragraph 1, cannot be correctly applied if the requirements of article 12 are not met. Similarly, article 3, paragraph 1, reinforces the functionality of article 12, by facilitating the essential role of children in all decisions affecting their lives⁹.

⁹ *Ibid.*, para. 84.

⁸ General comment No. 12, paras. 70-74.

44. The evolving capacities of the child (art. 5) must be taken into consideration when the child's best interests and right to be heard are at stake. The Committee has already established that the more the child knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for him or her have to transform direction and guidance into reminders and advice, and later to an exchange on an equal footing.⁹ Similarly, as the child matures, his or her views shall have increasing weight in the assessment of his or her best interests. Babies and very young children have the same rights as all children to have their best interests assessed, even if they cannot express their views or represent themselves in the same way as older children. States must ensure appropriate arrangements, including representation, when appropriate, for the assessment of their best interests; the same applies for children who are not able or willing to express a view.
45. The Committee recalls that article 12, paragraph 2, of the Convention provides for the right of the child to be heard, either directly or through a representative, in any judicial or administrative proceeding affecting him or her (see further chapter V.B below).

V. Implementation: assessing and determining the child's best interests

46. As stated earlier, the "best interests of the child" is a right, a principle and a rule of procedure based on an assessment of all elements of a child's or children's interests in a specific situation. When assessing and determining the best interests of the child in order to make a decision on a specific measure, the following steps should be followed:
 - (a) First, within the specific factual context of the case, find out what are the relevant elements in a best-interests assessment, give them concrete content, and assign a weight to each in relation to one another;
 - (b) Secondly, to do so, follow a procedure that ensures legal guarantees and proper application of the right.
47. Assessment and determination of the child's best interests are two steps to be followed when required to make a decision. The "best-interests assessment" consists in evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children. It is carried out by the decision-maker and his or her staff - if possible a multidisciplinary team -, and requires the participation of the child. The "best-interests determination" describes the formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment.

A. Best interests assessment and determination

48. Assessing the child's best interests is a unique activity that should be undertaken in each individual case, in the light of the specific circumstances of each child or group of children or children in general. These circumstances relate to the individual characteristics of the child or children concerned, such as, inter alia, age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context in which the child or children find themselves, such as the presence or absence of parents, whether the child lives with them, quality of the relationships between the child and his or her family or caregivers, the environment in relation to safety, the existence of quality alternative means available to the family, extended family or caregivers, etc.
49. Determining what is in the best interests of the child should start with an assessment of the specific circumstances that make the child unique. This implies that some elements will be used and others will not, and also influences how they will be weighted against each other. For children in general, assessing best interests involves the same elements.

50. The Committee considers it useful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in a best-interests assessment by any decision-maker having to determine a child's best interests. The non-exhaustive nature of the elements in the list implies that it is possible to go beyond those and consider other factors relevant in the specific circumstances of the individual child or group of children. All the elements of the list must be taken into consideration and balanced in light of each situation. The list should provide concrete guidance, yet flexibility.
51. Drawing up such a list of elements would provide guidance for the State or decision-maker in regulating specific areas affecting children, such as family, adoption and juvenile justice laws, and if necessary, other elements deemed appropriate in accordance with its legal tradition may be added. The Committee would like to point out that, when adding elements to the list, the ultimate purpose of the child's best interests should be to ensure the full and effective enjoyment of the rights recognized in the Convention and the holistic development of the child. Consequently, elements that are contrary to the rights enshrined in the Convention or that would have an effect contrary to the rights under the Convention cannot be considered as valid in assessing what is best for a child or children.
1. *Elements to be taken into account when assessing the child's best interests*
52. Based on these preliminary considerations, the Committee considers that the elements to be taken into account when assessing and determining the child's best interests, as relevant to the situation in question, are as follows:
- (a) The child's views
53. Article 12 of the Convention provides for the right of children to express their views in every decision that affects them. Any decision that does not take into account the child's views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence the determination of their best interests.
54. The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests. The adoption of specific measures to guarantee the exercise of equal rights for children in such situations must be subject to an individual assessment which assures a role to the children themselves in the decision-making process, and the provision of reasonable accommodation¹⁰ and support, where necessary, to ensure their full participation in the assessment of their best interests.
- (b) The child's identity
55. Children are not a homogeneous group and therefore diversity must be taken into account when assessing their best interests. The identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality. Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities. The right of the child to preserve his

¹⁰ See Convention on the Rights of Persons with Disabilities, art. 2: "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure [...] the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

or her identity is guaranteed by the Convention (art. 8) and must be respected and taken into consideration in the assessment of the child's best interests.

