

# LEGAL INSTRUMENT ON THE PROTECTION OF THE BEST INTERESTS OF THE CHILD IN DOMESTIC LAW PROCEEDINGS BY PUBLIC AUTHORITIES TO LIMIT PARENTAL RESPONSIBILITIES OR PLACE A CHILD IN CARE

## Feasibility study



[www.coe.int/children](http://www.coe.int/children)

**Building a Europe  
for and with children**



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

# **Feasibility study of a legal instrument on the protection of the best interests of the child in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care**

This feasibility study was prepared by Daja Wenke, independent consultant, under the supervision of the Committee of Experts on the Rights and Best Interest of the Child in Parental Separation and in Care Proceedings (CJ/ENF), which was set up and works under the supervision of the Steering Committee on the Rights of the Child (CDENF) and the European Committee on Legal Co-operation (CDCJ).

*The opinions expressed in this study are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe.*

Cover design: Council of Europe

Photo: © Shutterstock

© Council of Europe, July 2021

## Table of Contents

<b>1. Executive Summary .....</b>	<b>3</b>
<b>2. Key terms and concepts .....</b>	<b>7</b>
<b>3. Methodology .....</b>	<b>9</b>
<b>4. Care proceedings to limit parental responsibilities and place a child in care: Brief situation overview .....</b>	<b>10</b>
<b>5. International and European standards relevant to the best interests of the child in care proceedings .....</b>	<b>17</b>
<b>a. The best interests of the child as a substantive right, a fundamental interpretive principle and a rule of procedure .....</b>	<b>17</b>
<b>b. The best interests principle at the intersection of the rights of the child, state obligations and parental responsibilities.....</b>	<b>17</b>
<b>c. Reservations to the UN Convention on the Rights of the Child by Council of Europe Member States .....</b>	<b>20</b>
<b>d. International and European standards relevant to the best interests of the child in care proceedings .....</b>	<b>21</b>
<b>e. Principles emerging from the case law of the European Court of Human Rights .....</b>	<b>25</b>
<b>f. Jurisprudence of the Committee on the Right of the Child under the communications procedure .....</b>	<b>29</b>
<b>g. Human rights principles guiding care proceedings.....</b>	<b>30</b>
<b>h. Procedural safeguards in care proceedings.....</b>	<b>30</b>
<b>6. Implementation measures in Council of Europe member States .....</b>	<b>34</b>
<b>a. National legislation on the best interests of the child .....</b>	<b>35</b>
<b>b. National legislation on the right of the child to be heard and informed.....</b>	<b>44</b>
<b>c. Child-friendly information material.....</b>	<b>48</b>
<b>d. Service models, working methods and tools relevant for care proceedings</b>	<b>50</b>
<b>7. Proposals for policy instruments and practice-oriented tools .....</b>	<b>63</b>
<i>Policy instrument .....</i>	<i>63</i>
<i>Child-friendly material.....</i>	<i>64</i>
<b>8. References .....</b>	<b>67</b>

## 1. Executive Summary

1. The ‘best interests of the child’ is a central and all-embracing principle under the UN Convention on the Rights of the Child. Article 3 of the Convention stipulates that “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”. The article is considered a general principle that guides the implementation of the Convention and action undertaken by state and non-state actors in all matters concerning children. The article relates directly to all the other articles of the Convention, including specifically the right to non-discrimination, the right to life, survival and development, and the respect for the child’s views (Articles 2, 6, 12).<sup>1</sup>

### **Main considerations**

2. In care proceedings concerning the limitation of parental responsibilities and the placement of a child in alternative care, questions concerning the best interests of the child are highly sensitive and often contentious. The best interests determination is a formal procedure where the relation between the rights of the child, the rights, duties and responsibilities of the parents and the obligations of the state are negotiated and balanced in a specific case. Due to the issues at stake and the tensions that might derive from the power dynamics between the different actors involved, this procedure merits special attention in the transnational governance context of the Council of Europe.

3. For the purpose of this study, “care proceeding” is understood to relate to all formal decision making procedures concerning the limitation of parental responsibility and the placement of a child in alternative care. Care proceedings are led by public or delegated private social services, guardianship authorities, courts of law and other judicial or administrative bodies. Care proceedings aim to make decisions in accordance with the best interests of the child along a continuum of service provision to children, parents and families. They aim to strengthen the family and prevent family breakdown and, where applicable, to limit parental responsibilities and place a child in alternative care. Care proceedings include the assessments, services and decision making concerning the possibility of family reunification after placement. The study focuses primarily on the formalised assessments and decision making processes determining these services in accordance with the principle of the best interests of the child, as well as service models, working methods and tools that are in use in Council of Europe Member States in the assessment, case planning and service delivery phase.

### **Main findings**

4. The study has identified strong national laws, implementation measures, working methods and service models in Council of Europe member States that are able to inform the development of a policy instrument and/or practical guide. It found however also that the best interests of the child in the context of care proceedings are still often weakly determined and regulated, which, in consequence, creates challenges for the implementation process and service practice. These weaknesses, combined with the complexity, sensitivity and significance of the theme, warrant further attention to the issue. The initiative by the Council of Europe to develop a policy instrument and/or a practical guide is therefore timely and important. The Committee of Experts might consider the following key findings for its continued deliberations.

---

<sup>1</sup> Committee on the Rights of the Child, *General Comment No. 14 (2003) on the right of the child to have his or her best interests taken as a primary consideration*, CRC/IC/GC/14, 29 May 2013, par. 4. Committee on the Rights of the Child, *General Comment No.5 (2003), General Measures of Implementation for the Convention on the Rights of the Child*, CRC/GC/2003/5, 3 October 2003, par. 12.

5. The review of national legislation concerning the best interests of the child revealed **areas in which law reform is considered relevant** and which, in consequence, might lead the Committee of Experts to consider the possibility of developing a policy instrument:

- a. National laws providing for a list of **criteria to be considered for the purpose of best interests determinations** in care proceedings reduce the level of discretion on the decision making body, such as a court of law or a social service provider, and help promoting a broader approach to the decision making recognising different rights and needs of the child as interrelated. This approach is considered to contribute to a stronger child rights-based legal reasoning and transparency in decision making processes concerning the best interests of the child in domestic care proceedings, while also strengthening the accountability of decision makers.
- b. In member States, it is common practice to legislate for **minimum ages for children to be heard in civil proceedings** concerning the limitation of parental responsibility and the placement of the child in care. In many member States, statutory age limits are not absolute but coexist with provisions that leave decision-makers a degree of discretion in assessing the child's capacity of discernment. In some member States, statutory age limits and judicial decisions on how to exercise their discretion give rise to appeal procedures and diverse, at times contradictory, interpretations by different judges and levels of the judiciary. Evidence shows that children are able to provide accurate and reliable statements in proceedings concerning them even at a young age and where the child is traumatised, as long as the child receives appropriate support. In the criminal justice context, this evidence is increasingly recognised and is gradually transforming the practice by which children give testimony. The existing age limits in civil proceedings can therefore be considered to be contrary to state of the art empirical knowledge, could be interpreted to result in *de jure* or *de facto* discrimination, and are not in line with the recommendations from the Committee on the Rights of the Child to remove statutory age limits for the child to be heard in administrative and judicial proceedings, and the Committee's recent jurisprudence under the communications procedure.
- c. In many member States, the **right of the child to receive information** in the context of civil proceedings has been legislated for primarily with regard to the court hearing, whereas the provision of child-friendly information before, during and after the proceedings and in relation to service provision more generally has not been legislated for to the same extent. The limited legal regulations have an impact on service practice and pose obstacles for children to enjoy their right to access child-friendly information along all phases of service provision and care proceedings.

6. The study affirmed that international and European standards, and the **human rights principles and procedural safeguards** that derive from these standards, govern all administrative and judicial proceedings where the best interests of a child are determined. The case law of the European Court of Human Rights demonstrates that administrative and judicial practice in a range of Member States does not yet respect these principles and safeguards in a consistent way. These procedural weaknesses are causing harm for children and parents, and create demand on national appeal courts and the ECtHR. This observation underlines the importance of clarifying the relevant principles and safeguards for all contexts in which the best interests of the child are assessed and determined by administrative or judicial authorities, including in the context of social service provision and judicial practice. In light of these findings, it is strongly recommended that the Committee of Experts addresses the relevant principles and safeguards in a policy instrument and/or practical guide.

7. The study reviews some of the **implementation measures** devised by member States, with a particular focus on national legislation, including with regard to the participation of children in care proceedings and the provision of child-friendly information, as well as service practice. Among the **service models and working methods** in use in member States, some examples stand out for being child-centred and sensitive to the needs of children and families, including multi-professional service models for children and families, family support services, case and risk assessment methods, best interests determination methods, and child-sensitive interviewing protocols. The interest was to identify, where possible, evaluated and evidence-based service models and tools. In relation to these thematic areas, the report presents **examples of practice from Council of Europe member States**. The examples are considered useful to inform the development of practice-oriented guidance. Considering the limitations of space, this report could reflect only a fragment of implementation measures and service practice.

#### **Proposals for the development of a policy instrument and/or practical guide**

8. In light of the findings that emerged from the analysis and review undertaken, the feasibility study concludes that the complexity of the issues at stake, and their significance, might best be represented by a set of instruments:

9. A **Committee of Ministers Recommendation or Guidelines** on the best interests of the child in administrative and judicial proceedings concerning childcare, the limitation of parental responsibilities and parental separation.

10. By focusing on the best interests determination procedure as a formal case assessment and decision making process, a single recommendation or guideline would address matters relating to the limitation of parental responsibility, the placement of a child in alternative care, as well as parental separation cases, which involve a formal best interests determination procedure for the child. The development of a policy instrument appears to be relevant and pertinent considering the identified need for further law reform in this area. It would also represent an authoritative guidance document for member States and other stakeholders in this field, rooted in international and European standards and reflecting state of the art knowledge from member States. In light of the central role of the best interests determination, clarifying this procedure is expected to contribute significantly to the progressive implementation of the existing body of Council of Europe Conventions and other policy instruments in this field.

11. A **handbook for officials and practitioners** appears to be particularly meaningful in light of the complexity of the issues at stake and the identified need to strengthen standardised procedures, systematic evidence-based methods and training in this field, including multi-disciplinary and joint training of state officials, practitioners, service providers, civil society actors and other relevant professional groups.

12. A handbook would be particularly useful to translate the policy instrument to practice-oriented guidance and propose a package of working methods and tools that are evidence-based, child-centred and sensitive to the needs of the child, while also strengthening the confidence, skills and techniques of officials and professionals working with and for children and families in the context of care proceedings. The handbook might include chapters that are specifically targeted to the different professional groups and disciplines, such as social services, legal and judicial professionals, while also proposing practical guidance for interagency and multi-disciplinary cooperation.

13. In addition, the development of a chapter or stand-alone **handbook for Parliamentarians** might be considered, possibly in collaboration with the Council of Europe Parliamentary Assembly and with an associated training strategy for Parliamentarians on the best interests of the child. If the Committee

of Experts decides against the development of a policy instrument, a handbook for Parliamentarians should be considered as a stand-alone guide to address key considerations relevant for law reform and Parliamentary oversight.

14. In light of the identified need to develop ***child-friendly information and material*** for children involved in care proceedings, and the interest expressed in this issue by some member States, the development of a child-friendly version of the policy instrument or related child-friendly material is strongly recommended. This document would aim to strengthen the knowledge and awareness of children involved in care proceedings and related decision making processes and to empower them to exercise and claim respect for their rights in this context. Child-friendly material might include a set of brochures addressing the best interests determination procedure and complementing the existing material in this field, combined with a video or an application for children to be disseminated in social media. A format that would allow for adaptation to national languages and contexts could be preferable. The consultations with children planned to inform the development of a policy instrument and/or practical guide in this field may inform and contribute to the development of child-friendly material. Children might in addition be consulted specifically on the development of child-friendly material.

#### ***Methodological considerations***

15. This report was developed through a multi-step research process involving a review of international and European standards relevant for the field of study, the case law of the European Court of Human Rights, a literature review, consultations with the Committee of Experts CJ/ENF-ISE and a series of survey questionnaires administered by the Council of Europe.

16. The field of study is particularly complex and characterised by a highly diversified national and sub-national practice in Council of Europe member States. In light of the wide thematic areas to be addressed, the volume of literature in this field and of information received from delegations, the present report is based on a preliminary selection of thematic areas and country examples, in the interest of not exceeding on length. This selection creates biases and limitations, as it cannot be guided by scientific criteria and is therefore neither representative nor balanced in terms of thematic and regional representation of member States' policies and practice. The selection was guided by considerations for presenting information, analyses and country examples that are sufficiently strong and conclusive to inform the Committee's decision making regarding the development of a policy instrument and/or guidance document, and to provide a first proposal of content areas that these documents might address.

17. The draft report was revisited and updated in light of the discussions held at the third meeting of the Committee of Experts on 14 and 15 April 2021 and the comments received from the Committee members and observers. In a second review phase in June 2021, the delegations of the Council of Europe European Committee on Legal Co-operation (CDCJ) and the Steering Committee for the Rights of the Child (CDENF) provided comments, and the report was revised accordingly.

## 2. Key terms and concepts

18. The following definitions, key terms and concepts derive from international and European standards, guidelines and recommendations, from international jurisprudence, as well as academic literature. Key terms that have previously been defined in the context of Council of Europe standards might be adopted for the development of a policy instrument and practical guide. Others would have to be debated by the Committee of Experts during the drafting process. Some key terms and definitions may need to be revisited in light of evolving terminology and the specific context of the policy instrument and/or practical guidance to be developed.

19. For the purpose of this study,

- a. “Child” refers to any human being below the age of 18 years.<sup>2</sup>
- b. “Parent” is understood as an “individual biologically and/or emotionally linked to the child”, which typically includes “the provision of care, concern and affection”.<sup>3</sup> For the purpose of this report, the term “parent” is used in relation to the “legal parent”, i.e. the person holding parental responsibility, unless stated otherwise. Where a parent does not or no longer hold parental responsibility, the term may need to be defined specifically in terms of biological or social and affective parenthood.<sup>4</sup>
- c. “Holder of parental responsibility” refers to parents and other persons or bodies entitled to exercise some or all parental responsibilities.<sup>5</sup>
- d. “Parental responsibility” refers to all rights and duties relating to the person or the property of a child, which are given to a natural or legal person by a decision, by operation of law or by an agreement having legal effect, including the right and duty to complement the limited legal capacity of the child and rights of access.<sup>6</sup>
- e. The Council of Europe Committee of Ministers Recommendation on children’s rights and social services friendly to children and families defines “parents” as “the person(s) with parental responsibility according to national law. In cases where the parent or parents are absent or no longer have parental responsibility, this can be a guardian, an appointed legal representative or the child’s immediate caregiver”.<sup>7</sup> This definition is sensible to the purpose and scope of the Recommendation. For the matters addressed by this study, a distinction between “parent” and “holder of parental responsibility” appears to be more conducive.

---

<sup>2</sup> UN Convention on the Rights of the Child, Article 1.

<sup>3</sup> Ruggiero, Roberta, Diana Volnakis and Karl Hanson, The inclusion of ‘third parties’: The status of parenthood in the Convention on the Rights of the Child, *Children’s Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?*, Edited by Eva Brems, Ellen Desmet and Wouter Vandenhole, Routledge Research in Human Rights Law, 2017, pp.71-89. See also: David Archard, *Children: Rights and Childhood*, 2<sup>nd</sup> edition, Routledge 2004, p. 152.

<sup>4</sup> For a more detailed discussion of the term parent, please refer to the draft Feasibility Study on a legal instrument on the protection of the best interests of the child in parental separation, CJ/ENF-ISE(2021)03A.

<sup>5</sup> Council of Europe, European Convention on the Exercise of Children’s Rights, European Treaty Series No. 160, Strasbourg, 25 January 1996, Article 2.b. NB. The Council of Europe Convention on the Exercise of Children’s Rights has been ratified by only 20 Member States and signed by 8 Member States. Despite the limited number of ratifications, the text of the Convention, including the legal definitions it provides, can be considered to reflect a consensus among member States on the key terms defined for the purpose of the Convention, and as expressed by its formal adoption and entry into force.

<sup>6</sup> For the purpose of this study, the term “rights of custody” of the Council Regulation definition has been replaced with the term “right and duty to complement the limited legal capacity of the child”. The Council Regulation defines “rights of custody” to include rights and duties relating to the care of the person of a child and in particular the right to determine the place of residence of a child. See: Council Regulation (EU) [2019/1111](#) of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, Article 2.2.(7), 2.2.(9).

<sup>7</sup> Council of Europe, Recommendation [CM/Rec\(2011\)12](#) of the Committee of Ministers to member states on children’s rights and social services friendly to children and families, 2011, II.2.



- f. “Guardian” refers to a person who is appointed or designated to support, assist and, where provided by law, represent ... children in processes concerning them. The guardian acts independently to ensure that the child’s rights, best interests and well-being are guaranteed. The guardian acts as a link between the child and all other stakeholders with responsibilities towards him or her. This operational definition takes into account that the term used, as well as the function and manner of appointment of a guardian, vary from jurisdiction to jurisdiction.<sup>8</sup> A legal guardian does not fall within the definition of parent, considering the absence of biological and or affective ties to the child.<sup>9</sup>
- g. “Representative” [or legal representative] refers to a person, such as a lawyer, or a body appointed to act before a judicial authority on behalf of a child, whereas “judicial authority” refers to a court or an administrative authority having equivalent powers.<sup>10</sup>
- h. “Child-friendly information” refers to information that is adapted to the child’s age, maturity, language, gender and culture.<sup>11</sup>
- i. “Relevant information” refers to information that is given to the child to enable the child to exercise his or her rights fully unless the provision of such information were contrary to the [best interests] of the child.<sup>12</sup>
- j. “Family” has to “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”, in accordance with Article 5 of the UN Convention on the Rights of the Child and comprising in the notion of adoptive or foster parents also traditional childcare and guardianship arrangements such as *kafalah*, in accordance with Article 20 of the UN Convention on the Rights of the Child.<sup>13</sup>
- k. “Family ties” refers to the relationship of a child with his or her biological or adoptive family members. In addition, the European Court of Human Rights held that *de facto* family ties constitute family ties even in the absence of a biological or adoptive relationship. According to the Court, the time an adult and a child have spent living together, the quality of the relationship and the role the adult plays vis-à-vis the child must be taken into account. Where there is a family bond with a child, the State must act in such a way as to allow the bond to grow stronger and provide legal protection to facilitate the child’s integration in the family.<sup>14</sup>

---

<sup>8</sup> Council of Europe Committee of Ministers, Effective Guardianship for Unaccompanied and Separated Children in the Context of Migration, Recommendation [CM/Rec\(2019\)11](#) of the Committee of Ministers, 2019, II.1.d.

<sup>9</sup> Ruggiero, Roberta, Diana Volnakis and Karl Hanson, The inclusion of ‘third parties’: The status of parenthood in the Convention on the Rights of the Child, *Children’s Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?*, Edited by Eva Brems, Ellen Desmet and Wouter Vandenhole, Routledge Research in Human Rights Law, 2017, pp.71-89, p. 71.

<sup>10</sup> Council of Europe, European Convention on the Exercise of Children’s Rights, European Treaty Series No. 160, Strasbourg, 25 January 1996, Article 2.c and a. *Text in brackets added by the author.*

<sup>11</sup> Council of Europe, [How to Convey Child-friendly Information to Children in Migration](#), *A handbook for frontline professionals*, Building a Europe for and with Children, 2018, p. 11. Council of Europe Committee of Ministers, [Guidelines on Child-friendly Justice](#), 2010.

<sup>12</sup> Council of Europe, European Convention on the Exercise of Children’s Rights, European Treaty Series No. 160, Strasbourg, 25 January 1996, Article 2.d. *Text in brackets added by the author.*

<sup>13</sup> The Committee on the Rights of the Child expressed this view in relation to the preservation of the family environment and the maintenance of family ties as factors that need to be taken into account when considering the best interests of the child. See: Committee on the Rights of the Child, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 12/2017, CRC/C/79/D/12/2017, 5 November 2018, par. 8.11

<sup>14</sup> Interpretation by the European Court of Human Rights cited in: Committee on the Rights of the Child, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 12/2017, CRC/C/79/D/12/2017, 5 November 2018, par. 3.5.

- l. “Best interests determination” refers to a “formal process, with strict procedural safeguards, designed to assess and determine the child’s best interests” in relation to a decision affecting the child, including mechanisms for evaluating the results.<sup>15</sup>
- m. “Judicial proceeding” refers to “a very wide range of court hearings, including all civil proceedings such as divorce, custody, care and adoption proceedings, name-changing, judicial applications relating to place of residence, religion, education, disposal of money ..., judicial decision making on nationality, immigration and refugee status, and criminal proceedings; it also covers States’ involvement in international courts, ... criminal prosecutions of parents, the outcome of which can affect children ...”.<sup>16</sup>
- n. “Administrative proceeding” refers to formal procedures, such as “formal decision making in education, health, planning and environmental decisions, social security, child protection, alternative care, employment and administration of juvenile justice”.<sup>17</sup>

### 3. Methodology

20. This report was developed through a multi-step research process involving a review of international and European standards relevant for the field of study, a literature review, consultations with the Committee of Experts CJ/ENF-ISE and a series of survey questionnaires administered by the Council of Europe.

