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## 2009 Janusz Korczak Lecture

### **“Children in out-of-home care: more prevention, fewer institutions”**

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and given by

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The whole question of care for orphans is directly linked to the life and work of Janusz Korczak. He lost his father in his teens and to a large extent that emotional upheaval determined his way in life as he became the sole breadwinner for his mother and sister. He knew very well what it meant to grow up without a father. It may indeed have been because of his difficult personal experience that he became a director of *Dom Sierot*, the orphanage where he tried to create a family atmosphere of safety, trust and psychological comfort.

Janusz Korczak worked as the Director of *Dom Sierot* for 30 years. The orphanage housed children who had experienced severe hardship. Most of them had lost their parents; they begged and stole. However, Korczak treated them all with understanding and respect. He never sermonised or preached, but enabled children to develop in accordance with the universal concepts of good, honour and justice. Working with orphans led him to develop his fundamental principles for relationships with children and his system of child raising.

The child's right to live and grow up in a family environment is set forth in a major international instrument, the Convention on the Rights of the Child adopted by the UN General Assembly in 1989. The Convention was ratified by the USSR Supreme Soviet and came into force for that country in September 1990.

The Convention laid down new principles for relations between children and adults making children's best interests a primary consideration. It is based on the belief that children should be taken seriously, that their dignity should be respected and their views in all matters affecting them should be given due consideration. In many ways, the provisions of the Convention have much in common with Korczak's educational principles set out in his books *The Child's Right to Respect*, *How to Love a Child* and others.

One of the basic principles of the Convention is the recognition of the child's right to live in a family environment and the family's responsibility for the upbringing of children. The preamble emphasises 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".

Article 7 states that the child "shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents".

Article 9 provides that the state shall ensure that "a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child".

Where, for a given reason, such separation has taken place, the state shall respect the right of the child "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".

The Convention provisions on the family's essential role in the development of a child have become axiomatic. Russian legislation on the child's family and legal status is in compliance with such provisions.

The Constitution of the Russian Federation proclaims that "The basic rights and freedoms of man and the citizen shall be inalienable and shall belong to everyone from birth" and guarantees that "Motherhood, childhood and the family shall be protected by the State". The

family's value and role in the development and upbringing of children are confirmed in Articles 7 and 8.1.

Based on the priority significance of a family for a child, the Family Code of the Russian Federation not only determines the legal basis for family/parental relations but also provides for possible forms of family-based care if a child is deprived of his or her biological family.

Unfortunately, the problem of children being placed in orphanages cannot be resolved in full. There are orphans in every country throughout the world. The main questions are why this is so, how many there are and how children in such situations can be helped.

Children placed in orphanages are a topical issue in Russia. At present, more than 150 000 children there live in residential institutions for orphans and children without parental care. The majority (about 80%) are social orphans: children whose parents have been deprived of their parental rights because of a failure to discharge their parental duties. Many children are placed in infant homes immediately after birth, after a mother has relinquished a new-born child, because the child is sick, because of financial difficulties or out of a mere unwillingness to care for the child.

For a long time residential care was considered the best and most natural form of state care for orphans in Russia. In the mid 1930s it was decided that every parentless child or child abandoned by his or her parents, irrespective of his or her will and consent, should be placed in a special residential institution. In the context of the 1930s such practices did not appear so undesirable. In residential institutions, large numbers of homeless children were provided with proper care and given general education and vocational training. The living conditions in these institutions were mostly spartan, and measures to improve child care focused on improving material support for children's homes and boarding schools. Other forms of care for orphans and children without parental care were not discussed.

In the context of changed economic and social conditions, however, increasingly, the institutional care system has shown itself to be ineffective. Those leaving institutional care are much less prepared for choosing an occupation or coping with the challenges of an independent adult life than their peers. Practice shows that only one in 10 of those who leave institutional care finds a respectable place in society. Moreover, the overall humanisation of social processes also calls for a review of approaches to child care.