56. Regarding religious and cultural identity, for example, when considering a foster home or placement for a child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (art. 20, para. 3), and the decision-maker must take into consideration this specific context when assessing and determining the child's best interests. The same applies in cases of adoption, separation from or divorce of parents. Due consideration of the child's best interests implies that children have access to the culture (and language, if possible) of their country and family of origin, and the opportunity to access information about their biological family, in accordance with the legal and professional regulations of the given country (see art. 9, para. 4).
57. Although preservation of religious and cultural values and traditions as part of the identity of the child must be taken into consideration, practices that are inconsistent or incompatible with the rights established in the Convention are not in the child's best interests. Cultural identity cannot excuse or justify the perpetuation by decision-makers and authorities of traditions and cultural values that deny the child or children the rights guaranteed by the Convention.

(c) Preservation of the family environment and maintaining relations

58. The Committee recalls that it is indispensable to carry out the assessment and determination of the child's best interests in the context of potential separation of a child from his or her parents (arts. 9, 18 and 20). It also underscores that the elements mentioned above are concrete rights and not only elements in the determination of the best interests of the child.
59. The family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children (preamble of the Convention). The right of the child to family life is protected under the Convention (art. 16). The term "family" must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom (art. 5).
60. Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires "that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child". Furthermore, the child who is separated from one or both parents is entitled "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" (art. 9, para. 3). This also extends to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.
61. Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their

11 General Assembly resolution 64/142, annex.

12 Convention on the Rights of Persons with Disabilities, art. 23, para. 4.

parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents.

62. The Guidelines for the Alternative Care of Children¹¹ aims to ensure that children are not placed in alternative care unnecessarily; and that where alternative care is provided, it is delivered under appropriate conditions responding to the rights and best interests of the child. In particular, "financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care [...] but should be seen as a signal for the need to provide appropriate support to the family" (para. 15).
63. Likewise, a child may not be separated from his or her parents on the grounds of a disability of either the child or his or her parents.¹² Separation may be considered only in cases where the necessary assistance to the family to preserve the family unit is not effective enough to avoid a risk of neglect or abandonment of the child or a risk to the child's safety.
64. In case of separation, the State must guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with article 9 of the Convention, ensuring that no other option can fulfil the child's best interests.
65. When separation becomes necessary, the decision-makers shall ensure that the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child's best interests. The quality of the relationships and the need to retain them must be taken into consideration in decisions on the frequency and length of visits and other contact when a child is placed outside the family.
66. When the child's relations with his or her parents are interrupted by migration (of the parents without the child, or of the child without his or her parents), preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification.
67. The Committee is of the view that shared parental responsibilities are generally in the child's best interests. However, in decisions regarding parental responsibilities, the only criterion shall be what is in the best interests of the particular child. It is contrary to those interests if the law automatically gives parental responsibilities to either or both parents. In assessing the child's best interests, the judge must take into consideration the right of the child to preserve his or her relationship with both parents, together with the other elements relevant to the case.
68. The Committee encourages the ratification and implementation of the conventions of the Hague Conference on Private International Law,¹³ which facilitate the application of the child's best interests and provide guarantees for its implementation in the event that the parents live in different countries.
69. In cases where the parents or other primary caregivers commit an offence, alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interests of the affected child or children.¹⁴
70. Preservation of the family environment encompasses the preservation of the ties of the child in a wider

13 These include No. 28 on the Civil Aspects of International Child Abduction, 1980; No. 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption, 1993; No. 23 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, 1973; No. 24 on the Law Applicable to Maintenance Obligations, 1973.