21. A first scoping questionnaire was administered among the members of the Committee of Experts CJ/ENF-ISE in September 2020. Responses were sent in from seven member States, five participants in the Committee and one observer. A second, more comprehensive survey questionnaire was administered among all Council of Europe member States between September and December 2020. A total of 39 responses were received from 35 member States, among which 26 were EU/EFTA member States.<sup>18</sup> In addition, six responses were sent in by observers to the Committee of Experts and one from civil society.<sup>19</sup> A third survey was administered during February 2021 among practitioners, such as the national branches of the International Social Service (ISS), the International Academy of Family Lawyers (IAFL), and the European Network of Ombudspersons for Children (ENOC). Twelve responses were received from eight member States.

22. The data collection through survey questionnaires is connected to certain limitations and biases. While the responses received do not constitute a complete sample of member States, the information

---

<sup>15</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 87.

<sup>16</sup> Hodgkin, Rachel and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, Third edition, United Nations Children’s Fund, 2007, p. 156.

<sup>17</sup> Hodgkin, Rachel and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, Third edition, United Nations Children’s Fund, 2007, p. 156. Cf. Folke Bernadotte Academy, Office for Democratic Institutions and Human Rights, *Handbook for Monitoring Administrative Justice*, 2013. Council of Europe, Folke Bernadotte Academy, *Casebook on European Fair Trial Standards in Administrative Justice*, Arman Zrvandyan, 2016.

<sup>18</sup> Contributions received from member States: Albania, Austria, Azerbaijan, Belgium (Agency ‘Opgroeien’ (Growing up), Flanders; Administration générale de l’aide à la jeunesse et du centre pour mineurs dessaisis, Direction de l’appui juridique, Communauté française), Bulgaria, Croatia (Ministry of Labour, Pension System, Family and Social Policy; Ministry of Justice and Administration), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy (Department for Family Policies, Presidency of the Council of Ministers, Ministry of Labour and Social Policies; Ministry of Justice), Latvia, Republic of Moldova, Monaco, Montenegro, Norway, Poland, Portugal (Family, Children and Youth Office from Prosecutor General’s Office; National Commission for the Promotion of the Rights and the Protection of Children and Young People (CNPDPJ); Judicial High Council, Conselho Superior da Magistratura and Mr António José Fialho Member of the International Network of Judges at the Hague Conference on Private International Law; Portuguese Ombudsman), Romania, Serbia, Slovak Republic, Slovenia, Spain (Ministry of Justice / Ministry of Social Rights / General Council of the Judiciary; Ministry of Social Rights and 2030 Agenda), Sweden, Switzerland, Ukraine, United Kingdom.

<sup>19</sup> Contribution received from observers and civil society: European Commission, INGO Conference, ATD Quart Monde (France), International Movement ATD Fourth World, Mexico, Kingdom of Morocco, International Social Service.

gathered through the survey questionnaires is neither exhaustive nor representative of the individual countries or the different thematic areas. Despite these limitations, the survey responses were instrumental to gather information that is considered valid and conclusive. In an attempt to mitigate the biases, the review of survey responses was complemented by a broader literature review.

23. In light of the limitations of space, this report does not aspire to provide an exhaustive overview of the field of study. It rather aims to identify key themes, contentious issues and open questions that may inform the deliberations of the Committee of Experts with regard to the selection of the most appropriate policy instrument and/or practical guide and their specific scope. To this end, the selection of examples from the questionnaire responses aims to provide information on challenges and opportunities in the implementation of international and European standards. As it was beyond the scope of this study to evaluate or validate examples of national or local practice, the examples from Council of Europe member States in this report are presented as examples of practice rather than validated good practice examples. Even though this report can reflect only a fragment of the information provided by member States and other stakeholders in response to the survey questionnaires, all information provided has been reviewed and systematised to inform the Committee's continued work in this field.

24. The preliminary findings from this review were presented and discussed at the second meeting of the Committee of Experts convened on 14 and 18 December 2020. The discussions with the delegations, participants and observers have informed the drafting of this report. The Committee's third meeting convened on 14 and 15 April 2021 offered a renewed opportunity for consultation and debate on the draft report, its main findings and recommendations. Subsequently, the draft report was shared with the delegations to the Committee on Judicial Cooperation (CDCJ) and the Steering Group on the Rights of the Child (CDENF) who provided comments in June 2021.<sup>20</sup> The outcomes of the discussion alongside comments provided by Committee members and observers in follow-up to the third meeting have informed the study process and are reflected in this updated report.<sup>21</sup>

#### **4. Care proceedings to limit parental responsibilities and place a child in care: Brief situation overview**

##### *National data and statistics on care proceedings*

25. Reliable data on the number of children and families affected by care proceedings are not available for Council of Europe member States as a broad European region. The Council of Europe considers that more than 626,000 children live in residential institutions in the 22 countries of Central and Eastern Europe and the Commonwealth of Independent States.<sup>22</sup> A recent estimate by the European Union found that approximately 340,000 children were living in residential care in EU Member States in 2019. In 2015, a study conducted among the 11 members of the Council of the Baltic Sea States identified a medium of 1.22 percent of the child population living in alternative care placements, with national rates ranging from 0.8 percent to 2.3 percent.<sup>23</sup> In light of these figures and

<sup>20</sup> Comments were handed in by the following delegations: Belgium, Cyprus, Germany, Malta, Portugal, Spain, Switzerland, United Kingdom, and the Society Committee on the Rights of the Child (CSC-RC) of the INGO Conference (Council of Europe).

<sup>21</sup> Comments were provided by Armenia, Austria, Croatia, Germany, Italy, Latvia, Kingdom of Morocco, Norway, Portugal, as well as the European Commission, the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), and the Conference of International NGOs (CINGO).

<sup>22</sup> Council of Europe, *Compass: Manual for human rights education with young people*, [Children](#), 2017.

<sup>23</sup> Lerch, Véronique and Anna Nordenmark Severinsson, *Feasibility Study for a Child Guarantee, Target Group Discussion Paper on Children in Alternative Care*, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Luxembourg: Publications Office of the European Union, 2020, p. 6. Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015, p. 24-25.

in the absence of reliable estimates, it must be assumed that a significant population of children in the member States are affected by care proceedings concerning the limitation of parental responsibilities and placement in care.

26. Not all countries compile official statistics on children in alternative care. Where statistics exist, attempts to systematise the data bring to light significant biases and limitations that render a regional overview and comparison almost impossible. The indicators used and the disaggregation of data differ from country to country. The reported figures indicate the number of children referred to alternative care during a year, or the number of children in care at a specific cut-off date or throughout the entire year, irrespective of whether the children stay for a shorter or longer term. Recurrent short-term placements of the same child during a year or placements in different types of alternative care may be counted repeatedly. While most countries offer a diversity of placements in foster families, family-like placements and residential institutions, the terminology used to denominate these placements has not been harmonised across countries, so that data for different types of placement are not easily comparable. In some countries, young adults who are leaving care are included in alternative care statistics. National statistics, however, do not necessarily include all groups of children in care. In some countries, data are limited to children placed in residential institutions and exclude placements in foster families. Some groups of children, such as children with disabilities, children who are in conflict with the law, or unaccompanied migrant and asylum seeking children are not systematically included in national statistics on the alternative care for children. This is particularly the case where the institutional responsibility for children is divided between different ministries and departments. Finally, whereas official statistics typically represent children placed in public care, placements in institutions or other arrangements offered by private actors, faith-based groups or as voluntary service are not always accounted for.<sup>24</sup>

27. The limited baseline data poses obstacles to the analysis of the situation of children in care and the families involved in care proceedings. The limitations of qualitative and quantitative data hinder effective monitoring of children in care and make it difficult for national governments to measure, qualify and report on progress made in this field, including with regard to the progressive deinstitutionalisation. Considerations for data collection, indicators and disaggregation, as a basis for monitoring and evaluation, should therefore be addressed by the policy instrument and/or practical guide to be developed by the Committee of Experts CJ/ENF-ISE.

#### Determinants of quality care

28. In Europe and worldwide, family-based placements are generally considered to offer a higher quality of care for children than placement in institutional care. Research shows, however, that the quality of the care a child receives is more important than the type of placement. Quality care can also be provided where few children are placed together in small-scale and family-like institutional placements. The quality of care is determined strongly by the stability of the placement and the opportunity for the child to form stable relationships with the caregivers, peers and social workers. This typically leads to better outcomes for children with regard to emotional wellbeing, personal development and educational achievements. Permanency planning requires thorough case assessments, support services and follow-up, ideally through multi-disciplinary teams.<sup>25</sup> Quality care

---

<sup>24</sup> Lerch, Véronique and Anna Nordenmark Severinsson, *Feasibility Study for a Child Guarantee, Target Group Discussion Paper on Children in Alternative Care*, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Luxembourg: Publications Office of the European Union, 2020, pp. 14-17. Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015, pp. 24-26.

<sup>25</sup> Committee on the Rights of the Child, General Comment No. 7 (2005) implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, par. 36 (b). Department for Education, *Children in Care, Research priorities and*

is further conditional on the opportunities of the child to be heard and to have their views taken into account at all stages of care proceedings and related service provision. This includes the opportunities for the child to exercise all related “participatory” rights, such as the right to seek, receive and impart information, freedom of thought, expression and assembly, and the access to child-sensitive reporting and complaints mechanisms.<sup>26</sup>

29. In addition to the type of placement, quality care is essentially determined by the capability of the competent authorities and service providers to guarantee that the placement and care services fully respect, safeguard and promote all the human rights of the child at all times as interrelated and indivisible, in accordance with the UN Convention on the Rights of the Child and other relevant international and Council of Europe standards.

### Reasons for care proceedings

30. National data and multi-country studies suggest that the vast majority of children in alternative care are placed because their parents are having difficulties in providing appropriate care. In the Baltic Sea States, for instance, only 6-11 percent of the children in alternative care are orphans.<sup>27</sup> These data underline the importance of strengthening family support services in response to the multiple needs of families.

31. Where data are available, they suggest children are placed in care for a variety of reasons, which are often accumulating and inter-related. The reasons include socio-economic marginalisation and exclusion and related problems with housing, material deprivation and poor living standards, as well as issues related to mental health, substance abuse, domestic violence and neglect. Poverty continues to be strongly associated with higher risks of family breakdown. There is no generalised causality between poverty and family separation, however, precarious living situation tend to increase tensions within the family and reduce the resilience of a family to cope with stress factors. Where family support services are insufficient to prevent family breakdown, this correlation becomes even more manifest.<sup>28</sup>

32. Countries with a high level of emigration for work and employment observe that emigrating parents leave their children behind. In Lithuania, for instance, the largest proportion of children in alternative care have been placed due to the labour migration of their parents and often upon the parents’ request. In the case of separated parents, it is not uncommon that children are placed in care when the parent they are living with departs for labour migration, even when the other parent remains in the country. Parents have the possibility to apply for a temporary guardian to be appointed for their child when they leave the country temporarily for work purposes.<sup>29</sup>

---

questions, United Kingdom, March 2014, pp. 8-9. Rygaard, Niels Peter, *Research, Technology, Child Policies and Caregiver Education, A description of non-profit, open source online caregiver education programs worldwide*, undated, p. 2.

<sup>26</sup> Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015, pp. 31-38.

<sup>27</sup> Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015, p. 29. Browne, K., Hamilton-Giachritsis, C., *Mapping the Number and Characteristics of Children under Three in Institutions Across Europe at Risk of Harm*, University Centre for Forensic and Family Psychology (European Union Daphne Programme, Final Project Report No. 2002/017/C), 2002. Mulheir, G., *Deinstitutionalisation, A Human Rights Priority for Children with Disabilities*, *Equal Rights Review*, 2012. Cited in: European Expert Group on the Transition from Institutional to Community-based Care, *Common European Guidelines on the Transition from Institutional to Community-based Care, Guidance on implementing and supporting a sustained transition from institutional care to family-based and community-based alternatives for children, persons with disabilities, persons with mental health problems and older persons in Europe*, Brussels, November 2012, p. 56.

<sup>28</sup> Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015, pp 30. Lerch, Véronique and Anna Nordenmark Severinsson, *Feasibility Study for a Child Guarantee, Target Group Discussion Paper on Children in Alternative Care*, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Luxembourg: Publications Office of the European Union, 2020, p. 23.

<sup>29</sup> Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015, pp. 31-32.

33. Placements due to behavioural and emotional difficulties of children are common in many countries. Norway succeeded to reduce these placements by half between the year 2000 and 2010. This progress had been achieved thanks to a high political interest in the issue since the second half of the 1990s and the specific attention given to these matters in the restructuring of the child welfare services in 2004. In addition, the introduction of evidence-based working methods to support families at risk such as the Family Group Conference have helped to address the phenomenon in an effective and sustainable way (see *Chapter 6.4*).<sup>30</sup>

34. In some countries, boys and adolescents tend to be overrepresented in alternative care placements. These trends appear to be related to the high numbers of unaccompanied children who are placed in residential care for children, although the type and quality of care for unaccompanied children varies and is not always comparable with the care placements available to national children.<sup>31</sup>

35. UNICEF reported for the Eastern Europe and Central Asia region that children with disability are disproportionately, and almost 17 times more often, represented in residential institutions.<sup>32</sup> A similar trend was affirmed also for EU member States.<sup>33</sup>

36. Children belonging to minority groups or having a migration background are also placed more often in alternative care than children from the main population group. The Council of the Baltic Sea States observed that these patterns in the placement of children from different national or social backgrounds invite a review of the decision making processes to understand to which degree attitudes and stereotypes regarding children's backgrounds and needs influence care proceedings and placement decisions.<sup>34</sup>

37. A study from 2018 observed, for instance, that in Bulgaria, Hungary and Romania, 60 percent of the children in institutions were of Roma origin, whereas the Roma people in these countries accounted only for approximately 10 percent of the population. On the other side, there are reports from Romania that evidence a better access to nutrition, housing, education and healthcare services for children in alternative care than for their peers in their home communities. In Germany, a study noted in 2019 that almost half of the children placed in residential care had at least one parent of non-national origin.<sup>35</sup>

38. Care proceedings may become necessary when the child or the parents are involved in other types of proceedings, such as criminal proceedings, private law proceedings concerning parental separation, or immigration and asylum proceedings. For the policy instrument and/or practical guide, the Committee of Experts might consider addressing questions of how the case assessment and decision making process on the best interests of a child may be used as evidence in more than one proceeding concerning the family, in accordance with data protection regulations and the principle of the best interests of the child.

---

<sup>30</sup> Backe-Hansen, E., et al., Out of Home Care in Norway and Sweden – Similar and Different, *Psychosocial Intervention*, Elsevier, 22(2013) 193-202, p. 196.

<sup>31</sup> Lerch, Véronique and Anna Nordenmark Severinsson, *Feasibility Study for a Child Guarantee, Target Group Discussion Paper on Children in Alternative Care*, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Luxembourg: Publications Office of the European Union, 2020, pp. 22-23.

<sup>32</sup> UNICEF, *Children under the Age of Three in Eastern Europe and Central Asia: A rights-based regional situation analysis*, 2012.

<sup>33</sup> Lerch, Véronique and Anna Nordenmark Severinsson, *Feasibility Study for a Child Guarantee, Target Group Discussion Paper on Children in Alternative Care*, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Luxembourg: Publications Office of the European Union, 2020, p. 22.

<sup>34</sup> Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015, p. 36.

<sup>35</sup> *Opening Doors for Europe's Children*, 2018a. Hanesch, 2019. Lerch, Véronique and Anna Nordenmark Severinsson, *Feasibility Study for a Child Guarantee, Target Group Discussion Paper on Children in Alternative Care*, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Luxembourg: Publications Office of the European Union, 2020, p. 26.

39. Where a parent is facing criminal charges or a conviction and is, in consequence, temporarily or in the longer term unavailable to care for the child, care proceedings may need to be initiated. The same applies for cases, where a child who has reached the age of criminal responsibility is convicted for a criminal offence. Care proceedings may coincide also with criminal proceedings where the child is a victim of violence or exploitation and the parents were the perpetrators of or complicit in the criminal offence committed against the child.

40. In some cases, parental separation coincides with proceedings concerning the limitation of parental responsibilities and the placement of a child in care, for instance where incidents of violence or neglect emerge in the context of parental separation that would lead to the limitation of parental responsibilities or the temporary or longer-term placement of the child. This study did not identify any clear trends in Council of Europe member States as to how frequently care proceedings and parental separation overlap. From Belgium, for instance, the International Council of Shared Parenting reports that approximately 70 percent of the care proceedings result from high conflict parental separation.<sup>36</sup> In Austria, on the other side, research has evidenced neglect and different forms of violence as the main reasons for the placement of children in alternative care, without showing any causality or significant connections between care proceedings and parental separation.<sup>37</sup> Although data remain inconclusive, the policy instrument and/or practical guide to be developed by the Committee of Experts should address possible connections between parental separation and care proceedings, for instance by adopting a child-centred approach with a focus on the best interests determination procedure and preventive measures promoting the safety, wellbeing and development of the child across all proceedings concerning the relations between children and parents.

41. Care proceedings may be connected in multiple ways to proceedings concerning residence, immigration and asylum, such as in the case of unaccompanied migrant and asylum seeking children who are referred to care placements, in the context of intercountry adoption where the adopted child is to assume the nationality of the adoptive parents, in cases of family reunification across borders or in cases where parents and children have a different residence status and might be separated by return orders. Where children are victims of cross-border exploitation and trafficking and receive a residence status in the country where they were identified, the role of the parents and family members in the case is assessed. Due to the high level of mobility and international composition of families, it is not untypical, that care proceedings concern family members living in different countries. In cross-border cases, the case assessments have to be conducted in close collaboration with state agencies and service providers from different countries. The policy instrument and/or practical guide therefore should pay specific attention to cross-border cooperation for the purpose of best interests assessments.

42. Care proceedings may become necessary when a parent suffers from a health condition, such as a mental health issue or a chronic illness, which leads to a situation where the parent is temporarily or in the medium or longer term unable or unavailable to care for the child.

43. Care proceedings may be deemed necessary where the parents or a child are part of a terrorist or extremist group. In London, for instance, care proceedings were initiated in the case of a 16-year-old girl who had been radicalised online and was prevented from departing to Syria to join the Islamic State. While the girl was first placed in detention and subsequently in alternative care, the parents

---

<sup>36</sup> Council of Europe, Committee of Experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE), *Compilation of contributions received*, Restricted, CJ/ENF-ISE(2020)02 REV, 23 September 2020, p. 44.

<sup>37</sup> Gspurning, W., Heimgartner, A., Hojnik, S., Pantuček, G., Reicher, H., and E. Stuhlpfarrer, et al., *Gründe der Fremdunterbringungen in der Kinder- und Jugendhilfe in den Bezirken Graz-Umgebung und Liezen [Reasons for placement in alternative care in the districts of Graz and surroundings and Liezen]*, University of Graz, FH Joanneum, March 2020.

were questioned on why they did not prevent their daughter's extreme use of the darknet at home, considering that this behaviour caused a risk for herself and her younger siblings. The decision to place the girl in care was reasoned mainly on the grounds of a best interests determination and a risk assessment and not intended as a punishment of the girl or the parents.<sup>38</sup> In the case of "foreign terrorist fighters" who are seeking to enter or return to Council of Europe member States from conflict zones in Iraq and Syria, who may have children or be underage themselves, member States appear to be still in the process of defining appropriate procedures and responses. Thus far, children in these situations who are allowed entry are referred primarily to the juvenile justice or childcare sectors and would therefore be subject of care proceedings.<sup>39</sup>

44. In all the different contexts where care proceedings may become necessary, the parents of a child can be underage themselves. Where this is the case, the best interests determination has to be conducted separately for the child and for the underage parent(s).