In recent years, the President and Government of the Russian Federation have repeatedly addressed the problem of the high number of children deprived of family-based care. In 2006, the then President, Vladimir Putin, in his Message to the Federal Assembly of the Russian Federation, asked the government and the regions to develop a means of reducing the total number of social orphans and considerably reduce the number of children in institutional care. The problem of child placement in orphanages thus became a top priority.

Currently, the focus is on the following basic approaches to reducing the number of children placed in orphanages:

- preservation of the biological family for a child, prevention of child abandonment and relinquishment;
- introduction of new social approaches primarily aimed at family crisis prevention;
- placement of children without parental care in substitute care (foster or guardianship care) and professional case-management to provide assistance and prevent conflicts.

The placement of children in orphanages for social reasons has its roots in the family. The modern family is in crisis: traditional family ties between generations are disrupted, the number of divorces is growing, the level of material support for families with children is decreasing, many parents lead asocial lives and abdicate their parental duties.

Korczak urged us to remember that not all children – indeed far from it – live in a world of fun and happy dreams, that there are “many children who face the harsh and unvarnished truth of the world from their early years”. Therefore, if such placement in orphanages for social reasons is to be prevented, the relevant work should begin in the family, and we should use our best efforts to preserve the family environment for the child and maintain favourable conditions for family care.

Practice shows that timely interventions in cases of emerging social vulnerability have positive implications for changing the family situation and make it possible to reduce the number of children deprived of parental care. Consequently, the focus is now on preventive work with families, to help avoid family crises and provide support for families in overcoming anticipated problems.

This work will be undertaken by family and child social service providers. At present, there are over 3 000 such service providers: social support centres for families and children, social rehabilitation centres for minors, social shelters, rehabilitation centres for children with disabilities and others. In 2008, about 12 000 000 people, half of them minors, were provided with family and child social support services.

Many children have orphan status because their parents are deprived of parental rights. Responsible parenthood is one of the key goals of work carried out with families.

“Parental rights cannot be exercised contrary to the interests of the child. The child’s best interests shall be the primary concern of his or her parents. In exercising their parental rights, parents shall not harm their children’s physical and mental health, or moral development. In bringing up their children, parents must not employ methods entailing negligent, cruel and degrading treatment, abuse or exploitation”. This is how Article 65 of the Family Code of the Russian Federation defines the exercise of parental rights; violation of these provisions leads to the withdrawal of parental rights.

What is understood as “contrary to the interests of the child”? First of all, parents’ inability or unwillingness to satisfy the natural needs of their children, a failure to raise them in compliance with moral and legal norms, neglect or negative influences arising from their asocial way of life.

Parental rights may be withdrawn only by a court decision. This measure is widely applied. In 2007, more than 70 000 children were removed from their parents in this way. There are more and more such decisions each year, but does this have positive results? Is the application of this measure always advisable, and can anything be done to reduce the number of children without parental care?

A life-threatening situation does not emerge overnight. Often, things reach a crisis point over a period of time. In order to reduce the number of cases where parental rights have been withdrawn and so avoid an increase in the number of social orphans, it is essential that preventive action be taken at an early stage.

Social services for families should involve parents in comprehensive support programmes to prevent the situation from reaching a crisis point and maintain family relations. In 2007, there were 274 800 families at risk with 489 500 children who were registered with the social protection agencies.

The withdrawal of parental rights should be used only as a last resort, where there is direct evidence of persistent unwillingness to exercise parental rights and duties and where intensive preventive work with the “dysfunctional” families or poor parent has had no effect.

What are the implications of such a decision for parents and children? Pursuant to Article 71 of the Family Code of the Russian Federation, parents lose all their rights deriving from their relationship to the child. Some “poor parents” consider the removal of responsibility for bringing up their child as a blessing. For a child, however, losing one’s parents is the source of particular stress, as it demands a capacity for independence.