14 See recommendations of the Day of general discussion on children of incarcerated parents (2011).

15 General comment No. 13 (2011) on the right of the child to freedom from all forms of violence.

sense. These ties apply to the extended family, such as grandparents, uncles/aunts as well friends, school and the wider environment and are particularly relevant in cases where parents are separated and live in different places.

(d) Care, protection and safety of the child

71. When assessing and determining the best interests of a child or children in general, the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being (art. 3, para. 2) should be taken into consideration. The terms “protection and care” must also be read in a broad sense, since their objective is not stated in limited or negative terms (such as “to protect the child from harm”), but rather in relation to the comprehensive ideal of ensuring the child’s “well-being” and development. Children’s well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety.
72. Emotional care is a basic need of children; if parents or other primary caregivers do not fulfil the child’s emotional needs, action must be taken so that the child develops a secure attachment. Children need to form an attachment to a caregiver at a very early age, and such attachment, if adequate, must be sustained over time in order to provide the child with a stable environment.
73. Assessment of the child’s best interests must also include consideration of the child’s safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse (art. 19), sexual harassment, peer pressure, bullying, degrading treatment, etc.,¹⁶ as well as protection against sexual, economic and other exploitation, drugs, labour, armed conflict, etc.(arts. 32-39).
74. Applying a best-interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child’s safety.

(e) Situation of vulnerability

75. An important element to consider is the child’s situation of vulnerability, such as disability, belonging to a minority group, being a refugee or asylum seeker, victim of abuse, living in a street situation, etc. The purpose of determining the best interests of a child or children in a vulnerable situation should not only be in relation to the full enjoyment of all the rights provided for in the Convention, but also with regard to other human rights norms related to these specific situations, such as those covered in the Convention on the Rights of Persons with Disabilities, the Convention relating to the Status of Refugees, among others.
76. The best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation. Authorities and decision-makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child’s uniqueness. An individualized assessment of each child’s history from birth should be carried out, with regular reviews by a multidisciplinary team and recommended reasonable accommodation throughout the child’s development process.

¹⁶ General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) para. 31.

¹⁷ General comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.

(f) The child's right to health

77. The child's right to health (art. 24) and his or her health condition are central in assessing the child's best interest. However, if there is more than one possible treatment for a health condition or if the outcome of a treatment is uncertain, the advantages of all possible treatments must be weighed against all possible risks and side effects, and the views of the child must also be given due weight based on his or her age and maturity. In this respect, children should be provided with adequate and appropriate information in order to understand the situation and all the relevant aspects in relation to their interests, and be allowed, when possible, to give their consent in an informed manner.¹⁶

78. For example, as regards adolescent health, the Committee¹⁷ has stated that States parties have the obligation to ensure that all adolescents, both in and out of school, have access to adequate information that is essential for their health and development in order to make appropriate health behaviour choices. This should include information on use and abuse of tobacco, alcohol and other substances, diet, appropriate sexual and reproductive information, dangers of early pregnancy, prevention of HIV/AIDS and of sexually transmitted diseases. Adolescents with a psycho-social disorder have the right to be treated and cared for in the community in which he or she lives, to the extent possible. Where hospitalization or placement in a residential institution is necessary, the best interests of the child must be assessed prior to taking a decision and with respect for the child's views; the same considerations are valid for younger children. The health of the child and possibilities for treatment may also be part of a best-interests assessment and determination with regard to other types of significant decisions (e.g. granting a residence permit on humanitarian grounds).

(g) The child's right to education

79. It is in the best interests of the child to have access to quality education, including early childhood education, non-formal or informal education and related activities, free of charge. All decisions on measures and actions concerning a specific child or a group of children must respect the best interests of the child or children, with regard to education. In order to promote education, or better quality education, for more children, States parties need to have well-trained teachers and other professionals working in different education-related settings, as well as a child-friendly environment and appropriate teaching and learning methods, taking into consideration that education is not only an investment in the future, but also an opportunity for joyful activities, respect, participation and fulfilment of ambitions. Responding to this requirement and enhancing children's responsibilities to overcome the limitations of their vulnerability of any kind, will be in their best interests.