### Risks for children in care

45. Evidence shows that children in alternative care are affected by numerous, often interdependent risks to their safety, wellbeing and development. Children placed in alternative care face risks of neglect and violence, including corporal punishment and sexual violence. Poor quality care has a negative impact on the development of the child's cognitive, emotional and social skills with effects persisting into adulthood. Children who are not able to grow up in a caring family environment have higher risks of suffering mental health problems, such as anxiety and depression, as well as substance abuse issues. Separation from brothers and sisters while in care, unless in cases where separation would be considered in the best interests of the child, and disruptive care arrangements tend to deteriorate these negative outcomes further. Children in alternative care have disproportionately high school dropout rates, which results in reduced career and professional development opportunities in adulthood, including higher rates of unemployment. Placement in large residential institutions is particularly harmful for children under three years old. Adults who have grown up in alternative care are more likely to have their own children taken into care.<sup>40</sup>

46. When leaving care, the support provided to children and young people often ends abruptly, is significantly reduced, or access is obstructed by administrative hurdles. After-care support is essential to avoid or alleviate disruptive experiences and to enable the continuity of care and support for young people in their transition to adulthood and independent life. In practice, care leavers are often struggling in their transition to an independent life and are faced with numerous risks.<sup>41</sup> Studies suggest, for instance, that young care leavers have a high risk of remaining homeless. In France, for instance, it is estimated that up to 36 percent of homeless people aged between 18 and 25 years old had been in alternative care during their childhood.<sup>42</sup> Similar observations are reported from Germany,

---

<sup>38</sup> London Borough Tower Hamlets v B [2016] EWHC 1707 (Fam), cited in: Akhtar, Rajnaara C. and Conrad Nyamutata, *International Child Law*, 4<sup>th</sup> edition, Routledge 2020, p. 253.

<sup>39</sup> European Parliament, [The Return of Foreign Fighters to EU Soil](#), *Ex-post evaluation*, European Parliamentary Research Service, 2017. Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, [Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework](#), 2018. United Nations Office on Drugs and Crime, [Foreign Terrorist Fighters](#), *Manual for Judicial Training Institutes, South-Eastern Europe*, Updated Edition, 2019.

<sup>40</sup> European Expert Group on the Transition from Institutional to Community-based Care, *Common European Guidelines on the Transition from Institutional to Community-based Care, Guidance on implementing and supporting a sustained transition from institutional care to family-based and community-based alternatives for children, persons with disabilities, persons with mental health problems and older persons in Europe*, Brussels, November 2012, p. 47. Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015, p. 41.

<sup>41</sup> SOS Children's Villages, [Leaving Care – An Integrated Approach to Capacity Building of Professionals and Young People](#), 2020. Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015.

<sup>42</sup> Frechon, I. and Marpsat, M., *Placement dans l'enfance et précarité de la situation du logement [Alternative care placement during childhood and precarious housing]*



where approximately 40,000 young people are estimated to live in a situation of concealed homelessness as they sleep in makeshift accommodation, at friends' places or in couch surfing arrangements.<sup>43</sup> Many of these young people have grown up in family situations characterised by violence and neglect, and have a history of placements in institutions, foster families, in child psychiatry or youth custody services.<sup>44</sup>

47. The ongoing Covid-19 pandemic, combined with the multiple effects of the prevention and control measures, are expected to increase the existing risks for children and give rise to new risks. Children deprived of parental or family care, children living in institutions, young care leavers and children at risk of family separation, as well as children on the streets, are considered to be particularly exposed to the exacerbated risks.<sup>45</sup>

48. In 2019, Missing Children Europe reported that among the missing children who had voluntarily left from their homes or institutions, or were pushed out, almost 23 percent had left from an institution for children, and almost 3 percent from a foster family. Approximately 55 percent of all "runaway" children were found to have left because of problems in the placement situation, such as violence or conflict.<sup>46</sup>

49. The European Conference on the Best Interests of the Child, which was organised in 2014 by the Belgian authorities in cooperation with the Council of Europe during the Belgian Chairmanship of the Council of Europe on the occasion of the 25<sup>th</sup> anniversary of the UN Convention on the Rights of the Child, recognised that the relationship between parents and children can be characterised by severe tensions. Where this is the case, a best interests determination is important to ensure that the child can maintain his or her ties with both parents and with other family members, while also being able to fully develop his or her potentials. The Conference addressed particularly those situations, where the relationship between parents and children are under tensions due to the imprisonment of a parent, divorce, child maltreatment, the child's removal from the family, and when a child is insecure about his or her origins, for instance in the case of adoption or conception through medically assisted reproduction.<sup>47</sup> In many of these cases, quality services that support children and parents and strengthen families through targeted measures, can help preventing family separation or reuniting families after placement of a child in care.

50. In light of the multiple developmental challenges and concrete risks associated with the placement of children in alternative care, investing in early childhood education and care, quality care for children, the progressive deinstitutionalisation, especially of young children, and reliable, child-sensitive case assessment and decision making processes constitutes an important contribution to the continued social, economic and human development of societies and states in Europe. These policy developments and investments, and the related implementation processes, should be closely and

---

situations], INSEE, 2016. Fondation Abbé Pierre, *L'état du mal-logement – Rapport 2019 [The situation of sub-standard housing – Report 2019]*, 2019. Cited in: Lerch, Véronique and Anna Nordenmark Severinsson, *Feasibility Study for a Child Guarantee, Target Group Discussion Paper on Children in Alternative Care*, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Luxembourg: Publications Office of the European Union, 2020, p. 26.

<sup>43</sup> Off Road Kids, [5000 Straßenkinder und junge Obdachlose gerettet! Heimkinder von Obdachlosigkeit massiv bedroht \[5000 street children and homeless youth rescued! Children from institutions face a massive risk of homelessness\]](#), 5.5.2018.

<sup>44</sup> Vodafone Stiftung Deutschland (eds.), *Entkoppelt vom System, Jugendliche am Übergang ins junge Erwachsenenalter und Herausforderungen für Jugendhilfestrukturen [Detached from the system, Adolescents at the transition to adulthood and the challenges for youth welfare services]*, Deutsches Jugendinstitut e.V., 2015, p. 16.

<sup>45</sup> Better Care Network, The Alliance for Child Protection in Humanitarian Action, Unicef, [Protection of Children During the Covid-19 Pandemic, Children and Alternative Care Immediate Response Measures](#), undated.

<sup>46</sup> Missing Children Europe, [Figures and Trends 2019, From hotlines for missing children and cross-border family mediators](#), 2019.

<sup>47</sup> Council of Europe, [The Best Interests of the Child, A dialogue between theory and practice](#), 2016, p. 159.

continuously informed by consultations with relevant professional groups, parents, children and young people.

## 5. International and European standards relevant to the best interests of the child in care proceedings

### a. The best interests of the child as a substantive right, a fundamental interpretive principle and a rule of procedure

51. The UN Convention on the Rights of the Child (CRC) provides in Article 3.1 that the best interests of the child shall be a primary consideration in all actions concerning children. The best interests of the child are also mentioned in articles 9.1 and 9.3, 18.1, 20.1, 21, 37(c) and 40.2(b)(iii) of the CRC. The Committee on the Rights of the Child underlines that the best interests of the child relate closely to the other general principles and all the rights afforded under the Convention.

52. In 2013, the Committee on the Rights of the Child issued its General Comment No. 14 on the best interests of the child. This General Comment clarifies the concepts of a best interests assessment and determination and the relevant procedures. It provides guidance on how to understand, interpret and apply the principle. The General Comment presents the principle as a three-fold concept: a substantive right; a fundamental, interpretive legal principle; and a rule of procedure.

53. As a *substantive right*, Article 3.1 is considered self-executing and directly applicable and can be invoked before a court. Each child has the right to have her or his best interests assessed and taken as a primary consideration. As a *fundamental, interpretive legal principle*, the best interests principle offers guidance for the application of laws: when there is room for interpretation and discretion in applying a specific law, the interpretation that is in the best interests of the child shall be applied. As a *rule of procedure*, the principle implies that procedures concerning children, in particular those aimed at assessing and determining the best interests of a child or a group of children, need to be documented. This applies to individuals or groups of children or to matters concerning children in general and involves an evaluation of the possible positive or negative impact of a decision on the child. Procedural safeguards need to be in place to ensure that the decision making process is transparent and lawful.<sup>48</sup>

### b. The best interests principle at the intersection of the rights of the child, state obligations and parental responsibilities

54. The UN Convention on the Rights of the Child establishes not only the rights of the child, it also provides for obligations of state authorities, as well as duties and obligations of private actors, such as private social welfare institutions, parents and guardians.

55. The child has the right to be cared for by his or her parents and not to be separated from the family, except where this would be in the best interests of the child (CRC Articles 7 and 9). Family relations are considered an element of the child's identity, alongside the child's name and nationality, which the state has to undertake to preserve (CRC Article 8). In situations where the child and one or both parents do not cohabit, the child has the right to maintain personal relations and direct contact on a regular basis with both parents (CRC Article 9). The Convention affords these rights also specifically in transnational situations of family separation (CRC Article 10).

---

<sup>48</sup> Committee on the Rights of the Child, *General Comment No. 14 (2003) on the right of the child to have his or her best interests taken as a primary consideration*, CRC /C/GC/14, 29 May 2013, par. 6.

56. The primary responsibility for the upbringing and development of a child rests with both parents. Where the parents are not able to provide for their children, this responsibility is passed to a legal guardian (CRC Article 18). Parents or legal guardians are responsible to ensure living conditions are adequate to the child's physical, mental, spiritual, moral and social development, within their abilities and financial capacities (CRC Article 27). Article 5 clarifies that the parental rights, duties and responsibilities to provide "appropriate direction and guidance" diminish in light of the child's evolving capacities of autonomous thinking and acting, of discernment and decision making.

57. States parties have a legal obligation to assist parents in fulfilling their childcare and child-rearing responsibilities. Article 3.2 obliges States parties to ensure children enjoy the protection and care necessary for their wellbeing, taking into account the rights and duties of the parents. The articles setting out parental responsibilities provide for parallel obligations of the State to support parents through social and financial assistance, childcare facilities and services, and other support programmes (CRC Articles 18 and 27). Article 19 provides for the development of social support programmes for children and their caregivers to prevent and respond to all forms of violence, exploitation and neglect of children. Article 26 establishes the child's right to benefit from social security. Under Article 37, the use of cruel, inhuman or degrading treatment or punishment against children is prohibited, which applies to all situations and contexts, including in the home, in schools and institutions.

58. Most of the rights under the Convention that refer to child protection, care and family relations are considered programmatic rights, where States parties enjoy a level of discretion to develop appropriate implementation measures and programmes. Governments need to ensure that these rights are implemented progressively through appropriate legislative, administrative and other measures, and to the maximum extent of their available resources (CRC Article 4).

59. In the context of childcare, the best interests concept has a multiple purpose as it shall enable children to exercise their rights in a way that is most appropriate to their individual situation and needs, provide orientation to third parties under the CRC such as parents, guardians and private service providers to guide and support children to this end, and ensure that the support provided by state authorities to children and parents is conducive to this overall goal. The best interests of the child shall help to make the rights of the child visible in adults' decision making and to assist private and public decision makers in assessing the impact of their decisions on an individual child or groups of children. The principle aims further to ensure that the rights and interests of the child are assigned weight where the rights of the child and the rights of others are in conflict. There is a general understanding that children's interests "should carry more weight in such decisions because their outcome is likely to have much more profound effects on children in the immediate and longer term".<sup>49</sup>

60. The best interests of the child have been recognised as an important and yet complex and vague concept, which eludes efforts to define it. Its application in practice relates to legal and procedural, pragmatic, philosophical and ethical considerations. From a socio-political perspective, the UN Convention on the Rights of the Child promotes the understanding that the rights and interests of the child, as well as the rights, duties and responsibilities of parents, are matters of public interest. The

---

<sup>49</sup> Stalford, Helen, The broader relevance of features of children's rights law: the 'best interests of the child' principle, *Children's Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?*, Edited by Eva Brems, Ellen Desmet and Wouter Vandenhoele, Routledge Research in Human Rights Law, 2017, pp.37-51, p. 38. See also: Zermatten, J., The best interests of the child principle: Literal analysis and function, *International Journal of Children's Rights*, 2010, pp. 483-99.

Convention has fostered thereby an understanding that investing in children contributes to promoting the welfare and development of the society as a whole.<sup>50</sup>

61. In light of this complexity, it is important to recognise that the interpretation of the concept will differ between Council of Europe member States, notwithstanding the shared international and European standards.

*Rights, duties and responsibilities of parents under the UN Convention on the Rights of the Child*

62. The UN Convention on the Rights of the Child stands out from other international human rights treaties due to its comprehensiveness embracing social, economic, cultural, civil and political rights in a single treaty; through the importance attached to single articles considered general principles; and through the role of third parties in the treaty. As third parties, parents, legal guardians and private service providers have certain duties and responsibilities under the Convention that relate to the rights of the child and the obligations of the State. The implementation of the rights of the child depends therefore not only on state action but also on the rights, duties and responsibilities of these third parties, in particular parents.

63. States parties to the Convention have positive and negative obligations to support parents in exercising their rights, duties and responsibilities, to intervene where parents do not live up to their duties and responsibilities, without interfering with private and family life in an arbitrary manner. The Convention refrains, however, from defining any of these concepts, leaving national and sub-national policymakers and decision makers some degree of discretion. Due to the role of parents as third parties under the CRC, the Convention is interpreted to provide a “framework for a social contract between parents and the state, where protection from undue state interference coexists with the right to receive state support. In this framework, parents enjoy a degree of discretion in exercising their roles and responsibilities, whereas parental rights are considered limited and functional.”<sup>51</sup>

64. The Convention considers parents’ rights, duties and responsibilities as limited in time as determined by the evolving capacities of the child, limited in scope as determined by the best interests of the child, and functional in nature as they are to provide for the care, protection and well-being of the child.<sup>52</sup> The best interests principle plays a fundamental role in qualifying these limitations and functions.

65. The *duties of parents* refer to ‘a legally-defined responsibility to perform certain acts or meet certain standards of performance’. As duty bearers, parents are accountable for their decisions, actions and inaction in relation to their children. By obliging States parties to support and monitor the parent’s role in fulfilling his or her duties, the Convention makes parental duties legally enforceable where parents do not perform their duties in a manner consistent with the rights of the child.<sup>53</sup>

---

<sup>50</sup> United Nations General Assembly, *A World Fit For Children*, Special Session on Children, 2002. Stalford, Helen, The broader relevance of features of children’s rights law: the ‘best interests of the child’ principle, *Children’s Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?*, Edited by Eva Brems, Ellen Desmet and Wouter Vandenhoe, Routledge Research in Human Rights Law, 2017, pp.37-51, pp. 38-39.

<sup>51</sup> Ruggiero, Roberta, Diana Volnakis and Karl Hanson, The inclusion of ‘third parties’: The status of parenthood in the Convention on the Rights of the Child, *Children’s Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?*, Edited by Eva Brems, Ellen Desmet and Wouter Vandenhoe, Routledge Research in Human Rights Law, 2017, pp.71-89, pp. 72-75. See also: McGuinness, S., Best interests and pragmatism, *Health Care Analysis*, 2008, p. 208.

<sup>52</sup> Ruggiero, Roberta, Diana Volnakis and Karl Hanson, The inclusion of ‘third parties’: The status of parenthood in the Convention on the Rights of the Child, *Children’s Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?*, Edited by Eva Brems, Ellen Desmet and Wouter Vandenhoe, Routledge Research in Human Rights Law, 2017, pp.71-89, pp. 82-83. See also: Jonathan Law, Elizabeth A. Martin, *A Dictionary of Law*, 7<sup>th</sup> edition, Oxford University Press, 2014.

<sup>53</sup> Ruggiero, Roberta, Diana Volnakis and Karl Hanson, The inclusion of ‘third parties’: The status of parenthood in the Convention on the Rights of the Child, *Children’s Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?*, Edited by Eva Brems, Ellen Desmet and Wouter Vandenhoe, Routledge Research in Human Rights Law, 2017, pp.71-89, pp. 81-84.

66. The *rights of parents* under the Convention are understood as interests or privileges recognised and protected by law. They are not specifically defined, but relate primarily to the right to provide “appropriate direction and guidance in the exercise by the child of the rights” recognised under the Convention (Article 5). Parents enjoy the right that their childcare and child rearing roles and responsibilities are respected and protected by the State. The parental rights entail all those rights that can be considered instrumental to provide direction and guidance, such as a right to reside with the child, to have access and contact with the child. It can be argued that parental rights are recognised under the Convention as a consequence of parental responsibility, while they derive from the duty to provide direction and guidance and are limited by the understanding that this direction and guidance are appropriate and in accordance with the best interests of the child.<sup>54</sup>

67. The CRC does not define *parental responsibilities* but mentions examples in relation to the upbringing and development of the child and the living conditions (Articles 18.1, 27.2). The Convention uses the term to refer to parental duties and rights, owing to the individual needs of the child and with a view to supporting and enabling the child exercising his or her rights.

68. Against this background, parental responsibilities are understood as all the duties and rights of parents to take autonomous decisions in the performance of the parental role, whereas the child’s wellbeing is considered not only a private interest of the parents and the child but also a matter of public interest. This broad definition of parental responsibility is considered to combine rights, duties, powers and responsibilities towards the child and the child’s property. It encompasses “parental duties towards the child and the state, the parents’ right to perform their role free from arbitrary state interventions, and the right to benefit from different forms of state support”.<sup>55</sup>

### **c. Reservations to the UN Convention on the Rights of the Child by Council of Europe Member States**

69. After over three decades with the CRC, Council of Europe member States have removed a significant number of declarations and reservations, which limit the application of the Convention within their jurisdiction. Today, three member States uphold declarations and reservations to CRC Articles relevant for domestic care proceedings concerning the limitation of parental responsibilities or the placement of a child in care.<sup>56</sup>

70. Reservation by Croatia: “The Republic of Croatia reserves the right not to apply paragraph 1 of article 9 of the Convention since the internal legislation of the Republic of Croatia provides for the right of competent authorities (Centres for Social Work) to determine on separation of a child from his/her parents without a previous judicial review.” The reservation applies to the temporary separation of the child from the family and emergency placement in situations where there is an immediate risk to the child’s life, health or wellbeing. This urgency measure is provided for by law, whereas the Centres for Social Work are competent to take the decision *ex officio* and upon request from a child or parent. It is connected to strict time limits and requires a judicial review of the decision within 72 hours.<sup>57</sup> Similar provisions for time-limited emergency measures without a prior judicial review are in place in other member States as well.

71. Declaration by Poland: “The Republic of Poland considers that a child’s rights as defined in the Convention, in particular the rights defined in articles 12 to 16, shall be exercised with respect for

---

<sup>54</sup> Ibid. p. 83.

<sup>55</sup> Ibid. pp. 83-84. See also: Jonathan Law, Elizabeth A. Martin, A Dictionary of Law, 7<sup>th</sup> edition, Oxford University Press, 2014. David Archard, *Children: Rights and Childhood*, 2<sup>nd</sup> edition, Routledge 2004, p. 149.

<sup>56</sup> United Nations Treaty Collection, Chapter IV, Human Rights, [Convention on the Rights of the Child](#), Status as of 10 March 2021.

<sup>57</sup> Croatia, Family Law, Articles 135, 136 and 138.

parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family.”

72. Declaration by the United Kingdom: “The United Kingdom “interprets the references in the Convention to “parents” to mean only those persons who, as a matter of national law, are treated as parents. This includes cases where the law regards a child as having only one parent, for example where a child has been adopted by one person only and in certain cases where a child is conceived other than as a result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent.”

73. The reservation of Croatia and the declaration by Poland underline the importance of ascertaining that human rights principles and procedural safeguards in best interests determinations are fully in place and effective in all administrative and judicial proceedings concerning children. By reiterating recognition of this fact for all member States, especially from high levels of government, the policy instrument and/or practical guide could contribute to a firm commitment that children are protected by procedural safeguards also when their best interests are determined outside court proceedings and that the views of the child are heard and given due weight in accordance with CRC Article 12 (see *Chapter 5.g*).

**d. International and European standards relevant to the best interests of the child in care proceedings**

74. This chapter provides a non-exhaustive list of relevant Conventions, recommendations and guidelines of the Council of Europe and the United Nations, Conventions of the Hague Conference on Private International Law, as well as European Union law and guidance relevant for the best interests of the child in care proceedings. The most pertinent international and European standards with relevance to the best interests of the child in domestic law proceedings concerning the limitation of parental responsibilities and the placement of a child in alternative care relate, as a minimum, to the following fields: human rights, rights of the child, rights of women, rights of persons with disabilities, rights of persons belonging to minority groups, rights of migrants and asylum seekers.<sup>58</sup>

75. Questions concerning childcare, the limitation of parental responsibilities and the placement of children in alternative care continue to be high on the national and transnational agendas of Council of Europe member States. Numerous Council of Europe Conventions, Recommendations and Guidelines, as well as Resolutions of the Council of Europe Parliamentary Assembly, address matters related to parental responsibilities, family life and service provision for children and families, as well as alternative care for children and child-sensitive justice.

76. Council of Europe Conventions:

- Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) 1950 and Protocols
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (CETS No. 105) 1980

---

<sup>58</sup> The Committee of Experts CJ/ENF-ISE has thus far not specifically debated, nor taken a decision, whether the situation of unaccompanied and separated children in the context of migration should be covered by the policy instrument and/or practical guide specifically. The body of international and European standards regulating the placement and care for this group of children is therefore not explicitly mentioned in this document. In light of the right to non-discrimination and the principle of equality of care, the human rights, general principles and procedural safeguards discussed in this study, would be considered equally relevant to the best interests determination procedures concerning non-national children, migrant and asylum seeking children, including unaccompanied and separated children.

- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108) 1981 and Protocols
- Framework Convention for the Protection of National Minorities (CETS No. 157) 1995
- European Convention on the Exercise of Children's Rights, (CETS No. 160) 1996
- Revised European Social Charter (1996, CETS No. 163)
- Convention on Contact concerning Children (CETS No. 192) 2003
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) 2007
- European Convention on the Adoption of Children (Revised) (CETS No. 202) 2008
- Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) 2011

77. Council of Europe Recommendations, Guidelines and Strategies:

- Resolution Res(77)33 of the Committee of Ministers on placement of children
- Recommendation Rec(84)4 to member States on parental responsibilities
- Recommendation Rec(87)6 of the Committee of Ministers to member States on foster families
- Recommendation Rec(91)9 of the Committee of Ministers to member States on emergency measures in family matters
- Recommendation Rec(98)1 to member States on family mediation
- Recommendations on children's participation in family and social life (R(98)8)
- Recommendation Rec(2005)5 on the rights of children living in residential institutions
- Recommendation Rec(2006)19 on policy to support positive parenting
- Recommendation CM/Rec(2009)6 of the Committee of Ministers to member states on ageing and disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society
- Recommendation CM/Rec(2009)10 on integrated national strategies for the protection of children from violence
- Guidelines on child-friendly justice (2010)
- Recommendations on children's rights and social services friendly to children and families (Rec(2011)12)
- Guidelines on child-friendly health care (2011)
- Recommendations on participation of children and young people under the age of 18 (Rec(2012)2)
- Recommendation CM/Rec(2012)6 of the Committee of Ministers to member States on the protection and promotion of the rights of women and girls with disabilities
- Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation
- Guidelines of the Committee of Ministers of the Council of Europe on electronic evidence in civil and administrative proceedings, CM(2018)169
- Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents
- Recommendation CM/Rec(2019)11 on effective guardianship for unaccompanied and separated children in the context of migration
- Council of Europe Strategy for the Rights of the Child (2016-2021) and the forthcoming Strategy for 2022-2027

78. Council of Europe Parliamentary Assembly Resolutions:

- Council of Europe, Parliamentary Assembly Resolution 2232 (2018) on Striking a balance between the best interest of the child and the need to keep families together

- Council of Europe, Parliamentary Assembly Resolution 2049 (2015) on Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States
- Council of Europe, Parliamentary Assembly Resolution 1909 (2012) on Intercountry adoption: ensuring that the best interests of the child are upheld
- Council of Europe, Parliamentary Assembly Resolution 1762 (2010) on Children without parental care: urgent need for action
- Council of Europe, Parliamentary Assembly Resolution 1714 (2010) on Children who witness domestic violence
- Council of Europe, Parliamentary Assembly Recommendation 1071 (1988) on Child welfare – Providing institutional care for infants and children

79. United Nations Conventions:

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Rights of the Child (1989)
- Convention on the Elimination of all Forms of Discrimination Against Women (1979)
- United Nations Convention on the Rights of Persons with Disabilities (2006)

80. Committee on the Rights of the Child and other Treaty Bodies:

General Comments issued by the Committee on the Rights of the Child and other Treaty Bodies, including, but not limited to, the following:

- 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
- Committee on the Rights of the Child, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence
- Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard
- Committee on the Rights of the Child, General Comment No. 9 (2006) on the rights of children with disabilities
- Committee on the Rights of Persons with Disabilities, General Comment No. 5 (2017) on living independently and being included in the community

81. United Nations Guidelines:

- United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2005)
- United Nations High Commissioner for Refugees, UNHCR Guidelines on Determining the Best Interests of the Child, Geneva, May 2008
- United Nations Guidelines for the Alternative Care of Children (2010)
- United Nations High Commissioner for Refugees, United Nations Children's Fund, Safe and Sound, What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, 2014



82. Hague Conference on Private International Law:

- Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993)
- Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996)

83. European Union Law:

- Charter of Fundamental Rights (2000)
- Regulation EU/2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data
- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, and its recast: Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime

84. European Union Guidance:

- European Union Agency for Fundamental Rights, *Handbook on European Law Relating to the Rights of the Child* (2015)
- European Union Principles for integrated child protection systems (2015)
- European Asylum Support Office, *Practical Guide on the Best Interests of the Child in Asylum Procedures*, 2019
- European Expert Group on the Transition from Institutional to Community-based Care, *Common European Guidelines on the Transition from Institutional to Community-based Care*, 2012

85. Others:

- Council of the Baltic Sea States, *Guidelines on the Human Rights and Best Interests of the Child in Transnational Situations*, 2015
- Council of Europe and SOS Children's Villages International, *Securing Children's Rights, A guide for professionals working with children in alternative care*, 2014
- International Foster Care Organisation, SOS Children's Villages, FICE International, *Quality for Children Standards*, 2007

86. The existing Council of Europe standards, as well as other international and European standards relevant to care proceedings, share a common reference to the best interests of the child. They refrain however from providing details on what the best interests of the child mean in the context of care proceedings, how the best interests of the child have to be assessed and determined, and how decision makers could assign weight to the best interests of the child as a primary consideration.<sup>59</sup> A

---

<sup>59</sup> The European Convention on the Exercise of Children's Rights, CETS. 160, for instance, focuses on procedural rights that are relevant for the best interests determination procedure. It refrains, however, from clarifying the best interests determination procedure as such. In this sense, the proposed policy instrument would add value and contribute to the progressive implementation of this and other Council of Europe and international standards.

new policy instrument and/or practical guide could add innovative value by focusing on the best interests determination procedure as a cross-cutting element that being clarified would significantly contribute to the progressive implementation of existing standards in this field.

**e. Principles emerging from the case law of the European Court of Human Rights**

87. The European Court of Human Rights (ECtHR) has tried numerous cases concerning the best interests of the child in the context of care proceedings. These cases generally relate to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on the right to respect for private and family life. Between 1992 and 2019, 31 cases were directly relevant for the purpose of this study. They concern 15 countries, whereas Germany (5 cases), Italy (5 cases), and Norway (4 cases) were particularly often brought before the ECtHR on charges concerning Article 8 ECHR and the best interests of the child in care proceedings.<sup>60</sup> The ECtHR case law reveals that human rights principles and procedural safeguards are not yet respected consistently in the context of domestic care proceedings in Council of Europe member States.

88. The Court operates according to the principle of subsidiarity, whereas national authorities are primarily responsible for the assessment of facts and evidence and the ECtHR considers if the decisions of national authorities are compliant with the European Convention on Human Rights, as the main treaty of reference. The ECtHR case law demonstrates that the Court draws inspiration from other international standards, particularly legally binding instruments such as the UN Convention on the Rights of the Child, as well as recommendations and guidance developed by the Council of Europe and, occasionally, the general comments or concluding observations of the Committee on the Rights of the Child.<sup>61</sup> The Court considers the ECHR and the CRC as “living instruments” to be interpreted in light of the evolving role of children in society and the changing composition of families.<sup>62</sup>

*The best interests of the child as a substantive right*

89. The Court underlines that in all decisions concerning children, the best interests of the child are of paramount importance and must be a primary consideration.<sup>63</sup> The Court’s case law affirms an interpretation of the best interests of the child as a substantive right, a fundamental, interpretive legal principle and a rule of procedure. As a substantive right, the principle places an obligation on state authorities to ensure that the child is protected against harm to his or her health and development, and is able to maintain family relations, except in cases where the family has proved particularly unfit. State authorities are held to do everything to preserve family relations and, if and as appropriate, to rebuild and reunite the family. Family ties can only be severed in very exceptional circumstances.<sup>64</sup>

---

<sup>60</sup> Council of Europe, Committee of Experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE), *Best interests of the child in care proceedings – compilation of excerpts of relevant international and European instruments*, First meeting (24-25 September 2020), Agenda Item 6, CJ/ENF-ISE(2020)INF3prov, 3 September 2020, pp. 38-59.

<sup>61</sup> For ECtHR case law citing concluding observations of the Committee on the Rights of the Child, see: Wallová and Walla v. the Czech Republic, No. 23848/04, 26 October 2006. Cited in: Council of Europe, *The Best Interests of the Child, A dialogue between theory and practice*, 2016, p. 111.

<sup>62</sup> Council of Europe, *Report on the Protection of Children’s Rights, International standards and domestic constitutions*, European Commission for Democracy through Law (Venice Commission), Adopted by the Venice Commission at its 98<sup>th</sup> Plenary Session, Venice, 21-22 March 2014, pp. 13-14. Justice Turkovic, Presentation of the Case Law of the European Court of Human Rights relevant to the best interests of the child in domestic law proceedings concerning parental separation, the limitation of parental responsibility and the placement of a child in care, Second Meeting of the Committee of Experts CJ/ENF-ISE, 14 December 2020.

<sup>63</sup> Chbihi Loudoudi and Others v. Belgium, No. 52265/10, 16 December 2014, para. 131. Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 204.

<sup>64</sup> Gnahoré v. France, No. 40031/98, 19 September 2000, para. 59. Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 207.

Best interests determination as a formal process protected by procedural safeguards

90. The Court's case law refers to the General Comment No. 14 of the Committee on the Rights of the Child and affirms thereby the authoritative value of this guidance for state authorities. It underlines that states have to put in place formal processes for the assessment and determination of the best interests of the child, which are protected by procedural safeguards. These processes must be transparent and objective and guide decisions made by legislators, judges, and administrative authorities, which directly affect the child or children.<sup>65</sup> States have to ensure that procedural safeguards are practical, effective and child-sensitive where decisions are made to limit parental responsibility or to place a child in care and to determine the best interests of the child in this regard.<sup>66</sup>

91. The Court has regard to the authorities' decision making process, to determine whether it has been conducted in such a manner as to secure that the views and interests of the natural parents are made known to and duly taken into account by the authorities and that they are able to access in due time any remedies available to them.<sup>67</sup> The Court recognises the right of the parents to be involved in the decision making process, to a sufficient degree to provide them with the requisite protection of their interests, and that they are enabled to fully present their case.<sup>68</sup> The Court recognises that any procedural delay will result in the *de facto* determination of the issue submitted to the court before it has held its hearing. Equally, effective respect for family life requires that future relations between the parent and child be determined solely in the light of all relevant considerations and not by the mere effluxion of time.<sup>69</sup>

92. The Court observes that, as a general rule, national courts are held to assess the evidence before them, including the means to ascertain the relevant facts. Recognising the primordial interest of the child in the decision making process, the Court notes however also that national authorities have to undertake a thorough examination of the family situation and perform a genuine balancing exercise between the interests of the child and the biological family. The case assessment has to take into account a range of factors, including factual, emotional, psychological, material and medical factors. The Court underlines the importance that a case has to be assessed with diligence and take into account the dynamics of the situation of a parent and new evidence that may become available during the proceedings.<sup>70</sup> Based on the assessment of the facts and evidence, the national court has to give sufficient reason for its decision.<sup>71</sup>

Protection against arbitrary interference: Legality, necessity and proportionality of measures

93. The Court notes that Article 8 ECHR aims essentially to protect the individual against arbitrary action and interference in private and family life by the public authorities.<sup>72</sup> A best interests determination is necessary to assess if the measures taken respect the principle of proportionality and

<sup>65</sup> Committee on the Rights of the Child, *General Comment No. 14 (2003) on the right of the child to have his or her best interests taken as a primary consideration*, CRC /C/GC/14, 29 May 2013, par. 87. See: Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 207.

<sup>66</sup> Haddad v. Spain, No. 16572/17, 18 June 2019, para. 72. Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 207. Committee on the Rights of the Child, *General Comment No. 14 (2003) on the right of the child to have his or her best interests taken as a primary consideration*, CRC /C/GC/14, 29 May 2013, par. 85.

<sup>67</sup> See for instance, *W. v. the United Kingdom*, 8 July 1987, § 63, Series A no. 121, and *Elsholz* § 52. Cited in: Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 212.

<sup>68</sup> See: see, for example, *W. v. the United Kingdom*, § 64; *T.P. and K.M. v. the United Kingdom [GC]*, no. 28945/95, § 72, ECHR 2001-V (extracts); *Neulinger and Shuruk*, § 139; and *Y.C. v. the United Kingdom*, no. 4547/10, § 138, 13 March 2012. Cited in: Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 212.

<sup>69</sup> Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 211-212.

<sup>70</sup> Haddad v. Spain, No. 16572/17, 18 June 2019, para. 61, 63. Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 213, 220, 224.

<sup>71</sup> B.B. and F.B. v. Germany, Nos. 18734/09 and 9424/11, 14 March 2013. Cited in: Council of Europe, p. 112.

<sup>72</sup> *Ignaccolo-Zenide v. Romania*, No. 31679/96, 25 January 2000, para. 94. *Keegan v. Ireland*, No. 16969/90, 26 May 1994, para. 49.

protect all individuals involved against arbitrary interference with family life. An interference with an individual's right to respect for their family life within the meaning of Article 8 §1, such as the limitation of parental responsibility and the placement of a child in alternative care, can be justified where it is "in accordance with the law" and where it pursues an aim or aims that are legitimate under Article 8 §2. It can be regarded as "necessary in a democratic society" where it pursues the legitimate aim of protecting the rights of others, namely the child who has suffered harm. This is the case where, in the light of the case as a whole, the reasons adduced to justify the measures were "relevant and sufficient", and where the decision making process to determine the measures of interference were fair and afforded due respect to the interests safeguarded by Article 8.<sup>73</sup>

94. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In this context, a fair balance has to be struck between the legitimate interests involved in the case, which may be competing.<sup>74</sup> The best interests principle shall guide the assessment by national authorities of the proportionality of the measures taken.<sup>75</sup>

95. The Court ascertains that economic reasons alone cannot give reason to a limitation of parental responsibility or the placement of a child in care.<sup>76</sup>

#### Preventive measures and family support

96. The Court considers that the role of the social welfare authorities is to assist persons in difficulty, including in situations where parents are unable to provide adequate care for their child. Where these difficulties lead to a child being placed in care, it is the role of the social welfare authorities to guide the parent(s) in their efforts and to advise them.<sup>77</sup>

#### Proactive measures to support family reunification

97. A recurring theme in the Court's case law is the right of the parents to have measures taken with a view to their being reunited with their children and the correlated obligation on national authorities to take such measures to facilitate family reunification as soon as reasonably feasible.<sup>78</sup>

98. To achieve this, the Court ascertains that support to family reunification has to take place in an effective and coherent manner. The competent national authorities have a duty to exercise constant vigilance over the conduct of service providers to ensure effective action is taken to implement relevant decisions, for instance to facilitate effective contact between the parents and the children placed in alternative care.<sup>79</sup> Distance and restrictions that limit access or other impediments to easy and regular access are considered to weaken family ties and the prospects for successful family reunification.<sup>80</sup> Where the authorities are responsible for a situation of family breakdown because of impediments that hindered the easy and regular access, they may not base a decision to authorise adoption on the grounds of the absence of bonds between the parents and the child.<sup>81</sup>

<sup>73</sup> R.K. and A.K. v. the United Kingdom, No. 38000/05, 30 September 2008, para. 32-37. Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 202-203. Blyudik v. Russia, No. 46401/08, 25 June 2019, para. 75.

<sup>74</sup> Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 203.

<sup>75</sup> Chbihi Loudoudi and Others v. Belgium, No. 52265/10, 16 December 2014, para. 131.

<sup>76</sup> R.M.S. v. Spain, No. 28775/12, 18 June 2013, para. 92.

<sup>77</sup> Haddad v. Spain, No. 16572/17, 18 June 2019, para. 68.

<sup>78</sup> Olsson v. Sweden (No. 2), No. 74/1991/326/398, 30 October 1992, para. 90. Ignaccolo-Zenide v. Romania, No. 31679/96, 25 January 2000, para. 94. Keegan v. Ireland, No. 16969/90, 26 May 1994, para. 49. Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 205.

<sup>79</sup> Scozzari and Giunta v. Italy, No. 39221/98 and 41963/98, 13 July 2000, para. 181.

<sup>80</sup> Olsson v. Sweden (No. 1), No. 10465/83, 24 March 1988, para. 81.

<sup>81</sup> Strand Lobben and others v. Norway, No. 37283/13, 10 September 2019, para. 208-209.

99. Where children are placed in care, the placement decision should always be considered a temporary measure unless the children are to be adopted. Temporary placement measures should be consistent with the ultimate aim of family reunification as soon as circumstances permit.<sup>82</sup> The adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent with whom the child does not live. When, however, a considerable period of time has passed since the child was placed in care, the interest of the child not to have his or her family situation changed again may override the interests of the parents to have their family reunited.<sup>83</sup>

100. The effective respect for family life is connected with positive obligations on state authorities and the rights of parents. The Court has repeatedly held that Article 8 includes a parent's right to the taking of measures with a view to being reunited with his or her child and an obligation on the national authorities to take such action. The boundaries between the State's positive and negative obligations in this field have not been defined. The Court underlines, however, that a fair balance is required between the competing interests of the individual and of the community, whereas the State enjoys a certain margin of appreciation with regard to both dimensions.<sup>84</sup>

101. The margin of appreciation to be accorded to the competent national authorities varies in light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation that is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit.<sup>85</sup>

102. Neither the right of the parents nor the obligations of the national authorities are, however, absolute. The reunion of natural parents with children who have lived for some time in a foster family needs preparation. The nature and extent of such preparation may depend on the circumstances of each case. It always requires the active co-operation of all concerned. Whilst national authorities must do their utmost to bring about such co-operation, their possibilities of applying coercion in this respect are limited since the interests as well as the rights and freedoms of all concerned must be taken into account, notably the children's interests and their rights under Article 8 ECHR. Where contacts with the natural parents would harm those interests or interfere with those rights, it is for the national authorities to strike a fair balance. A decisive consideration for the Court is whether the national authorities have made efforts to arrange the necessary preparations for family reunification as can reasonably be demanded under the special circumstances of each case.<sup>86</sup>

103. While recognising a wide margin of appreciation on the side of national authorities, the Court underlines also that a stricter scrutiny is called for as regards any further limitations, such as restrictions placed on parental rights of access, questions of information, and any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed.<sup>87</sup>

---

<sup>82</sup> *Olsson v. Sweden* (No. 1), No. 10465/83, 24 March 1988, para. 81.

<sup>83</sup> *Strand Lobben and others v. Norway*, No. 37283/13, 10 September 2019, para. 208-209. *Jansen v. Norway*, No. 2822/16, 6 September 2018, para. 88-93, 90. *K.A. v. Finland*, No. 27751/95, 14 January 2003, para. 138. *Haddad v. Spain*, No. 16572/17, 18 June 2019, para. 54.

<sup>84</sup> *Ignaccolo-Zenide v. Romania*, No. 31679/96, 25 January 2000, para. 94. *Keegan v. Ireland*, No. 16969/90, 26 May 1994, para. 49.

<sup>85</sup> *Jansen v. Norway*, No. 2822/16, 6 September 2018, para. 88-93, 90.

<sup>86</sup> *Olsson v. Sweden* (No. 2), No. 74/1991/326/398, 30 October 1992, para. 90.

<sup>87</sup> *Sahin v. Germany*, No. 30943/96, 8 July 2003, para. 65. *Fröhlich v. Germany*, No. 16112/15, 26 July 2018, para. 41. *Sommerfeld v. Germany*, No. 31871/96, 8 July 2003, para. 63. *K.A. v. Finland*, No. 27751/95, 14 January 2003, para. 138-139. *Johansen v. Norway*, No. 17383/90, 7 August 1996, para. 64. *A.D. and O.D. v. United Kingdom*, No. 28680/06, 16 March 2010, para. 83.

104. The Court has in certain instances attached weight to whether the authorities, before taking a child into public care, had first attempted to take less drastic measures, such as supportive or preventive measures, and whether these had proved unsuccessful.<sup>88</sup> In this context, the Court takes a range of formal matters into consideration, such as the absence of a time-limit on a care order, as well as matters of personal attitudes, the quality of cooperation of different actors involved in a case and the quality of influence that service providers and caretakers have on the child.<sup>89</sup> The minimum to be expected of the authorities is to examine the situation anew from time to time to see whether there has been any improvement in the family's situation.<sup>90</sup>

#### **f. Jurisprudence of the Committee on the Right of the Child under the communications procedure**

105. In 2018, the Committee on the Rights of the Child examined under the communications procedure a cross-border *kafalah* case.<sup>91</sup> The case was brought before the Committee by a married couple, citizens of Belgium, who had taken an abandoned child from Morocco into care under a *kafalah* arrangement formally approved by the Moroccan state authorities.<sup>92</sup> In Morocco, *kafalah* arrangements are governed by the national law on the care of abandoned children. *Kafalah* arrangements are recognised by the UN Convention on the Rights of the Child as a form of alternative care of children. Article 20 obliges States parties to pay due regard to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. In consequence, care proceedings should protect the relationship between the child and the child's *Kafil* parents, in accordance with the best interests of the child. Whereas the authors of the claim were partially living in Morocco and in Belgium, the Belgian authorities refused to grant the child a residence permit for Belgium on the grounds that the authors had taken the child into care in a domestic proceeding in Morocco and that they would be required to proceed with an inter-country adoption procedure if the child was to live with them in Belgium.