Accordingly, the withdrawal of parental rights should be an exceptional measure of punishment for negligent parents who systematically and deliberately fail to discharge their parental duties.

Nevertheless, if this measure is applied, the best solution is to find a new family for the child. Today, placing orphans with a family is a preferred alternative to institutional care. More than two thirds of orphans and children without parental care live with new families. This approach is now being increasingly adopted. Forms of family placement, such as guardianship and foster care, and – at regional level – long-term, permanent foster care (“patronage”) are developing alongside adoption, and various factors are taken into account in order to select the best form of placement for the child.

One of the priorities in protecting a child’s right to live and grow up in a family is the reduction of the number of children in residential institutions and of the number of such institutions. Creating the conditions for child care outside residential institutions is called deinstitutionalisation. This is a process requiring carefully considered and systematic steps and should be backed up by increased opportunities for family placement, support services for substitute families, preventive work with socially vulnerable families and other forms of social support for families with children. Deinstitutionalisation processes should be implemented step by step, with the priority being given to ensuring that the necessary conditions are in place. The child’s best interests should be the primary consideration. The main aim should not be closure of residential institutions but rather the successful family placement of children.

Today, the state is aware of what is required to bring about a reduction in the number of orphans and children in institutional care. Nonetheless, the total number of orphans and children without parental care remains unchanged at about 700 000.

One of the primary weaknesses is the lack of inter-agency action and co-ordination, and shortcomings in managerial decision making. Russia, like other European countries, is a federated state with the regions having considerable delegated authority regarding work with families and the family placement of children. Comprehensive measures covering all components of the system are best ensured at regional level. Regions are better placed to acquire and build on innovative experience.

The Russian Children in Need Fund was set up in March 2008 to look for new ways to manage the process and encourage the necessary changes at regional level, including changes regarding the family placement of orphans.

This has been the first step taken by the public authorities. The Fund's activities are financed out of the federal budget, the budgets of the constituent entities of the Russian Federation and charity donations.

Its priorities are the prevention of family crises and child abandonment, the restoration of a child-friendly family environment and the family placement of orphans and children without parental care.

Further action needs to be taken in other areas, such as reducing the number of cases where mothers hand over their new-born babies in maternity wards, the early prevention of child abandonment and the rehabilitation of families at social risk, reduction in the number of cases of withdrawal of parental rights and the development of responsible parenthood, the training of potential foster parents and professional support for substitute families.

In addition, an emphasis is placed on support for families who have children with disabilities to ensure the best possible development of such children in a family environment, and the social rehabilitation of children who have committed a crime.

Naturally, it is difficult to address all the social development issues relating to the support and protection of children in need, especially those situations which are specific to a particular region. Regions should establish similar funds that could address more specific issues which are, nevertheless, vital for the local population and families with children. For example, there is a need to provide support for leisure activities for adolescents in order to divert them away from anti-social behaviour and encourage their personal development; this would help solve the problem of neglect. Experience has shown that often such measures require minimal financial resources to produce a significant result.

The Children in Need Fund began its work at a difficult time, given the context of the current crisis. Its goal and objectives are aimed at supporting families and children and as such make it an effective anti-crisis instrument. In our opinion, the present situation makes the activities of the fund ever more meaningful.

In conclusion, I would like once again to quote Janusz Korczak:

*Children account for a large percentage of mankind, population, nation, people, fellow citizens – they are our faithful friends. Are, were and will be.*

We, adults, have a moral and legal responsibility for children and, such being the case, we should do our best so that these small citizens can feel themselves fully fledged individuals in the world of adults. This is my understanding of Korczak's well-known maxim: "There are no children, just human beings." In building our world, however, we should always remember that it is not the wishes of adults but the best interests of children that should be the primary consideration. If we are to make fewer mistakes on this path, we should learn to listen to and hear children, and to understand and respect them as did Janusz Korczak.