2. *Balancing the elements in the best-interests assessment*

80. It should be emphasized that the basic best-interests assessment is a general assessment of all relevant elements of the child's best interests, the weight of each element depending on the others. Not all the elements will be relevant to every case, and different elements can be used in different ways in different cases. The content of each element will necessarily vary from child to child and from case to case, depending on the type of decision and the concrete circumstances, as will the importance of each element in the overall assessment.

81. The elements in the best-interests assessment may be in conflict when considering a specific case and its circumstances. For example, preservation of the family environment may conflict with the need to protect the child from the risk of violence or abuse by parents. In such situations, the elements will have to

be weighted against each other in order to find the solution that is in the best interests of the child or children.

82. In weighing the various elements, one needs to bear in mind that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention and its Optional Protocols, and the holistic development of the child.
83. There might be situations where “protection” factors affecting a child (e.g. which may imply limitation or restriction of rights) need to be assessed in relation to measures of “empowerment” (which implies full exercise of rights without restriction). In such situations, the age and maturity of the child should guide the balancing of the elements. The physical, emotional, cognitive and social development of the child should be taken into account to assess the level of maturity of the child.
84. In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions. To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child’s development, and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child’s present and future situation.

B. Procedural safeguards to guarantee the implementation of the child’s best interests

85. To ensure the correct implementation of the child’s right to have his or her best interests taken as a primary consideration, some child-friendly procedural safeguards must be put in place and followed. As such, the concept of the child’s best interests is a rule of procedure (see para. 6 (b) above).
86. While public authorities and organizations making decisions that concern children must act in conformity with the obligation to assess and determine the child’s best interests, people who make decisions concerning children on a daily basis (e.g. parents, guardians, teachers, etc.) are not expected to follow strictly this two-step procedure, even though decisions made in everyday life must also respect and reflect the child’s best interests.
87. States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child’s best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children.
88. The Committee invites States and all persons who are in a position to assess and determine the child’s best interests to pay special attention to the following safeguards and guarantees:
 - (a) Right of the child to express his or her own views
89. A vital element of the process is communicating with children to facilitate meaningful child participation and identify their best interests. Such communication should include informing children about the process and possible sustainable solutions and services, as well as collecting information from children and seeking their views.
90. Where the child wishes to express his or her views and where this right is fulfilled through a representative, the latter’s obligation is to communicate accurately the views of the child. In situations where the child’s views are in conflict with those of his or her representative, a procedure should be established to allow the child to approach an authority to establish a separate representation for the child (e.g. a guardian ad litem), if necessary.

91. The procedure for assessing and determining the best interests of children as a group is, to some extent, different from that regarding an individual child. When the interests of a large number of children are at stake, Government institutions must find ways to hear the views of a representative sample of children and give due consideration to their opinions when planning measures or making legislative decisions which directly or indirectly concern the group, in order to ensure that all categories of children are covered. There are many examples of how to do this, including children's hearings, children's parliaments, children-led organizations, children's unions or other representative bodies, discussions at school, social networking websites, etc.
- (b) Establishment of facts
92. Facts and information relevant to a particular case must be obtained by well-trained professionals in order to draw up all the elements necessary for the best-interests assessment. This could involve interviewing persons close to the child, other people who are in contact with the child on a daily basis, witnesses to certain incidents, among others. Information and data gathered must be verified and analysed prior to being used in the child's or children's best-interests assessment.
- (c) Time perception
93. The passing of time is not perceived in the same way by children and adults. Delays in or prolonged decision-making have particularly adverse effects on children as they evolve. It is therefore advisable that procedures or processes regarding or impacting children be prioritized and completed in the shortest time possible. The timing of the decision should, as far as possible, correspond to the child's perception of how it can benefit him or her, and the decisions taken should be reviewed at reasonable intervals as the child develops and his or her capacity to express his or her views evolves. All decisions on care, treatment, placement and other measures concerning the child must be reviewed periodically in terms of his or her perception of time, and his or her evolving capacities and development (art. 25).
- (d) Qualified professionals
94. Children are a diverse group, with each having his or her own characteristics and needs that can only be adequately assessed by professionals who have expertise in matters related to child and adolescent development. This is why the formal assessment process should be carried out in a friendly and safe atmosphere by professionals trained in, inter alia, child psychology, child development and other relevant human and social development fields, who have experience working with children and who will consider the information received in an objective manner. As far as possible, a multidisciplinary team of professionals should be involved in assessing the child's best interests.
95. The assessment of the consequences of alternative solutions must be based on general knowledge (i.e. in the areas of law, sociology, education, social work, psychology, health, etc.) of the likely consequences of each possible solution for the child, given his or her individual characteristics and past experience.
- (e) Legal representation
96. The child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies.. In particular, in cases where a child is

18 General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, paras. 78-81.

referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision.