106. The Committee on the Rights of the Child concluded that there had been a violation of Article 3, as the best interests of the child had not been assessed and, in consequence, not been taken as a primary consideration. In addition, the Committee noted that the rights of the child under Article 10 had been violated, which requires States parties to deal with family reunification in a positive, humane and expeditious manner, underlining that the State party was obliged to take into account the *de facto* ties that had developed on the basis of the *kafalah* arrangement between the child and the authors of the claim. The Committee identified also a violation of Article 12, as the views of the child had not been heard and taken into account in the decision making process. The Committee held that, at the age of five years old, when the second decision on the authors' application for a humanitarian visa for the child was made, the child would have been "perfectly capable of forming views of her own

---

<sup>88</sup> See for instance, *Olsson (no. 1)* §§ 72-74; *R.M.S. v. Spain*, no. 28775/12, § 86, 18 June 2013, § 86; and *Kutzner v. Germany*, no. 46544/99, § 75, *ECHR 2002-I*. Cited in: *Strand Lobben and others v. Norway*, No. 37283/13, 10 September 2019, para. 211-212.

<sup>89</sup> *Scozzari and Giunta v. Italy*, No. 39221/98 and 41963/98, 13 July 2000, para. 215.

<sup>90</sup> *K.A. v. Finland*, No. 27751/95, 14 January 2003, para. 139.

<sup>91</sup> Committee on the Rights of the Child, [Table of Pending Cases](#) before the Committee on the Rights of the Child, Last update: 15 March 2021. For the years 2020 and 2021, there are at present five cases pending before the Committee on the Rights of the Child under the individual complaints procedure, with potential relevance for the best interests of the child in the context of domestic care proceedings concerning the limitation of parental responsibilities and the placement of the child in care: 127/2020 France Institutionalization of a child with autism and a heart disease. 133/2020 Spain Irregularities during the adoption proceedings of the author's two daughters. 135/2021 France Institutionalization of two girls. 137/2021 France Placement in foster care of a new born premature baby girl. 139/2021 Czech Republic Placement in institutional care of two siblings to ensure their rights to health and education.

<sup>92</sup> In Morocco, *kafalah* arrangements are governed by Law n° 15.01 on the care of abandoned children. Article 12 of Law n° 15.01 states that the *kafalah* of a child over the age of twelve years (Gregorian calendar) is subject to the child's personal consent. The Family Code of Morocco regulates custody provisions in Articles 163 to 186.

regarding the possibility of living permanently with the authors in Belgium”.<sup>93</sup> The Committee’s General Comment No. 12 on the right of the child to be heard, states clearly that “it is vitally important that the child is heard ... when a child is to be placed for adoption or *kafalah*”.<sup>94</sup>

#### **g. Human rights principles guiding care proceedings**

107. On the basis of the international and European standards and the case law of the ECtHR, the following human rights principles and fundamental freedoms may be considered for the drafting of the policy instrument and/or practical guidance:

108. Human rights principles and fundamental freedoms:

- Inviolability of human dignity
- Right to protection against arbitrary interference with family life
- Right to be cared for by the parents
- Continuity in a child’s upbringing
- Right to maintain contact with the family of origin
- Right of the child to preserve his or her identity
- The best interests of the child as a primary consideration
- The right of the child to life, survival and development
- Equality of care and prevention of discrimination
- Right of the child to be heard and to have their views taken into account
- Respect for the evolving capacities of the child
- Right to be protected against all forms of neglect, violence and exploitation
- Right to protection from use of force or restraint
- Right to healthcare, education and welfare
- Protection of personal data and privacy
- Legality, necessity and proportionality of measures
- Adequacy of measures

#### **h. Procedural safeguards in care proceedings**

109. A best interests determination, as a formal administrative or judicial proceeding, has to comply with the following procedural safeguards, which are rooted in international and European law, guidance and recommendations,<sup>95</sup> and reflect principles of rule of law and due process. These safeguards have been ascertained by the case law of the ECtHR:

- a. ***Child-friendly information:*** At all times during the best interests determination, the child has a right to seek, receive and impart information. Information has to be provided in a language that the child understands.<sup>96</sup> Information should be gender and culture sensitive and should be provided to the child in a manner that is adapted to the child’s age and maturity.<sup>97</sup>

---

<sup>93</sup> Committee on the Rights of the Child, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 12/2017, CRC/C/79/D/12/2017, 5 November 2018.

<sup>94</sup> Committee on the Rights of the Child, General Comment No. 12 (2009, par. 55).

<sup>95</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 87.

<sup>96</sup> UN Convention on the Rights of the Child, Article 17. International Covenant on Civil and Political Rights, Article 19. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 25. Committee on the Rights of the Child, General Comment No. 12 (2009). Committee on the Rights of the Child, General Comment No. 14 (2013), par. 90. See also: Council of Europe, *European Convention on the Exercise of Children’s Rights*, 1996, Article 1.2, Article 3.

<sup>97</sup> Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, 2010, Guideline IV. A. 2.

- b. **Right to be heard:** The child has the right to express his or her views and to have them taken into account with due weight at all stages of a best interests determination procedure. States have to ensure that the child has access to assistance by a legal representative, quality interpretation and cultural mediation, where applicable.<sup>98</sup>
- c. **Guardianship:** Where a child is unaccompanied or separated from his or her parents, where the child's parents are not available or in a position to exercise the guardianship of their child, or where the interests of the child and the parent(s) are in conflict, the child has a right to have a guardian appointed. If a guardian cannot be appointed promptly, a temporary guardian should fulfil the guardian's mandate pending the appointment of the guardian. The guardian shall be mandated to promote the best interests of the child and to complement the limited legal capacity of the child in all matters concerning the child.<sup>99</sup>
- d. **Legal representation:** "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 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."<sup>100</sup> The legal representative supports the child to seek and receive information in a language that the child understands, ensures that the child's views are heard and taken into account and that the procedure respects the rights of the child at all times.<sup>101</sup>
- e. **Establishment of facts:** The best interests determination must be based on facts and information gathered, verified and analysed by well-trained professionals in order to draw up all the necessary elements.<sup>102</sup>
- f. **Legal reasoning:** In a best interests determination, the decision making process has to be documented in writing with clear and transparent legal reasoning.<sup>103</sup> The decision must be motivated, justified and explained and should be made available, together with all supporting documentation, promptly to the child and his or her parent or guardian and, where applicable, legal representative. While the child should be assisted in reading and understanding the decisions resulting from administrative and judicial proceedings and the underlying legal reasoning, it is an added value to write these documents in a language that the child understands.
- g. **Timeliness** of the procedure, the decision making and follow-up: The best interests determination has to be carried out in a timely manner and be prioritized and completed in the shortest possible time, with due regard to the impact of the procedure on the child.<sup>104</sup>

---

<sup>98</sup> UN Convention on the Rights of the Child, Article 12. International Covenant on Civil and Political Rights, Article 14. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 25. Committee on the Rights of the Child, General Comment No. 12 (2009). Committee on the Rights of the Child, General Comment No. 14 (2013), par. 90.

<sup>99</sup> United Nations Convention on the Rights of the Child Articles 14.2, 18. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 21, 24, 25, 33-38, 55, 63, 69, 72, 89, 95, 99. Committee on the Rights of the Child, General Comment No. 14 (2013), par. 44, 86, 90, 96. Council of Europe Committee of Ministers, Effective Guardianship for Unaccompanied and Separated Children in the Context of Migration, Recommendation [CM/Rec\(2019\)11](#) of the Committee of Ministers, 2019. 2011 EU Qualifications Directive (recast), Articles 31.1, 31.2 and 31.6.

<sup>100</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 96.

<sup>101</sup> United Nations Convention on the Rights of the Child Articles 12.2, 37.d, 40. International Covenant on Civil, Cultural and Political Rights Articles 13, 14.2 b. Committee on the Rights of the Child, General Comment No. 14 (2013), par. 90. See also: Council of Europe, *European Convention on the Exercise of Children's Rights*, 1996, Articles 1.2, 4, 5, 9, 10.

<sup>102</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 92.

<sup>103</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 97.

<sup>104</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 93.



- h. **Complaints mechanism:** Children should have access to a child-sensitive reporting and complaints mechanism. They should be informed in a language that they understand how to access these mechanisms in order to report infringements against their rights in relation to the best interests determination procedure. Such mechanisms have to ensure effective follow-up to any reports and complaints received, including specific and effective support in cases where the rights of the child or any procedural safeguards have been infringed.<sup>105</sup>
- i. **Mechanisms to review or revise decisions:** A child whose best interests have been determined in the context of administrative or judicial proceedings has the right to have the outcome of the proceedings reviewed or revised. A review or revision of the decision could be in the best interests of the child when the child can present information or documentation that has become newly available or rectify any information falsely reflected in the supporting documentation of the decision.<sup>106</sup>
- j. **Right to appeal and access to legal remedies:** Best interests determinations should be subject to administrative or judicial appeal. The appeal procedure should be accessible for the child and his or her legal representative, child-sensitive, and they should be initiated and concluded in a timely manner. To enable the child to access the appeal mechanism, the child needs to have access to child-friendly information, legal remedies, including legal assistance and representation by a qualified lawyer free of charge as well as interpretation wherever required.<sup>107</sup>

110. Whereas procedural safeguards have to be sensitive to the needs and rights of children, they must also give due consideration to specific needs and vulnerabilities. Protection from discrimination on any grounds is one of the fundamental principles of the Council of Europe Guidelines on child-friendly justice. To prevent and redress discrimination, children with special needs may require targeted support to exercise their right to participate in decision making processes concerning them, including in the context of a best interests determination procedure. The Guidelines provide that “specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum-seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions”.<sup>108</sup>

111. The Committee on the Rights of the Child underlines in its General Comment No. 12 on the right of the child to be heard that children with disabilities should be equipped with, and enabled to use, any mode of communication necessary to facilitate the expression of their views. The Committee welcomed the obligation of States parties in article 7 of the Convention on the Rights of Persons with Disabilities to ensure that children with disabilities are provided with the necessary assistance and equipment to enable them to freely express their views and for those views to be given due weight in all matters concerning the child, including in the context of administrative and judicial proceedings.<sup>109</sup>

---

<sup>105</sup> UN Convention on the Rights of the Child, Article 12. United Nations Committee on the Rights of the Child, General Comment No. 2 (2002). United Nations General Assembly, National Institutions for the Promotion and Protection of Human Rights, A/RES/48/134, 1993.

<sup>106</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 98.

<sup>107</sup> European Convention on Human Rights, Article 13. International Covenant on Civil and Political Rights, Articles 2, 13, 14(5). EU Charter, Article 47. Committee on the Rights of the Child, General Comment No. 14 (2013), par. 98.

<sup>108</sup> Council of Europe, *Guidelines on Child-friendly Justice*, 2011, p. 19.

<sup>109</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 21 and 78. Article 7 of Convention on the Rights of Persons with Disabilities affords that in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. States parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that rights.

### Examples of practice: Procedural safeguards in Council of Europe member States

112. In **Ireland**, the child care legislation does not define specific time limits for child care proceedings. It is however generally recognised that it is in the best interests of the child for proceedings to be carried out as expeditiously as possible. This has been given weight in practice directions issued by the Dublin Metropolitan District Court in relation to the hearing of care proceedings. These practice directions have also been adopted by many District Court judges throughout the country as good practice. The practice direction is intended to ensure that in all decisions and directions made with respect to the conduct of a case, the safety, welfare and best interests of the child are paramount and that the case is dealt with expeditiously and fairly. The practice direction sets out guidance for case management hearings to ensure court time is used effectively and requires that, save in exceptional circumstances, the hearing of care proceedings should be completed within nine months to one year from the date of commencement or earlier in appropriate cases.

113. In emergency and urgent cases much shorter deadlines apply. The Child Care Act 1991 allows members of the police forces to remove children to immediate safety where they have reasonable grounds to believe that there is an immediate and serious risk to the health or welfare of the child and it would not be safe to await the making of an application for an emergency care order. When a child is removed in such circumstances, the Child and Family Agency must either return the child to their parent(s) or apply for an emergency care order at the next sitting of the District Court or, in the event that the next such sitting is not due to be held within three days, at a sitting of the District Court, which has been specially arranged for this purpose within three days of the child being taken into the Agency's custody.<sup>110</sup>

114. The legal status of the child in the context of care proceedings differs from country to country. Several member States have legislated for the child to be a party to the proceedings as of a specific age. In **Norway**, the child's status in the proceedings depends not only on the child's age but also on the nature of the case. Children who are at least 15 years old and who understand the subject matter of the case may appear as a party in care proceedings and other cases before the county social welfare board or the court. They may be represented by their own counsel. Such rights might also be given to younger children in special instances (Section 6-3 of the Child Welfare Act). When a child who has shown serious behavioural problems, for instance in the form of serious or repeated criminality, persistent abuse of intoxicants or drugs, the child will always be party to the case before the county social welfare board or the court. If it is likely that a child with such behaviour is in need of long-term treatment, an order may be made to place the child in a treatment or training institution for up to twelve months without his or her consent, or the consent of the person who has parental responsibility for the child. In such cases the child will always be represented by a lawyer, regardless of age.

115. In Spain, the Organic Law 1/1996, of January 15, on the Legal Protection of Minors (LOPJM, Article 2.5) establishes that any measure in the best interests of the child must be carried out with due respect to procedural safeguards. This applies to care proceedings and requires consideration, in particular to the following aspects:

a) The rights of the child to be informed, heard and to participate in the proceedings in accordance with the regulations in force.

<sup>110</sup> Information provided by the Irish delegation in response to the survey questionnaire, 1 February 2021.

b) The involvement of qualified professionals or experts in the proceedings. Where necessary, these professionals must be sufficiently trained to identify the specific needs of children with disabilities. In the case of particularly important decisions affecting the child, a joint assessment report of a multidisciplinary group specialised in the relevant fields shall be requested and taken into consideration.

c) The participation of the child's parents, guardian or legal representative or, where their interests differ or are in conflict with the rights and best interests of the child, a lawyer and the Public Prosecutor's Office defending the child's interests.

d) The adoption of a decision, which includes a legal reasoning on the criteria used, the elements applied in weighing the criteria against each other and against other current and future interests, as well as the procedural safeguards respected.

e) The existence of remedies allowing for the review of a decision, which has not considered the best interests of the child as a primary consideration or where the child's own development or significant changes in the circumstances, which led to that decision, make it necessary to review the decision. The law provides for the right of the child to free legal assistance in accessing legal remedies.

## 6. Implementation measures in Council of Europe member States

116. Council of Europe member States share a common legal and policy framework on the best interests of the child, which is rooted in the UN Convention on the Rights of the Child, the authoritative guidance of the Committee on the Rights of the Child, Council of Europe Conventions, recommendations and guidelines. This section reviews some of the implementation measures taken by member States to promote the effective application of the best interests principle in the context of care proceedings.

117. This chapter presents examples of legislation, policy measures and service practice in Council of Europe member states. It aims to explore two main questions: In which principle ways do implementation measures and governance methods promote the application of the best interests principle in care proceedings? How do weak implementation measures create obstacles to the full application of the principle and are there examples from member States in how such obstacles could be overcome? The aspiration is to identify solution-oriented propositions to strengthen the implementation of the best interests principle in the context of care proceedings, as well as methods of governance in this field.

118. The review is guided by the general measures of implementation, in accordance with General Comment No. 5 of the Committee on the Rights of the Child (*see below*). Whereas all general measures are relevant for the implementation of the best interests principle, this chapter focuses only on a fraction of measures, in the interest of not exceeding on length, namely national legislation and dissemination through child-friendly information, as well as service provision. The role of the independent judiciary has been addressed in Chapter 5.f, whereas the monitoring role of international and national bodies is to some extent addressed in case examples. Chapter 4 addressed briefly questions relating to data and statistics as a basis for monitoring and evaluation. The Committee of Experts may consider to address implementation measures as a cross-cutting concern in the consultation of stakeholders, including matters of budget allocation, data and research, as well as parliamentary oversight, the role of independent human rights institutions, and the monitoring role of international Treaty Bodies, such as the Committee on the Rights of the Child, and groups of experts established under the Council of Europe, such as GREVIO, GRETA and the Lanzarote Committee.

**Committee on the Rights of the Child, General Comment No. 5 on the general measures of implementation for the UN Convention on the Rights of the Child<sup>111</sup>**

- Law reform
- National strategies or action plans
- Coordination across sectors of government and ministry departments
- Devolution of competences in federal states and decentralised state administrations
- Privatisation
- Monitoring and oversight (including child impact assessments and evaluations)
- Independent human rights institutions and structures
- Independent judiciary
- Research, data collection, analysis and development of indicators
- Budget allocation
- Training of officials and professionals and capacity strengthening
- Cooperation with civil society, including children and families, child and youth-led organisations, communities, NGOs and CBOs
- Dissemination of information on the rights of the child
- International cooperation

**a. National legislation on the best interests of the child**

*The best interests of the child in constitutional law*

119. Although the Committee on the Rights of the Child promotes an interpretation of CRC Article 3 as a substantive right, the best interests principle is not considered directly applicable across all Council of Europe member States, and it is also not recognised as a substantive right across the region. At the level of the European Union, consensus has not yet been reached as to the role of Article 24 of the EU Fundamental Rights Charter and whether it is setting out principles to be interpreted and taken into account by courts of law or if it defines a substantive right that could be invoked by individuals.<sup>112</sup>

120. An analysis of court decisions in Council of Europe member States commissioned in 2014 by the European Commission for Democracy through Law (Venice Commission) noted that the wording of CRC Article 3.1 should be considered to require direct application as it puts obligations not only on lawmakers, but also on social welfare institutions, courts of law and administrative authorities. As the provision is primarily addressed to public and private actors who apply the law, courts noted that the intent of State parties to allow for direct application could be presumed. Article 3, unlike other articles under the Convention, which allow States parties to “take all appropriate measures” to ensure implementation, does not envisage discretion in progressive application. In addition, the provision that the child’s best interests shall be a primary consideration among other factors, obliges the competent public and private decision making bodies to give detailed reasoning on how they balance different factors.<sup>113</sup> Despite the clear position taken by the Venice Commission, there is no common legal practice among member States with regard to the status of the UN Convention on the Rights of the

<sup>111</sup> Committee on the Rights of the Child, General Comment No.5 (2003), General Measures of Implementation for the Convention on the Rights of the Child, CRC/GC/2003/5, 3 October 2003.

<sup>112</sup> Council of Europe, [Report on the Protection of Children’s Rights](#), *International standards and domestic constitutions*, European Commission for Democracy through Law (Venice Commission), Adopted by the Venice Commission at its 98<sup>th</sup> Plenary Session, Venice, 21-22 March 2014, pp. 11-13.

<sup>113</sup> Council of Europe, [Report on the Protection of Children’s Rights](#), *International standards and domestic constitutions*, European Commission for Democracy through Law (Venice Commission), Adopted by the Venice Commission at its 98<sup>th</sup> Plenary Session, Venice, 21-22 March 2014, pp. 11-12.

Child in national law and the direct applicability of either CRC Article 3 or the respective national laws referring to the best interests of the child.

121. The Venice Commission recommended, on the basis of the legal review it had undertaken, that member States should legislate for constitutional guarantees for the recognition and promotion of the rights of the child, in accordance with their constitutional systems. Irrespective of the status and protection afforded to the family, constitutional law should provide that children are recognised as rights-holders and not merely as persons in need of protection. The Venice Commission recommended further that constitutional law should incorporate the wording of CRC Articles 3 and 12: in all actions concerning children, the best interests of the child shall be a primary consideration, and the child shall have the right to be heard and to have their views taken into account in all decisions affecting them.<sup>114</sup>

122. In many Council of Europe member States, constitutional law refers to children in relation to the right to education or the protection from harm. At least 20 member States have included provisions on the family and the protection of children in their Constitutions. National constitutions most commonly address the rights and duties of parents, while several Constitutions establish also the obligation of the state to support parents in this regard. At least 18 member States provide for the equal status of children irrespective of birth within or out of wedlock. Fewer member States provide in their national Constitutions that the best interests of the child shall be a primary consideration in matters affecting the child. This is the case, for instance, in Austria, Belgium, Ireland, Norway, Portugal and Serbia, although the wording and scope of the provisions differ.<sup>115</sup> Other member States are in the process of debating constitutional amendments to incorporate provisions on the rights and the best interests of the child.