(f) Legal reasoning

97. In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained. The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests. If the decision differs from the views of the child, the reason for that should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child's best interests were a primary consideration despite the result. It is not sufficient to state in general terms that other considerations override the best interests of the child; all considerations must be explicitly specified in relation to the case at hand, and the reason why they carry greater weight in the particular case must be explained. The reasoning must also demonstrate, in a credible way, why the best interests of the child were not strong enough to be outweighed by the other considerations. Account must be taken of those circumstances in which the best interests of the child must be the paramount consideration (see paragraph 38 above).

(g) Mechanisms to review or revise decisions

98. States should establish mechanisms within their legal systems to appeal or revise decisions concerning children when a decision seems not to be in accordance with the appropriate procedure of assessing and determining the child's or children's best interests. There should always be the possibility to request a review or to appeal such a decision at the national level. Mechanisms should be made known to the child and be accessible by him or her directly or by his or her legal representative, if it is considered that the procedural safeguards had not been respected, the facts are wrong, the best-interests assessment had not been adequately carried out or that competing considerations had been given too much weight. The reviewing body must look into all these aspects.

(h) Child-rights impact assessment (CRIA)

99. As mentioned above, the adoption of all measures of implementation should also follow a procedure that ensures that the child's best interests are a primary consideration. The child-rights impact assessment (CRIA) can predict the impact of any proposed policy, legislation, regulation, budget or other administrative decision which affect children and the enjoyment of their rights and should complement ongoing monitoring and evaluation of the impact of measures on children's rights.¹⁹ CRIA needs to be built into Government processes at all levels and as early as possible in the development of policy and other general measures in order to ensure good governance for children's rights. Different methodologies and practices may be developed when undertaking CRIA. At a minimum, they must use the Convention and its Optional Protocols as a framework, in particular ensuring that the assessments are underpinned by the general principles and have special regard for the differentiated impact of the measure(s) under con-

¹⁹ States may draw guidance from the Report of the Special Rapporteur on the right to food on Guiding principles on human rights impact assessments of trade and investment agreements (A/HRC/19/59/Add.5).

sideration on children. The impact assessment itself could be based on input from children, civil society and experts, as well as from relevant Government departments, academic research and experiences documented in the country or elsewhere. The analysis should result in recommendations for amendments, alternatives and improvements and be made publicly available.¹⁹

VI. Dissemination

100. The Committee recommends that States widely disseminate the present general comment to parliaments, governments and the judiciary, nationally and locally. It should also be made known to children - including those in situations of exclusion -, all professionals working for and with children (including judges, lawyers, teachers, guardians, social workers, staff of public or private welfare institutions, health staff, teachers, etc.) and civil society at large. To do this, the general comment should be translated into relevant languages, child-friendly/appropriate versions should be made available, conferences, seminars, workshops and other events should be held to share best practices on how best to implement it. It should also be incorporated into the formal pre- and in-service training of all concerned professionals and technical staff.
101. States should include information in their periodic reporting to the Committee on the challenges they face and the measures they have taken to apply and respect the child's best interests in all judicial and administrative decisions and other actions concerning the child as an individual, as well as at all stages of the adoption of implementation measures concerning children in general or as a specific group.



Resolution adopted by the General Assembly on 19 December 2011
[on the report of the Third Committee (A/66/457)]

Optional Protocol to the Convention on the Rights of the Child on a communications procedure

The General Assembly,

Taking note with appreciation of the adoption by the Human Rights Council, through its resolution 17/18 of 17 June 2011,¹ of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure,

- 1. Adopts the Optional Protocol to the Convention on the Rights of the Child on a communications procedure as contained in the annex to the present resolution;*
- 2. Recommends that the Optional Protocol be opened for signature at a signing ceremony to be held in 2012, and requests the Secretary-General and the United Nations High Commissioner for Human Rights to provide the necessary assistance.*

*89th plenary meeting
19 December 2011*

Annex

Optional Protocol to the Convention on the Rights of the Child on a communications procedure

The States parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Noting that the States parties to the Convention on the Rights of the Child (hereinafter referred to as “the Convention”) recognize the rights set forth in it to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status,

¹ See *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53 (A/66/53)*, chap. I.