#### *The best interests of the child in national legislation: Scope and wording*

123. A review of the legal framework relating to the best interests of the child in Council of Europe member States reveals that the wording of CRC Article 3 on the best interests of the child has typically been introduced in national legislation concerning childcare and protection, parental responsibility, alternative care, as well as the reception of asylum seeking children and assessment of their applications. Reflecting the approach of international and European standards, the wording of these laws remains often undetermined and vague so that the legal provisions as such remain unclear and leave a wide margin for interpretation and discretion. In consequence, where the case of a child is subject to different legal areas, there is a concrete risk that more specific laws, such as criminal law provisions or legislation on migration and asylum, take precedence, weakening thereby the best interests principle.<sup>116</sup>

124. The CRC Committee has refrained from defining the best interests of the child. It argued that the best interests of the child is a “dynamic concept that encompasses various issues which are continuously evolving. ... The concept of the child’s best interests is complex and its content must be

---

<sup>114</sup> Council of Europe, [Report on the Protection of Children’s Rights](#), *International standards and domestic constitutions*, European Commission for Democracy through Law (Venice Commission), Adopted by the Venice Commission at its 98<sup>th</sup> Plenary Session, Venice, 21-22 March 2014, p. 30.

<sup>115</sup> Constitution of Belgium, Article 22bis. Constitution of Ireland, Article 42A. Constitution of Serbia, Article 65. Council of Europe, [Report on the Protection of Children’s Rights](#), *International standards and domestic constitutions*, European Commission for Democracy through Law (Venice Commission), Adopted by the Venice Commission at its 98<sup>th</sup> Plenary Session, Venice, 21-22 March 2014, pp. 22-24.

<sup>116</sup> UNICEF Innocenti Research Centre, *Critical Reflections on Child Trafficking Responses in the Nordic Countries: Towards a more systemic and rights-based approach*, 2012.

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.”<sup>117</sup> In fact, the “meaning of the best interests of the child has remained indeterminate and opaque, so that it tends to be invoked from different sides to justify sometimes opposing decisions”.<sup>118</sup>

125. The review of national laws concerning the best interests of the child in relation to child welfare, care and protection shows that there is no unified legal wording concerning the best interests of the child. This derives from the fact that member States refer to the concept in national languages, availing themselves of terminology rooted in the legal history of the respective country, whereas concepts relating to the “interest(s)”, “welfare” or “wellbeing” of the child co-exist in the broad European region.

126. The review of national legislation reveals also significant differences in the level of discretion left to decision making bodies, such as social services, family courts and other administrative and judicial bodies. The majority of member States offer no or weak legal orientation for the best interests determination procedure, and this stands in contrast to the enormous impact that decisions on the best interests of the child have on children and adults, and the complexity of the assessments to be made.<sup>119</sup>

127. Attempts to define the best interests of the child as a legal principle tend to be seen in a critical way, as a definition could limit the scope of the concept and its adaptability. Establishing guiding criteria for the best interests determination procedure, however, appears to be a viable and practicable approach. Several Council of Europe member States, such as Austria, Bulgaria, Finland, Romania the Slovak Republic and Spain, provide a list of criteria in national law, which need to be taken into consideration for a best interests determination, including for the context of child welfare, care and protection. The Committee on the Rights of the Child proposed such criteria in its General Comment No. 14.<sup>120</sup> The European Conference on the Best Interests of the Child, which was organised by the Belgian authorities in cooperation with the Council of Europe on the occasion of the 25<sup>th</sup> anniversary of the UN Convention on the Rights of the Child, concluded that the non-exhaustive and non-hierarchical list of elements suggested in General Comment No. 14 (2013) should be considered in the determination of the best interest of the child.<sup>121</sup> See Table 1 for an overview of different national approaches, which are all largely oriented at rights and needs of the child.

128. In Bulgaria, the law reform that led to the enactment of the Child Protection Act, which sets out criteria to be considered for a best interests determination was the result of a training process targeting judges and social workers throughout the country. A trainer team composed of a family lawyer from Bulgaria, a judge and a social worker from the UK, visited each one of the 28 court districts in the country to train judges, social workers and other professionals on the best interests of the child and the determination procedure. This initiative was called “Roadshow” and took place over a period of five years, 2005-2010. The participants in the training appreciated the idea to enact legally binding criteria to be considered for a best interests determination. The family lawyer, who was part of the trainer team, was subsequently invited to participate in the drafting group tasked to amend the

---

<sup>117</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 11, 32. In relation to law reform, the best interests principle requires law makers to conduct a child rights impact assessment and evaluation, see also Committee on the Rights of the Child General Comment on the general measures of implementation for the UN Convention on the Rights of the Child, paragraph 118.

<sup>118</sup> Freeman, M., Article 3: The best interests of the child. Alen and others (n 19) 1.

<sup>119</sup> Skivenes, Marit and Line Marie Sørsdal, [The Child's Best Interest Principle across Child Protection Jurisdictions](#), *Human Rights in Child Protection*, 2018, pp. 59-88.

<sup>120</sup> 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), [CRC/C/GC/14](#), 2013, Chapter V.A.1 and par. 44.

<sup>121</sup> Council of Europe, [The Best Interests of the Child](#), *A dialogue between theory and practice*, 2016, p. 149.

Bulgarian Child Protection Act and proposed on behalf of the 850 participants who took part in the training, to introduce these criteria. The law was adopted in 2009.<sup>122</sup>

129. In Latvia, the Civil Law clarifies the meaning of “care of the child”, which refers to the child’s maintenance, ensuring food, clothes, dwelling and health care, child rearing and tending to the child and his or her education, ensuring mental and physical development, as far as possible taking into account the child’s individuality, abilities and interests, and preparing the child for socially useful work.<sup>123</sup> Practitioners in Latvia tend to use this section as orientation when assessing the situation of children and determining the best interests of the child in family matters. The Ministry of Justice is currently holding consultations with practitioners to explore the possibility of formulating criteria for the best interests determination in the national law. The consultations inform the development of a proposal for the inclusion of such criteria in the Law on the Protection of Children’s Rights.<sup>124</sup>

130. Legally binding criteria for the best interests determination guide the interpretation and application of the principle by officials and professionals. They sensitise decision makers to the complexity of the assessment to be made and link the assessment with specific rights of the child.

131. Where these criteria are absent from national law, and where authoritative guidance on the implementation of the best interests principle is missing, decision makers enjoy a high level of discretion. This may lead to a higher risk that decisions are influenced by personal perceptions, while the possibilities to hold decision makers accountable are reduced.<sup>125</sup>

132. In some member States, as for instance Estonia and Spain, the law provides for procedural guidance for best interests determinations. The Estonian legislation, as a rather recent law, strengthens significantly the position of the child in the decision making process as it requires justification for decisions that differ from the child’s opinion. The Spanish legislation establishes not only the criteria to be considered for the best interests determination but provides also guidance on how the different elements established during the case assessment have to be balanced and assigned weight.<sup>126</sup>

133. In Ireland, the Child and Family Relationships Act 2015 introduced a set of criteria to be considered in determining the child’s best interest in family law cases, such as the importance of the child’s relationship with their parent(s), the child’s views, the child’s religious, spiritual, cultural and linguistic upbringing and needs, and their physical, psychological and emotional needs. As this law does not apply to care proceedings, an ongoing law reform initiative aims to introduce a similar, though not necessarily identical provision to the context of care proceedings. The criteria would be understood as non-exhaustive. The Bill shall be presented to the national Parliament in the first half of 2021.

---

<sup>122</sup> Bulgaria, Child Protection Act, State Gazette No 14 as of 2009. Information provided by ISS Bulgaria in response to the survey questionnaire administered by the Council of Europe, 5 March 2021.

<sup>123</sup> Latvia, Civil Law of the Republic of Latvia, Section 177, Paragraph 4.

<sup>124</sup> Comments provided by the Civil Law Department of the Ministry of Justice of the Republic of Latvia, 23 April 2021.

<sup>125</sup> Skivenes, Marit and Line Marie Sørsdal, [The Child’s Best Interest Principle across Child Protection Jurisdictions](#), *Human Rights in Child Protection*, 2018, pp. 59-88.

<sup>126</sup> Spain: Organic Law 1/1996 of January 15 on the Legal Protection of Minors (LOPJM), Article 2 and specifically 2.5. See also Chapter 5.h, paragraphs 114 and 135.

**Examples of legal practice: Procedural guidance for best interests determinations**

134. The Estonian Child Protection Act § 21 (1) and (2) provides that decisions concerning a child have to be based on a best interests assessment and that the best interests of the child shall be the primary consideration. In order to assess the best interests of the child, it is necessary:

- 1) to ascertain all the relevant circumstances concerning the situation and person of the child and other information, which is necessary to evaluate the effect of the decision on the child's rights and well-being;
- 2) to explain the content and reasons of the planned decision to the child, to hear the child in a manner taking account of his or her age and development and to account for his or her opinion based on the child's age and development as one of the circumstances upon ascertaining the best interests of the child;
- 3) assessing all the relevant circumstances in aggregate, to form a reasoned opinion concerning the best interests of the child with regard to the planned decision.

135. If the best interests of a child differ from the child's opinion or if a decision, which does not coincide with the child's opinion is made on other grounds, the reasons for not taking the child's opinion into account must be explained to the child.

136. In Spain, the Law on the Legal Protection of Minors of 1996 (Article 2) establishes criteria that have to be considered in the process of a best interests determination and provides for general elements that guide the balancing of different rights and interests in the decision making process (see Table 1). These criteria are to be balanced and assigned weight according to the following general elements established by the law:

- a) The age and maturity of the child.
- b) The need to guarantee their equality and non-discrimination due to their special vulnerability, whether due to the lack of a family environment, suffering abuse, their disability, their sexual orientation and identity, their refugee status, asylum seeker or subsidiary protection, their membership of an ethnic minority, or any other relevant characteristic or circumstance.
- c) The irreversible effect of the passage of time in the child's development.
- d) The need for stability of the solutions adopted to promote the effective integration and development of the child in society, as well as to minimise the risks that any change in material or emotional situation may cause in their personality and future development.
- e) The preparation of the transition to adulthood and independent age, according to the child's abilities and personal circumstances.
- f) Those other elements of weighting that, in the specific case, are considered relevant and respect the rights of the child.



**Table 1: Guiding criteria for best interests determinations: CRC Committee and national laws of Council of Europe member States**

Committee on the Rights of the Child, General Comment No. 14 (2013) <sup>127</sup>	Austria, General Civil Code <sup>128</sup>	Finland, Child Welfare Act, with cross reference in Aliens Act <sup>129</sup>	Romania, Law regarding the protection and promotion of the rights of the child <sup>130</sup>	Spain Law on the Legal Protection of Minors of 1996 (Article 2)
The child's views and aspirations	the consideration of a child's opinions depending on the child's level of understanding and ability to arrive at an informed opinion; preventing disturbance of a child which he/she may suffer due to the realisation of a measure against his/her will	the opportunity to become involved in matters affecting the child and to influence them	the child's opinion, depending on his age and his degree of maturity	<i>Consideration of the wishes, feelings and opinions of the child, as well as their right to participate progressively, depending on their age, maturity, development and personal evolution, in the process of determining their best interests.</i>
The identity of the child, including age and gender, personal history and background	upholding and protecting the rights and interests of a child	the need to take account of the child's linguistic, cultural and religious background		<i>The preservation of the identity, culture, religion, convictions, orientation and sexual identity or language of the child, as well as the right to non-discrimination on these or any other grounds, including disability, guaranteeing the harmonious development of their personality.</i>
The care, protection and safety of the child;	the care, comfort and protection of the bodily and emotional integrity of the child; preventing the danger of suffering violence for a child or of witnessing violence inflicted on persons of relevance for the child	the opportunity to be given understanding and affection, as well as supervision and care that accord with the child's age and level of development	the capacity of the parents or of the persons who are to taking care of the child's upbringing and care to respond to his/her concrete needs	

<sup>127</sup> 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), [CRC/C/GC/14](#), 2013, Chapter IV.B, V.A.1 and par. 44.

<sup>128</sup> Austria, General Civil Code, Paragraph 138.

<sup>129</sup> Finland, Child Welfare Act (417/2007), Chapter 1, Section 4(2).

<sup>130</sup> Romania, Law no. 272/2004 regarding the protection and promotion of the rights of the child.

The child's well-being	adequate provisioning, especially in terms of sustenance, medical and sanitary care and living space, as well as a thorough upbringing of the child; the living conditions of a child, its parents and its general environment	balanced development and wellbeing		
The family environment, family relations and contact	reliable contact of the child with both parents and important attachment figures as well as substantial connection between the child and these persons; the acceptance and appreciation of a child by the parents; preventing conflicts of loyalty and feelings of guilt in a child	close and continuing human relationships	maintaining personal relationships with the persons with whom the child has developed attachment relationships	<i>The convenience that the child's life and development takes place in a suitable family environment free from violence. Remaining in their family of origin will be prioritised and the maintenance of their family relationships will be preserved, whenever possible and positive for the child. If a protection measure is agreed, foster care will be prioritised over residential care. When the child has been separated from the family nucleus, the possibilities and convenience of his/her return will be evaluated, taking into account the evolution of the family since the protective measure has been adopted and always prioritising the interest and needs of the child over those of the family.</i>
Social contacts of the child with peers and adults				
Situations of vulnerability, i.e. the risks that the child is facing and the sources of protection,	preventing the danger of being illegally deported or detained for a child, or any other form of harm	a safe environment in which to grow up, and physical and emotional freedom	the child's history, taking into account, in particular, the situations of abuse, neglect, exploitation or any other form of violence against the child, as well as the potential risk situations that may occur in the future	

resiliency and empowerment				
The child's skills and evolving capacities	the support of a child's talents, abilities, aptitudes and developmental possibilities	an education consistent with the child's abilities and wishes		
The rights and needs with regard to health and education	upholding and protecting the rights and interests of a child	the needs of physical, psychological development, education and health, security and stability and belonging to a family	the needs of physical, psychological development, education and health, security and stability and belonging to a family	<i>(...) responses to meet their basic needs, including material, physical and educational, as well as emotional and affective needs.</i>
The development of the child and her or his gradual transition into adulthood and an independent life		a sense of responsibility in becoming independent and growing up		<i>The protection of the right of the child to life, survival and development</i>

**Examples of practice: An independent Child Welfare Commission tasked to review and promote the application of the best interests principle in the context of asylum and immigration law and practice – Austria**

137. In March 2021, the Government of Austria established an independent Child Welfare Commission (*Kindeswohlkommission*) within the Federal Ministry of Justice. The establishment of the Commission was considered necessary, as decisions about the rejection of asylum claims handed in by children and their subsequent return had led to a high-profile public and political debate. The Commission is tasked to analyse matters related to the best interests of the child in the context of asylum and residence.

138. The Commission is tasked to document and analyse relevant safeguards concerning the principle of the best interests of the child in all areas of asylum and immigration law, particularly with regard to international, European and national legal standards, European and national case law, and the application of the best interests principle in practice, in light of existing recommendations of relevant organisations. On the basis of this review, the Commission is tasked to develop criteria and recommendations to ensure the best interests of the child are duly respected in the field of asylum and immigration. The recommendations shall include solution-oriented propositions to change the current administration and legislation, if and as required. The Commission's report is expected in the first half of the year 2021 and will be published by the Commission, without pre-approval by the Federal Ministry of Justice.<sup>131</sup>

139. The strong political attention to the best interests of the child in Austria, including at high levels of government, may be seen as a continuation of the preparatory work undertaken when the UN Convention on the Rights of the Child was ratified by the Federal Government in 1992. At the time, the federal Parliament decided to conduct a systematic analysis of the compliance of national legislation with the Convention. The analysis covered a diversity of thematic areas relevant to the best interests of the child, such as the implications of the new status of the child as a rights holder under the Convention, the meaning of the best interests principle for the judiciary, as well as implications for criminal law. On the basis of this analysis, which was presented and debated at the federal Parliament, the Parliament called upon the Federal Government to consider the possibility of constitutional reform in light of the Convention. The Constitution was amended in 2011 by the Federal Constitutional Act on the Rights of Children, which includes reference to the best interests of the child as a primary consideration, in accordance with CRC Article 3.1.<sup>132</sup>

<sup>131</sup> Austria, Federal Ministry of Justice, Kindeswohl-Kommission (eingesetzt vom Bundesminister/Bundesministerin für Justiz gemäß § 8 BMG) [Child Welfare Commission, established by the Federal Minister / Federal Ministry of Justice in accordance with § 8 Federal Ministry Law], 15 February 2021, <https://www.bmj.gv.at/themen/Kindeswohlkommission.html>.

<sup>132</sup> Österreichische Nationalrat, Entschließung vom 26. Juni 1992. E 59-NR XVIII.GP Expertenbericht zum UN-Übereinkommen über die Rechte des Kindes, <https://www.kinderrechte.gv.at/wp-content/uploads/2013/10/Expertenbericht-zum-UN-Uebereinkommen-ueber-die-Rechte-des-Kindes-19931.pdf>. Entschließung des Nationalrats E 156-XVIII. Source: Stenographisches Protokoll der 172. Sitzung des Nationalrates, XVIII. Gesetzgebungsperiode (37. Pkt: Bericht des Familienausschusses zum "UN-Übereinkommen über die Rechte des Kindes").

## **b. National legislation on the right of the child to be heard and informed**

### *The right of the child to be heard in care proceedings*

140. All Council of Europe member States that responded to the survey for this study have national laws in place that provide for the right of the child to be heard in administrative and judicial proceedings concerning the child. In the majority of countries, the law establishes minimum ages as of when a child can be heard in civil proceedings, which typically range between 6 and 14 years of age. Age limits are established in civil codes and civil procedure codes, child welfare and protection laws or family laws, among others. Only few countries have chosen to refrain from defining a minimum age for the child to be heard in the context of care proceedings, as for instance Sweden.<sup>133</sup>

141. In Switzerland, the civil and civil procedure codes provide that the child shall be heard personally, in an appropriate manner, unless his or her age or other good reasons prevent this (Art. 314a of the Civil Code and Art. 298 Civil Procedure Code). The Federal Court issued the guideline that a child can in principle be heard from the age of 6 years old, although it may be necessary to hear a child who is a little younger, for example if there are several siblings who are heard and the youngest child is just under 6 years old.

142. The Italian Civil Code provides for different statutory age limits regulating as of what age children have a right to be heard in proceedings. Article 315-bis para. 3 provides for the right of the child to be heard in all matters and proceedings concerning the child as of the age of 12 years old. Younger children shall be heard where the child is considered to have the capacity of discernment. In some contexts, the age limits are higher or lower, ranking between 10 years and 14 years of age. A child who is younger than 12 years old can be heard when the judge considers the child capable of discernment. As each case is unique, it was a conscious decision of the Italian legislator to leave it to the judge to assess the child's capacity of discernment, and this assessment is considered more important than the child's age in guiding the judge's decision on whether or not to hear a child. Although there is currently no explicit legal regulation that would oblige the judge to provide a legal reasoning for the decision to not hear the child, the Supreme Court ruled in January 2021 that a specific motivation is required where the judge decides not to hear a child and, in the absence of such a motivation, the judge's decision would be considered invalid.<sup>134</sup>

143. In Germany, the Federal Parliament (*Bundestag*) has adopted an Act to combat sexualised violence against children, which provides for changes to procedural law concerning childcare cases and care proceedings. The Act establishes, among others, the principle that children must be heard in person, regardless of their age, and lays down qualification requirements for family judges and guardians ad litem for children involved in care proceedings.

144. The Norwegian Constitution (Section 104) states that children have the right to be heard in questions that concern them, and that due weight shall be attached to their views in accordance with their age and development. This constitutional provision governs the legislation and practice in the context of child welfare, including in care proceedings. The Child Welfare Act provides that children who have reached the age of 7, or younger children who are capable of forming their own opinions, shall receive information and be given an opportunity to state their opinion before a decision is made in matters that affect them. Weight shall be attached to the child's opinion in accordance with the

---

<sup>133</sup> For an overview and analysis of the participation of children in judicial proceedings, including civil proceedings, in EU member States, see: European Union Agency for Fundamental Rights, *Child-friendly Justice, Perspectives and experiences of children and professionals*, 2017.

<sup>134</sup> Italy, Supreme Court, Cassazione, Sez. 1 - , Ordinanza No. 1474 of 25/01/2021 (Rv. 660431 - 01); Sez. 1 - , Ordinanza No. 16410 of 30/07/2020 (Rv. 658563 - 01) 3 – 01.

child's age and maturity (Section 1-6 and 6-3). These provisions apply to all measures, decisions and proceedings related to child welfare. The Norwegian Ministry of Children and Families has recently introduced a proposal for a new Child Welfare Act. The bill proposes to remove the age limit of 7 years for children to be heard. In the preparatory works, the Ministry emphasised that the Child Welfare Service shall inform the child and speak with the child at all stages of the case.

145. To facilitate the child's participation in decisions concerning him or her during placement, the child has the right to be supported by a person of trust, a role established under the Norwegian Child Welfare Act Section 1-6. The purpose of this figure is to give the child a sense of security so that the child can more easily express his or her views in his or her own child welfare case (Section 8 of the Regulation). Section 11 of the Regulation states that the person of trust shall support the child in expressing his or her views and help to ensure that the child's perspective and experience is presented. The person of trust is chosen by the child and must be at least 18 years old, which is the age of majority in Norway. Parents who have been deprived of the care for the child, cannot act as person of trust, and the child welfare service can prohibit a person from being designated if the child's interests might be harmed (Section 10 of the Regulation).

146. The Norwegian Ministry of Children and Families has issued guidelines that contain practical advice for professionals who lead conversations with children in a child welfare context.<sup>135</sup> The Directorate for Children, Youth and Family Affairs has published a guide for conversations with children in cases regarding negative social control, forced marriage and honour-related violence.<sup>136</sup>

147. The child welfare service has a duty to facilitate the participation of the child (Section 6 of the Regulation). The child has the possibility to participate, but no pressure to participate should be exerted. The Child Welfare Services are obliged to document the child's participation in a case file. The file documentation has to specify whether the child has been given the opportunity to participate, which questions the child has been heard on, and what the child's view were (Section 7 of the Regulation).

148. In its General Comment No. 12 on the right of the child to be heard, the Committee on the Rights of the Child "... discourages States parties from introducing age limits either in law or in practice, which would restrict the child's right to be heard in all matters affecting him or her".<sup>137</sup> The Committee advises States parties to recognise the right of the child to express his or her views on the basis of a general presumption that children are capable of forming their own views. Acting on this basis would require States parties, through their public institutions and agencies and delegated private partners, to automatically provide for the hearing of the child's views in all matters concerning the child, unless this would be contrary to the best interests of the child, and to duly motivate any exceptions. This position is also reflected in the Committee's jurisprudence under the communications procedures (*see Chapter 5.f*). The UN Convention on the Rights of the Child (Article 12) refrains from establishing age limits and affords to each child "who is capable of forming his or her own views" the right to express those views freely in all matters affecting the child and provides that the views of the child be given due weight "in accordance with the age and maturity of the child".

---

<sup>135</sup> [https://www.regjeringen.no/contentassets/2240b330760646f5a03b254837e73919/snakk-med-meg\\_web.pdf](https://www.regjeringen.no/contentassets/2240b330760646f5a03b254837e73919/snakk-med-meg_web.pdf).

<sup>136</sup> See:

[https://bufdir.no/Barnevern/Fagstotte/Negativ\\_sosial\\_kontroll\\_tvangsekteskap\\_og\\_aresrelatert\\_vold\\_en\\_veileder\\_til\\_barnevern\\_stjenesten/Verktoykasse/Samtale\\_og\\_kartleggingsverktoy/Guide\\_samtale\\_med\\_barn/](https://bufdir.no/Barnevern/Fagstotte/Negativ_sosial_kontroll_tvangsekteskap_og_aresrelatert_vold_en_veileder_til_barnevern_stjenesten/Verktoykasse/Samtale_og_kartleggingsverktoy/Guide_samtale_med_barn/). The guide is based on "Barnesamtalen" ("The conversation with the child"), which is available publicly and has been developed in collaboration with the Norwegian Centre for Violence and Traumatic Stress Studies,

[https://bufdir.no/globalassets/global/nbbf/samtaler\\_med\\_barn/nkvtvsbarnesamtalen2007.pdf](https://bufdir.no/globalassets/global/nbbf/samtaler_med_barn/nkvtvsbarnesamtalen2007.pdf).

<sup>137</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 21.

149. The Committee notes that research demonstrates how “children’s levels of understanding are not uniformly linked to their biological age.”<sup>138</sup> In fact, research has evidenced that children are generally able to remember events and emotions they experienced. They are able to give accurate accounts of their experiences even at a young age, even though the child’s capability to narrate in free recall and to resist suggestive questions by an interviewer evolves significantly with age. The capability of children to provide accurate information and disclose what they remember depends on several factors. The location and environment where the interview or hearing takes place are fundamental. A child-friendly place with as little distractions as possible offers the most conducive conditions for interviewing or hearing children in the context of administrative or judicial proceedings. Support services should be available for the child before, during and after the hearing, in accordance with the child’s needs and best interests. The most important factor influencing the accuracy and reliability of a child’s statement is the interviewer’s ability to elicit information and the child’s willingness and ability to disclose it. Research in this field has identified some fundamental principles and rules that professionals have to observe in order to positively influence the child’s willingness and ability to express their views and what they remember. These principles and rules form the basis of evidence-based interviewing protocols, which guide the interviewer step-by-step through the interview and help creating supportive conditions for the child to speak out and to make an accurate statement.<sup>139</sup>

150. The Council of Europe Guidelines on child-friendly justice promote the understanding that it is generally in the best interests of the child to be heard in administrative and judicial proceedings concerning the child.<sup>140</sup>

151. In light of state-of-the-art science, the Committee of Experts might consider recommending that statutory minimum ages determining the right of the child to be heard in care proceedings should be revisited and removed. In addition, guidance on child-sensitive communication and interviewing in the context of care proceedings could be included in the practical guide to be developed by the Committee of Experts, to ensure that children are able to exercise this right in an effective and meaningful way. Guidance is needed specifically on the assessment of the child’s capacity of discernment, where this is provided for by law, by the competent authority and through multi-professional approaches.

*The right of the child to seek and access information in the context of care proceedings*

152. Access to information is a fundamental precondition for children to exercise their rights and to participate in a meaningful way in the decisions and proceedings concerning them. The right of the child to seek, receive and impart information (UN Convention on the Rights of the Child, Article 17) is a fundamental right of the child and a procedural safeguard for children’s involvement in administrative and judicial proceedings. To be able to exercise their rights effectively, children require information in a language they understand, adapted to the child’s age and evolving capacities. To prevent discrimination when communicating information to the child, service providers have to take into account the child’s national and social origin, gender and culture, as well as possible experiences of violence and the correlated health impairments or trauma.<sup>141</sup> State officials and service providers

---

<sup>138</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 29.

<sup>139</sup> Lamb, Michael E., Orbach, Y., Hershkowitz, I., Esplin, P.W., Horowitz, D., Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol, <https://www.ncbi.nlm.nih.gov/entrez/eutils/elink.fcgi?dbfrom=pubmed&retmode=ref&cmd=prlinks&id=18023872>.

<sup>140</sup> Council of Europe, *Guidelines on Child-friendly Justice*, 2011. Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009.

<sup>141</sup> Council of Europe, *Guidelines on Child-friendly Justice*, 2011.

therefore are challenged to assess the child's specific communication and information needs and adapt the language, methods and contents of their communication accordingly.<sup>142</sup>

153. In care proceedings, information is the basis on which social workers and judges, as well as children and their parents, assess situations, assign weight to different factors, views and legitimate interests, and make decisions. The Committee on the Rights of the Child underlines that States parties have to "ensure that the child receives all necessary information and advice to make a decision in favour of his or her best interests".<sup>143</sup>

154. Effective access to information is connected to several obligations of the state that are directly or indirectly relevant to ensure that all procedural safeguards are sensitive to the needs of the child. This requires effective information on the right to access legal representation, to access the documentation and legal reasoning of the proceedings, as well as access to legal remedies. The Committee on the Rights of the Child noted, for instance, that in preparation for the hearing of a child in court proceedings, the competent authorities have to ensure that the child is informed about his or her right to be heard and the way in which the views expressed by the child will be used and taken into consideration. The child has to be informed about the possibility to be heard either directly or through a representative. In addition, the child has to be informed about practical aspects of the hearing, such as the date and time, the location, the modalities of the hearing and any participants who are present or following the hearing through video transmission from another room. The child has to be informed also about the possible consequences of the choices he or she makes and the impact that his or her views may have on decisions and outcomes of proceedings. Children should also be informed that, although their views and opinions are sought, heard and taken into account, they are not responsible for the decisions made by a social worker or a judge.<sup>144</sup>

155. There is at present no uniform approach in Council of Europe member States to informing children about care proceedings and their rights. In many countries, the right to information has been legislated primarily in relation to the hearing of the child by the judicial authority. Where the child is supported by a representative or guardian, the duty to inform the child is typically connected with this figure. An EU study conducted in 2012 noted a significant level of uncertainty on professional roles and responsibilities and who provides information to children and parents involved in civil proceedings.<sup>145</sup>

156. In Norway, the Regulation on participation and person of trust defines the details of the child's participation in care proceedings. Section 4 of the Regulation states that the child at the earliest possible stage should receive understandable information about situations in which the child can express his or her views, about the case and the child's own situation, the services that are available to the child, the child's rights, and what choices and decisions have to be made, as well as their possible consequences.

157. In Montenegro, the guardianship authority is obliged under Article 164 of the Family Law, prior to deciding on a family placement of the child, to give the child any information on the placement the child needs to form his/her own view, to enable the child to express freely his or her view with regard

---

<sup>142</sup> Council of Europe *How to Convey Child-friendly information to children in migration, A handbook for frontline professionals, Building a Europe for and with Children*, 2018.

<sup>143</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 16, accessed from: <https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>.

<sup>144</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 41, 42, 45.

<sup>145</sup> See also: European Union Agency for Fundamental Rights, *Child-friendly Justice, Perspectives and experiences of children and professionals*, 2017.



to the placement and to give due consideration to the child's view in accordance with his or her age and maturity.

158. A study conducted by the Swiss Competence Centre for Human Rights on the implementation of CRC Article 12 found that the provision of information to children differed between cantons and within cantons, with regard to the moment of the procedure when information is provided, which is often the case only in connection to the hearing, and the way it is provided. In most cases, the parents or, where applicable, the child's guardian or representative provide information to the child. There is no uniform practice of providing information about a placement decision. The information is given either orally or in writing. As of the age of 12-14 years old, children are informed of the decision in writing, in accordance with general court practice, and sometimes also personally.<sup>146</sup>

159. A European research project affirmed similar findings for Italy and other European countries. The analysis of the relevant legislation in Italy, conducted by the University of Genoa in the context of the MiRI project, revealed that the right of the child to seek and receive information concerning civil proceedings is addressed primarily in connection to the hearing of the child by the judge. The provision of information with continuity prior, during and after the proceedings has not yet been regulated by law.<sup>147</sup> Where the provision of information is connected to the hearing, children who are not heard by the judge, for instance due to their young age, are at risk of not being informed.

160. This limitation leaves service providers for children and families in legal uncertainty as to their role in ensuring that children involved in civil proceedings are duly informed about their rights and entitlements, about the proceedings as such and the possible outcomes. As opposed to judges, service providers are typically involved with the child throughout a longer-term period. Regulating their roles in providing child-friendly information would be essential to safeguard the right of the child to information, as a substantive right and as a procedural safeguard. The provision of information and the related consultation of the child is a basic requirement for ensuring that services are provided along a continuum for prevention, protection and empowerment of children involved in civil proceedings. The Committee of Experts might consider introducing specific standards and guidance on this matter in the policy instrument and/or practical guidance to be developed.

### **c. Child-friendly information material**

161. The Council of Europe is developing a growing resource of child-friendly information material in relation to different thematic areas, such as the rights of the child in the digital environment, the right to be protected against violence, and the rights of children and young people in care.<sup>148</sup>

162. Child-friendly material is important to complement the communication of information between service providers and children. It includes brochures handed out to children, videos, information accessible through social media or applications, as well as other printed or digital material. Child-friendly material helps to support the information flow, communication and mutual understanding of children and service providers, including in the digital environment. It also helps children to reflect on the information they received orally from a service provider and to identify questions for a follow-up conversation with the service provider.

163. In Belgium (Flanders), child-friendly brochures have been developed to explain the different service providers for children and how they work. In these brochures, the name and contact details

---

<sup>146</sup> Study cited in the Swiss delegation's response to the Council of Europe survey questionnaire.

<sup>147</sup> Pesce, F., Maoli, F., Bendinelli, R., *Children's right to information in civil proceedings in Italy*, National Report Italy, MiRI – Minor's Right to Information in EU Civil Actions, University of Genoa, January 2021.

<sup>148</sup> Council of Europe, Child-friendly material, <https://www.coe.int/en/web/children/child-friendly-materials>.

of the child's key reference person at a specific service provider could be filled in. The child-friendly materials, which explain the rights of the child in care, have been developed with the help of children who had been in care.<sup>149</sup>

164. In Ireland, the Child and Family Agency has developed child friendly documents to explain the role of the Agency and what social workers do. The documents include the National Children's Charter and a National Young People's Charter. The Agency has also developed a website for children ([changingfutures.ie](http://changingfutures.ie)) which provides information about the measures undertaken by the child protection and care system. Based on extensive consultation of children, specific resources were also developed for children in care by children in care.<sup>150</sup>

165. In Italy, the national Ministry of Labour and Social Policy has developed a child-friendly guide for children who are placed in foster care. The booklet is intended to be used by service providers working with children in foster care. It aims to inform children in a simple and direct language and through the use of illustrations, what foster care is and how they and their family of origin can use the temporary placement in foster care as an opportunity to feel better and to gain confidence in handling their own situation.<sup>151</sup>

166. In Switzerland, information brochures on the hearing of the child in the context of care proceedings have been available since 2007. They target children in different age groups (from 5 and 13 years of age). An informative brochure is also available for professionals. Unicef Switzerland and the Marie Meierhofer Institute for Children developed this material in the three national languages. The brochures provide clear and target group-specific information on what a child hearing is and how parents can prepare their children for it. Specific tools are also included, such as sample invitation letters for children and parents.<sup>152</sup>

167. In Sweden, the National Board of Health and Welfare operates the website "Koll på soc", which informs children and young people about social services. The website has been operating for several years and is currently revised to make it more easily accessible for children and young people and to be better compatible with mobile phone screens. The National Board of Health and Welfare consulted children and young people and involved them in the development of the website.

168. The European Commission and the EU Fundamental Rights Agency have developed child-friendly material, which should be taken into consideration for the development of additional material.<sup>153</sup> Child-friendly material is being developed in the context of many EU co-funded projects. To obtain an overview of the existing child-friendly material in Europe, a compilation of this material might be considered with a view to providing easy access for children, parents and professionals.

169. Some member States (Estonia, Iceland, Ireland) affirmed in their survey responses the general need to strengthen the provision of information to children involved in care proceedings, that they

<sup>149</sup> See for instance: Agentschap Jongerenwelzijn, *YOU and the Ondersteuningscentrum Jeugdzorg*, undated. Department of Welfare, Public Health and Family, *How is it in integrated youth care*, 2020.

<sup>150</sup> For example, see <https://www.tusla.ie/publications/tactic/> and [https://www.tusla.ie/uploads/content/3181-TUSLA\\_YouthStrategy\\_LEAFLET-POSTER\\_HR.pdf](https://www.tusla.ie/uploads/content/3181-TUSLA_YouthStrategy_LEAFLET-POSTER_HR.pdf)

<sup>151</sup> Ministero del Lavoro e delle Politiche Sociali [Ministry of Labour and Social Policies], Istituto degli Innocenti, *Linee di indirizzo per l'affidamento familiare, Versione per Bambine, bambini, ragazze e ragazzi [Guidelines for foster care, Version for children and adolescents]*, 2018, [lavoro.gov.it/temi-e-priorita/infanzia-e-adolescenza/focus-on/minorenni-fuori-famiglia/Documents/etr-Linee-Indirizzo-affido-easy.pdf](http://lavoro.gov.it/temi-e-priorita/infanzia-e-adolescenza/focus-on/minorenni-fuori-famiglia/Documents/etr-Linee-Indirizzo-affido-easy.pdf). Ministero del Lavoro e delle Politiche Sociali [Ministry of Labour and Social Policies], *L'intervento con bambini e famiglie in situazione di vulnerabilità Promozione della genitorialità positiva Versione Easy to Read – Facile da leggere [Services for children and families in a situation of vulnerability; Promotion of positive parenting]*, 2019, <https://www.lavoro.gov.it/temi-e-priorita/infanzia-e-adolescenza/focus-on/sostegno-alla-genitorialita/Documents/Linee-Indirizzo-famiglie-vulnerabili-Easy.pdf>.

<sup>152</sup> <http://www.unicef.ch/de/information/publikationen/kinderrechte/anhoerungsbroschueren/index.cfm>. <https://www.unicef.ch/de/shop/publikationen>.

<sup>153</sup> European Union Agency for Fundamental Rights, Children, Youth and Older People, [Highlights](#).

have an interest in the development of a standardised procedure for providing information to children and/or of child-friendly material. This area is therefore clearly a field that the Committee of Experts could decide to focus on, in addition to the development of a policy instrument and/or practical guide.

**d. Service models, working methods and tools relevant for care proceedings**

170. In the context of care proceedings, important decisions depend on the quality of case assessments and decision making process, of the communication and interaction of state officials and service providers with the child and the family members, and the quality of collaboration and coordination of different service providers and state officials. Interagency and multi-disciplinary cooperation models or protocols are particularly important to ensure that a comprehensive case assessment and multi-professional expertise inform the decision making process on the best interests of the child. It is not uncommon that the assessments require the collaboration of service providers and state authorities across different cities and regions of member States and across borders. All of these factors determine the meaningfulness and sustainability of the decisions made and the services provided as a result.

171. In proceedings regarding the limitation of parental responsibilities and the placement of a child in care, case assessments and decision making processes are typically conducted by social workers, child protection officials, guardianship services and judicial authorities. They take place along a continuum of services starting with the identification of families at risk, to support and strengthen the family and safeguard the child through specialised services of a voluntary or mandatory nature; monitor the child's situation; limit parental responsibilities; place the child in emergency, temporary, longer-term or permanent care; and periodically review placement decisions to adjust service provision to the evolving capacities and needs of the child and to assess the possibility of family reunification. Best interests determination procedures are decisive for determining the type of placement for a child, such as placement in a foster family, in residential care or informal care arrangements, the non-separation of siblings, as well as contact and visitation rights of parents and other family members.

172. In numerous member States, there is a trend towards using evidence-based methods that have been developed, tested and refined on the basis of empirical data and demonstrated to enhance the quality of service provision and outcomes for children, families and professional service providers. Some of these tools are guiding service providers in transforming their own professional roles, attitudes and behaviours to gradually take on the role of a facilitator who is coaching children and families in taking responsibility for resolving problems and challenges they are struggling with. Some of the service models demonstrate that children and parents can be competent service users from a young age, as long as they receive the appropriate support to participate and get involved in accordance with their evolving capacities. Consulting children and parents and engaging them in the planning of service provision is essential to understand how services can become meaningful for them, how to support them so that they trust and collaborate with service providers and in proceedings.<sup>154</sup>

173. The Council of the Baltic Sea States noted in 2015, based on a review of evidence from the 11 member States, that “poverty alleviation, home visiting programmes, parenting programmes on

---

<sup>154</sup> Wenke, Daja, [Service Providers as Champions for Non-Violent Childhoods](#), *Service provision for children and parents to end corporal punishment*, Non-Violent Childhoods Project, Council of the Baltic Sea States, 2018, pp. 13-14. For additional information, see European Union Agency for Fundamental Rights, [Mapping Child Protection Systems in the EU](#), 2015.

positive discipline and parenting skills can achieve significant results for stabilising families, making them safe for children and preventing the removal of the child”.<sup>155</sup>

174. The Council of Europe Recommendation CM/Rec (2011)12 on children’s rights and social services friendly to children and families promotes a child rights-based approach to the planning, delivery and evaluation of social services. The Recommendation aims to “ensure that social services are delivered upon individual assessment of the child’s needs and circumstances and take into account the child’s own views, considering his or her age, level of maturity and capacity”. The Recommendation defines “child-friendly social services” as “social services that respect, protect and fulfil the rights of every child, including the right to provision, participation and protection and the principle of the best interest of the child”.<sup>156</sup>

175. Whereas this study aimed to focus primarily on the formalised assessments and decision making processes determining these services in accordance with the principle of the best interests of the child, this chapter provides an overview of service models, working methods and tools that are in use in Council of Europe Member States in the assessment, case planning and service delivery phase. They include service models and working methods to support and strengthen families, prevent the placement of a child in alternative care and to safeguard children in care. In light of the practice-oriented guidance to be developed by the Committee, the selection of examples was guided by an attempt to identify evidence-based methods that are rights-based, child-centred, sensitive to the needs of the individual child while supporting officials and professionals in carrying out their demanding roles.

#### *The best interests determination procedure in accordance with international standards*

176. The best interests determination is understood, in accordance with existing international guidance in this field, as a formal two-step procedure that consists of a comprehensive case assessment (best interests assessment) and a formal decision making process.<sup>157</sup>

177. The Committee on the Rights of the Child underlines that best interests determinations build on assessments conducted by a multi-disciplinary team of well-trained professionals with appropriate judicial involvement.<sup>158</sup>

178. The best interests assessment is a consolidated case assessment process, which aims to gather and verify data and information about the child’s situation. It includes the following steps and assessments, which represent a non-exhaustive list:

- Hearing the child,
- Assessment of the child’s situation, background and needs,
- Social inquiry and family assessment,
- Gathering evidence, for instance through forensic examinations and interview,
- Risk and security assessment,

---

<sup>155</sup> Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015, p. 44.