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Reaffirming also the status of the child as a subject of rights and as a human being with dignity and with evolving capacities,

Recognizing that children's special and dependent status may create real difficulties for them in pursuing remedies for violations of their rights,

Considering that the present Protocol will reinforce and complement national and regional mechanisms allowing children to submit complaints for violations of their rights,

Recognizing that the best interests of the child should be a primary consideration to be respected in pursuing remedies for violations of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels,

Encouraging States parties to develop appropriate national mechanisms to enable a child whose rights have been violated to have access to effective remedies at the domestic level,

Recalling the important role that national human rights institutions and other relevant specialized institutions, mandated to promote and protect the rights of the child, can play in this regard, “

Considering that, in order to reinforce and complement such national mechanisms and to further enhance the implementation of the Convention and, where applicable, the Optional Protocols thereto on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, it would be appropriate to enable the Committee on the Rights of the Child (hereinafter referred to as “the Committee”) to carry out the functions provided for in the present Protocol,

Have agreed as follows:

Part I General provisions

Article 1

Competence of the Committee on the Rights of the Child

1. A State party to the present Protocol recognizes the competence of the Committee as provided for by the present Protocol.
2. The Committee shall not exercise its competence regarding a State party to the present Protocol on matters concerning violations of rights set forth in an instrument to which that State is not a party.
3. No communication shall be received by the Committee if it concerns a State that is not a party to the present Protocol.

Article 2

General principles guiding the functions of the Committee

In fulfilling the functions conferred on it by the present Protocol, the Committee shall be guided by the principle of the best interests of the child. It shall also have regard for the rights and views of the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 3

Rules of procedure

1. The Committee shall adopt rules of procedure to be followed when exercising the functions conferred on it by the present Protocol. In doing so, it shall have regard, in particular, for article 2 of the present Protocol in order to guarantee child-sensitive procedures.
2. The Committee shall include in its rules of procedure safeguards to prevent the manipulation of the child by those acting on his or her behalf and may decline to examine any communication that it considers not to be in the child's best interests.

Article 4

Protection measures

1. A State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee pursuant to the present Protocol.
2. The identity of any individual or group of individuals concerned shall not be revealed publicly without their express consent.

Part II

Communications procedure

Article 5

Individual communications

1. Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments to which that State is a party:
 - (a) The Convention;
 - (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
 - (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.
2. Where a communication is submitted on behalf of an individual or group of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 6

Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 7

Admissibility

The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication is not in writing;
- (c) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention and/or the Optional Protocols thereto;
- (d) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (e) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- (f) The communication is manifestly ill-founded or not sufficiently substantiated;
- (g) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State party concerned, unless those facts continued after that date;
- (h) The communication is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit.

Article 8

Transmission of the communication

1. Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State party concerned as soon as possible.
2. The State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. The State party shall submit its response as soon as possible and within six months.

Article 9

Friendly settlement

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the obligations set forth in the Convention and/or the Optional Protocols thereto.
2. An agreement on a friendly settlement reached under the auspices of the Committee closes consideration of the communication under the present Protocol.

Article 10

Consideration of communications

1. The Committee shall consider communications received under the present Protocol as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications received under the present Protocol.
3. Where the Committee has requested interim measures, it shall expedite the consideration of the communication.
4. When examining communications alleging violations of economic, social or cultural rights, the Committee shall consider the reasonableness of the steps taken by the State party in accordance with article 4 of the Convention. In doing so, the Committee shall bear in mind that the State party may adopt a range of possible policy measures for the implementation of the economic, social and cultural rights in the Convention.
5. After examining a communication, the Committee shall, without delay, transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

Article 11

Follow-up

1. The State party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee a written response, including information on any action taken and envisaged in the light of the views and recommendations of the Committee. The State party shall submit its response as soon as possible and within six months.
2. The Committee may invite the State party to submit further information about any measures the State party has taken in response to its views or recommendations or implementation of a friendly settlement agreement, if any, including as deemed appropriate by the Committee, in the State party's subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, where applicable.

Article 12

Inter-State communications

1. A State party to the present Protocol may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under any of the following instruments to which the State is a party:
 - (a) The Convention;
 - (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
 - (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.
2. The Committee shall not receive communications concerning a State party that has not made such a declaration or communications from a State party that has not made such a declaration.
3. The Committee shall make available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Convention and the Optional Protocols thereto.
4. A declaration under paragraph 1 of the present article shall be deposited by the States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States

parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communications by any State party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party concerned has made a new declaration.

Part III **Inquiry procedure**

Article 13

Inquiry procedure for grave or systematic violations

1. If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention or in the Optional Protocols thereto on the sale of children, child prostitution and child pornography or on the involvement of children in armed conflict, the Committee shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State party concerned, as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory.
3. Such an inquiry shall be conducted confidentially, and the cooperation of the State party shall be sought at all stages of the proceedings.
4. After examining the findings of such an inquiry, the Committee shall transmit without delay these findings to the State party concerned, together with any comments and recommendations.
5. The State party concerned shall, as soon as possible and within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
6. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the proceedings in its report provided for in article 16 of the present Protocol.
7. Each State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in the present article in respect of the rights set forth in some or all of the instruments listed in paragraph 1.
8. Any State party having made a declaration in accordance with paragraph 7 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General of the United Nations.

Article 14

Follow-up to the inquiry procedure

1. The Committee may, if necessary, after the end of the period of six months referred to in article 13, paragraph 5, invite the State party concerned to inform it of the measures taken and envisaged in response to an inquiry conducted under article 13 of the present Protocol.

2. The Committee may invite the State party to submit further information about any measures that the State party has taken in response to an inquiry conducted under article 13, including as deemed appropriate by the Committee, in the State party's subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, where applicable.

Part IV

Final provisions

Article 15

International assistance and cooperation

1. The Committee may transmit, with the consent of the State party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, together with the State party's observations and suggestions, if any, on these views or recommendations.
2. The Committee may also bring to the attention of such bodies, with the consent of the State party concerned, any matter arising out of communications considered under the present Protocol that may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States parties in achieving progress in the implementation of the rights recognized in the Convention and/or the Optional Protocols thereto.

Article 16

Report to the General Assembly

The Committee shall include in its report submitted every two years to the General Assembly in accordance with article 44, paragraph 5, of the Convention a summary of its activities under the present Protocol.

Article 17

Dissemination of and information on the Optional Protocol

Each State party undertakes to make widely known and to disseminate the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular with regard to matters involving the State party, by appropriate and active means and in accessible formats to adults and children alike, including those with disabilities.

Article 18

Signature, ratification and accession

1. The present Protocol is open for signature to any State that has signed, ratified or acceded to the Convention or either of the first two Optional Protocols thereto.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

Article 19

Entry into force

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 20

Violations occurring after the entry into force

1. The Committee shall have competence solely in respect of violations by the State party of any of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol.
2. If a State becomes a party to the present Protocol after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to violations of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol for the State concerned.

Article 21

Amendments

1. Any State party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States parties with a request to be notified whether they favour a meeting of States parties for the purpose of considering and deciding upon the proposals. In the event that, within four months of the date of such communication, at least one third of the States parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and, thereafter, to all States parties for acceptance.
2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States parties that have accepted it.

Article 22

Denunciation

1. Any State party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 5 or 12 or any inquiry initiated under article 13 before the effective date of denunciation.

Article 23

Depositary and notification by the Secretary-General

1. The Secretary-General of the United Nations shall be the depositary of the present Protocol.
2. The Secretary-General shall inform all States of:
 - (a) Signatures, ratifications and accessions under the present Protocol;
 - (b) The date of entry into force of the present Protocol and of any amendment thereto under article 21;
 - (c) Any denunciation under article 22 of the present Protocol.

Article 24

Languages

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.