<sup>156</sup> Council of Europe Recommendation [CM/Rec \(2011\)12](#) on children’s rights and social services friendly to children and families, 2011, p. 5, I.3. and p.6, II.5.

<sup>157</sup> See in particular: 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), [CRC/C/GC/14](#), 2013. United Nations High Commissioner for Refugees, United Nations Children’s Fund, *Safe and Sound, What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, 2014. Council of the Baltic Sea States, [Guidelines on the Human Rights and Best Interests of the Child in Transnational Situations](#), Council of the Baltic Sea States Children’s Unit and Expert Group for Cooperation on Children at Risk, 2015.

<sup>158</sup> 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), [CRC/C/GC/14](#), 2013, par. 64.

- Mapping sources of support, skills and resources for empowerment, and
- Continued assessments and monitoring during follow-up services to enable an adjustment of service provision in light of the child's evolving situation.

179. The formal decision making process on the best interests of the child is led by state authorities and professional decision makers. It is informed by the previous best interests assessment and aims to reach a decision on the best interests of the child. The best interests determination, which includes a case assessment that may need to be periodically updated, as well as a formal decision making process, is protected by procedural safeguards (see Chapter 5.h).

180. The decision making process in a best interests determination requires decision makers to assign weight to different rights, needs and legitimate interests identified during the case assessment. To facilitate this balancing of rights and interests, international guidance advises to make the following considerations:

- The possibility of harm outweighs other factors,
- The child's right to be brought up by the parents and to maintain family contact is a fundamental principle,
- Matters related to health, education and vulnerability need to be assigned weight, and
- Continuity and stability of the child's situation are important.<sup>159</sup>

181. The Committee on the Rights of the Child has defined a more detailed list of criteria that need to be taken into consideration when the best interests of the child are determined. It underlines also that many of these criteria relate to specific rights of the child (see Chapter 6.a, Table 1).<sup>160</sup>

182. Based on the review of national legislation and methods, the study observes that the Committee of Experts may consider a diversity of elements that could inform a best interests determination procedure, with or without determining a hierarchy of these aspects:

- a. the information and evidence gathered for the specific case during the case assessment phase, including the views of the child and other relevant statements;
- b. the normative framework on the rights of the child as in force in Council of Europe member States, in light of applicable international, European and national law, and authoritative guidance and recommendations in this field;
- c. scientific knowledge and empirical evidence relating to the development and needs of children; as well as
- d. social and cultural considerations about a "good life" and a "good childhood", which may vary across cultures, religions and states, and between individuals and population groups.<sup>161</sup>

---

<sup>159</sup> 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), [CRC/C/GC/14](#), 2013. United Nations High Commissioner for Refugees, United Nations Children's Fund, *Safe and Sound, What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, 2014.

<sup>160</sup> 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), [CRC/C/GC/14](#), 2013, Chapter V.A.1 and par. 44.

<sup>161</sup> Skivenes, Marit and Line Marie Sørsdal, [The Child's Best Interest Principle across Child Protection Jurisdictions](#), *Human Rights in Child Protection*, 2018, pp. 59-88.

### **Examples of practice: National approaches to make the best interests determination culture-sensitive**

183. Recognising the importance of promoting equality of care and preventing discrimination in the provision of alternative care, the Government of **Ireland** included considerations to alternative care in the National Traveller and Roma Inclusion Strategy 2017-2021. A section of the Strategy requires from the Child and Family Agency to consider the human rights and equality impact of its policies, services, procedures and practice. In consequence, the Agency's alternative care strategy has to balance the need to recognise and respect social and cultural diversity with the need to promote and ensure the best interests of the child. To achieve this, the Agency committed to consult with the Traveller and Roma communities in relation to the development of an implementation plan for the Strategy with a view to support the provision of culturally-appropriate care placements for Traveller and Roma children who are in care under the provisions of the Child Care Act 1991.<sup>162</sup>

184. The **Norwegian** Directorate for Children, Youth and Family Affairs has issued an action plan for the period 2016 to 2021 that aims to improve trust between national minorities and the child welfare services, including in the context of family support and care proceedings.<sup>163</sup>

185. In **Finland**, the Sámi people are recognised as indigenous group and represented by a Parliament. This status is considered to have helped to safeguard the right of Sámi children to practice their own language and culture in child protection and welfare measures. In the Sámi Homeland in Northern Finland, Sámi-speaking social workers support Sámi families, including with regard to childcare, protection and welfare. The social services for Sámi families has been developed specifically to take the resources of the Sámi families into account for the service provision and to create support networks for families in need. Where children required placement in care, the social services were attentive to ensure that children are placed in their own linguistic and cultural environments. The Sámi Parliament observed that this approach has led to positive outcomes for children and families even in areas where many families had required social support and the rate of placements of children in alternative care had been high. In order to ensure the continued support and early intervention, the Sámi Parliament underlined the need for sustained resource allocation.<sup>164</sup>

### National tools and guidance for case assessment, best interests determination and care planning

#### **Framework assessment of children in need**

186. The Framework Assessment of Children in Need has been tested and evaluated positively in a number of member States, including Estonia, Sweden and the UK. It supports social workers in strengthening the child's safety, wellbeing and development. The assessment looks at physical, psychological, emotional, cognitive and educational aspects as well as the child's health and socio-economic situation, social relations and skills. The tool guides social workers in assessing how the family and the social environment influence the child's situation. It explores the parents' skills and their capability to understand and respond to the child's needs and to build positive relationships. This case assessment tool guides social workers in applying general principles in practice, such as

<sup>162</sup> Information provided by the Irish delegation in response to the survey questionnaire, 1 February 2020.

<sup>163</sup> [https://bufdir.no/globalassets/global/Handlingsplan\\_for\\_a\\_bedre\\_tillit\\_mellom\\_barnevern\\_og\\_etniske\\_minoritetsmiljoer\\_2016\\_2021.pdf](https://bufdir.no/globalassets/global/Handlingsplan_for_a_bedre_tillit_mellom_barnevern_og_etniske_minoritetsmiljoer_2016_2021.pdf)

<sup>164</sup> United Nations Committee on the Rights of the Child, Considerations of Reports Submitted by States Parties under Article 44 of the Convention, Fourth reports of States parties due in 2008, Finland, CRC/C/FIN/4, 26 May 2010, par. 215-219.

respect for the views of the child and making the child's best interests a primary consideration. It offers step-by-step guidance throughout the assessment process, including how to gather and analyse information and how to make decisions. The tool clarifies the roles and responsibilities of the different services and agencies involved.<sup>165</sup>

### **Children's Needs in Focus**

187. In Sweden, the BBIC model (*Barns behov i centrum* / Children's Needs in Focus) delivers positive results in strengthening the role of the child in the case management process.<sup>166</sup> BBIC aims to harmonise and standardise the assessment, planning, decision making, and review of cases of children who are placed in alternative care. The model provides a concept for working with children and families at risk, including a structure for case management and documentation to systematize the process from initial referral and assessment until a decision for placement of the child is taken and providing for periodic reviews of the child's situation and that of her or his family of origin. The objective is to strengthen the position of the child in the social childcare system.

188. The BBIC model provides for multi-professional coordination meetings with the child, under the leadership of an independent chairperson. These meetings aim to assess the child's situation, listen to the child's views and decide on any necessary adjustments of the care plan. The BBIC programme provides a structure for the assessment of the child's needs and the planning and monitoring of the agreed actions and services. It guides social workers in monitoring children in placements with a specific view on the individual needs of the child. It is used for placements in residential institutions and in foster care. As the model is used by almost all municipalities in Sweden, it helps harmonising local service practice. As the programme has been evaluated and mainstreamed, it is expected to contribute to evidence-informed and knowledge-based social services throughout the country. The National Board of Health and Welfare operates the programme in cooperation with county councils and municipalities, and with the financial support from the central government.

### **Guidelines for the best interests determination**

189. In Austria, an interdisciplinary guidance document is available for child welfare professionals and other service providers who are conducting best interests assessments and determinations for children, including in relation to care proceedings. The guidelines are based on the Civil Code para. 138, which sets out the criteria to be taken into account for a best interests determination. The guidelines were considered necessary as the best interests determination, even though guided by the criteria established in law, should always remain an individualised decision making process.

190. The guidelines emphasise that the best interests of the child are not understood as a fixed and static value, but as a flexible attribute of specific and variable constellations of personal and social risk and protection factors. A conclusive definition of the multi-layered concept of the best interests of the child is therefore not possible.

---

<sup>165</sup> Department of Health, Department for Education and Employment, Home Office, [Framework for the Assessment of Children in Need and their Families](#), 2000. HM Government, [Working Together to Safeguard Children](#), *A guide to inter-agency working to safeguard and promote the welfare of children*, 2015. Socialstyrelsen, [Child Welfare in a State of Change](#), *Final report from the BBIC project*, 2012.

<sup>166</sup> Edebalk, Per Gunnar, *Children Looked After and Their Right to Participation in Accordance with the UN Convention on the Rights of the Child, Article 12*, Paper presented at Childhoods 2005 in Oslo, July 2005, Lunds Universitetet, Socialhögskolan, Working-paper serien 2006:1, Lund, 2005, accessed from <http://www.childcentre.info/projects/institutions/dbaFile12713.pdf> on 15 May 2015, pp. 3-5. United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention*, Office of the High Commissioner for Human Rights, Geneva, Fifth Periodic Report of States Parties due in 2011: Sweden, CRC/C/SWE/5, 5 May 2014, par. 213-214. Council of the Baltic Sea States, *Family Support and Alternative Care, The Baltic Sea States Regional Report*, 2015, pp. 34-35.

191. The guidelines can be accessed from a website for registered users.<sup>167</sup> The website serves as a comprehensive resource centre for officials and professionals working in the field. It provides access to a set of tools and working methods, such as methods for case assessments and risk assessments, clarifies key terms and concepts in relation to the best interests of the child and the relevant legislation, and provides orientation on different needs of the child as well as needs assessment tools for different groups of professionals and contexts. The needs of the child provide the overall orientation for the care planning, as they are understood to be connected with specific rights of the child, as well as responsibilities and obligations of service providers to plan, deliver and follow-up on services for children and families in a child-centred way.

192. Other member States have also elaborated guidance on the best interests of the child, such as the Flemish Department for Culture, Youth and the Media and the Children's Rights Knowledge Centre (KeKi) in Belgium, who published a guide for practitioners on how to determine the best interests of the child in five steps.<sup>168</sup> The experience made with the development and roll-out of these and other guidance document should inform the drafting process of the policy instrument and/or practical guide.

### **Signs of Safety**

193. The Signs of Safety method is actively used in some member States, including Ireland and Belgium. In Ireland, the Child and Family Agency has adopted "Signs of Safety" as a national practice model. The model requires that the child's view is central to the child protection measure taken by social services. The child must understand the reason for the social worker's involvement, and must have the opportunity to meet with their social worker and share their views and opinions. The social workers have a responsibility to enable the child to give his or her views, taking into account the child's age, ability and any other barriers or challenges to communication they face. The Signs of Safety model includes a set of appropriate tools for the purpose of engaging with children. To support the work with this service model, the Child and Family Agency has developed a general children and youth participation training for its staff and a Child and Youth Participation Toolkit.<sup>169</sup>

---

<sup>167</sup> [Interdisziplinäre Leitlinie Kindeswohl](#) [Interdisciplinary Guidelines on the Best Interests of the Child].

<sup>168</sup> Department for Culture, Youth and the Media and the Children's Rights Knowledge Centre (KeKi), [In 5 Stappen naar een Beslissing in het Belang van het Kind](#) [In five steps towards a decision on the best interests of the child], 2021.

<sup>169</sup> Information provided by the Irish delegation in response to the survey questionnaire, 1 February 2021.



## Council of Europe: The Life Project model for unaccompanied migrant children

194. The life project model recommended by the Council of Europe for unaccompanied migrant children proposes a child-centred model for interagency and multi-disciplinary cooperation in casework and care planning.<sup>170</sup> This model offers a sensible and meaningful structure to assess, understand and promote the best interests of the child in a care context and to facilitate the implementation of sustainable solutions and other decisions concerning the child. The life project model envisages a longer-term case assessment and care planning process with the active engagement of the child, which motivates the child to collaborate with service providers irrespective of any pending decisions concerning the child's immigration status or asylum. It provides for a close follow-up and monitoring of the child's safety, wellbeing and development.

195. The Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors and the associated handbook provide a good example of how consideration for the best interests of the child could lay the foundation for ensuring a continuum of services for case assessment, care planning and follow-up services.

### Service models and methods to strengthen families

#### Family Group Conferences

196. Family group conferences is an evaluated social service method that succeeds in resolving serious family conflicts and risks in childcare and help the family stay together, even after a violent incident. The method provides a structured framework for the assessment and resolution of conflicts and engages all family members actively with the support from public services and, where appropriate, the social support network of the child and the family. The method trains family members to identify solutions to their problems and take responsibility to resolve them. Evidence shows that the method is efficient and cost-effective.<sup>171</sup> The method is used to protect children from violence and to improve the wellbeing of children and other family members, and to prevent the placement of children in alternative care. Family Group Conferences are used in many member States, including Belgium and Norway.<sup>172</sup>

197. In family group conferences, families are seen as resourceful, competent and capable of solving their problems with the help of formal state services as well as informal social support networks in the extended family, neighbourhood and community. This approach requires professionals to revisit their traditional roles as case managers and to become resource persons who facilitate, mentor and

---

<sup>170</sup> Council of Europe Committee of Ministers, [Recommendation CM/Rec\(2007\)9](#) of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, adopted by the Committee of Ministers on 12 July 2007; Council of Europe, [Life Projects for unaccompanied migrant minors: A handbook for front-line professionals](#), 2010.

<sup>171</sup> Originally developed in New Zealand in the 1980s and based on Maori traditions, the method has been adapted to the Norwegian context since the end of the 1990s and continues to expand throughout Europe and globally. Skaale Havnen, Karen J. and Øivin Christiansen, *Knowledge Review on Family Group Conferencing, Experiences and Outcomes*, Regional Centre for Child and Youth Mental Health and Child Welfare (RKBU West), Uni Research Health, 2014, p. 9. Linnosmaa, Ismo, Antti Väisänen, Eero Siljander and Jukka Mäkelä, Effectiveness and costs of preventive services for children and families, In: Nordic Council of Ministers, *Family Centre in the Nordic Countries, A meeting point for children and families*, 2012, pp. 87-97. p. 95. For more information, see:

[https://bufdir.no/en/English\\_start\\_page/The\\_Norwegian\\_Child\\_Welfare\\_Services/family\\_group\\_conference/](https://bufdir.no/en/English_start_page/The_Norwegian_Child_Welfare_Services/family_group_conference/). Informative video available in several languages: [https://youtu.be/P8Zc8QiJV7Y?list=PLipNlfkX49jGseHOCdMv\\_fk7cSoW1x5Oj](https://youtu.be/P8Zc8QiJV7Y?list=PLipNlfkX49jGseHOCdMv_fk7cSoW1x5Oj).

<sup>172</sup> See: [European Network on Family Group Conference](#). The Family Group Conference method is considered to employ and integrate restorative justice approaches, and has been evaluated positively together with other restorative justice approaches used in cases where children are victims of family-based violence or other criminal offences. The lessons learned and opportunities arising from restorative justice approaches might be considered and explored further in the deliberations of the Committee of Experts and the development of the policy instrument and/or practical guide. See: Gal, Tali, *Child Victims and Restorative Justice, A needs-rights model*, Oxford Scholarship Online, 2011.

monitor the conflict resolution process within a family. The method builds trust and linkages between families, their social networks and service providers.

198. The main task is for the family to develop an action plan, which includes activities for family members, the social support network, the caseworker from the child welfare services or other service providers. If the action plan or its subsequent implementation do not succeed to improve the family relations and the situation of the child, the caseworker proceeds according to general child protection practice, which could mean that the child is placed in alternative care as a measure of last resort, whenever this is in the child's best interests.

199. The child welfare service may also use family group conference as a tool at different stages of the casework. It can be used to find a foster home, during an investigation and even in emergency and urgent cases. In a family group conference, the family's private network meets with public authorities, with the aim to develop a plan to improve the situation of the child and the family.

200. Evaluations have shown that participants in family group conferences, including children, consider them useful. Caseworkers learn to trust and hand responsibility over to the family members. Children give positive feedback about the meetings and feel that they have better opportunities to participate in family group conferences than in traditional child protection work and this leads to a better understanding of their perspectives and needs. The involvement of a support person to watch over the best interests of the child enhances the quality of the child's participation and children find it helpful to have this support. A research-based checklist has been developed to guide caseworkers and coordinators in ensuring that the child's views and needs are at the centre of the method.<sup>173</sup>

201. In Norway, more recently, family group conferences also are being used in high conflict cases. This started as a pilot project with 18 cases, which were characterised by violence in close relationships where the children had either witnessed violence between the parents, and/or been exposed to violence as a part of their upbringing. In several cases, there was a generally high level of conflict within the family, in addition to incidents of violence. Where a joint family group conference was impossible due to the high level of conflict, the participants were placed initially in separate rooms. This approach was called a "shuttle conference" and has become an alternative method to start a dialogue between the parents who would not speak to each other. It was considered an ultimate attempt for conflict resolution before referring the case to court proceedings.

202. The pilot project was evaluated in 2019. The evaluation reaffirmed some of the previous evaluation findings of the method also for this context. They showed that the use of family group conferences, and shuttle conferences in particular, is an important first step to start a dialog in violence and high conflict cases. The evaluation revealed also several additional positive effects of the method. It gave the involved parties an opportunity to own their own problems. The network around the child got to know how the child welfare service work, they were updated about the case, and received useful information about the harmful effects of violence on children. The child experienced being seen, heard and taken seriously. All the informants in the evaluation expressed that a family group conference was useful, also in violence and high conflict cases. The conclusion after the evaluation was that the pilot project should be continued.<sup>174</sup> Today, more and more child

---

<sup>173</sup> Heino, Tarja, [Family Group Conference from a Child Perspective](#), Nordic Research Report, National Institute for Health and Welfare, 2009, p. 121.

<sup>174</sup> For more information on the method and the evaluations, please see the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir), [Bruk av familieråd i vold- og høykonfliktsaker](#), [Evaluering av et samarbeidsprosjekt/pilot mellom fem kommuner og Bufetat region øst](#) [Use of family councils in violence and high-conflict cases, Evaluation of a collaborative project / pilot between five municipalities and Bufetat region east]. [Slettebø, Tor; Flacké, Astrid; de Flon, Halvor; Negård, Inger Lise; Oterholm, Inger, Familieråd i familievernet](#). Evaluering av et pilotprosjekt 2013-2015 [Family Council in family protection, Evaluation of a pilot project 2013-2015].

welfare services in Norway have gained competence to use family group conferences also in violence and high conflict cases.

203. Considering the concrete risks to the child in families where levels of conflict are high and where the child has already been exposed to violence, the Family Group Conference method requires the confident and competent leadership of a well-trained child protection worker who can count on the support of a strong child protection system while monitoring the safety and wellbeing of the child. Introducing this method in contexts where these basic conditions are not guaranteed may be connected to risks for the child. Where Council of Europe member States consider introducing working methods that have been evaluated positively in other states, these considerations should always be prepared carefully by a situation analysis, targeted capacity strengthening of the service providers concerned and accompanied by a process of child-centred and rights-based monitoring and evaluation, with due regard to ethical and safety standards.

### **Italy: The multi-professional resilience-based programme P.I.P.P.I. to prevent the placement of children in alternative care**

204. In Italy, the Ministry of Labour and Social Policies developed in cooperation with the University of Padua (LabRIEF – Laboratory of Research and Intervention in Family Education) the P.I.P.P.I. programme to respond to child neglect and to prevent the placement of children in alternative care. P.I.P.P.I. is a research-training-intervention-programme aimed at preventing the out-of-home placement of children by balancing risk and protective factors. The programme focuses on supporting parents through multi-professional and resiliency-based interventions. It builds on a participatory method, where social workers collaborate with parents, teachers and other actors along a transformative evaluation path to promote the development of the children involved. Within this evaluation-path every service provider becomes also a researcher and his/her reflection is key in creating a community of practice and research. P.I.P.P.I. is strongly child and family focused, giving children and their parents a voice. It demonstrates the importance of an integrated approach to evaluation, planning and service provision for families. Government support encourages the different departments, such as schools and social welfare services, to work in an integrated manner, and ensures financial commitment. The programme recognises parenting support as a strategy that could break the cycle of social disadvantage and ensure children a good life path. The project has been operational since 2011 and delivers positive and convincing results. It is currently being evaluated.<sup>175</sup>

### **Multi-Dimensional Family Therapy**

205. Multi-dimensional Family Therapy<sup>176</sup> is an evidence-based service model that succeeds to reduce and resolve family conflicts and improve the quality of the relationships within the family. It is also used for situations where children are struggling with mental health issues, difficulties at school, aggression, substance abuse or getting into conflict with the law. The method has been evaluated positively as it achieves positive outcomes for children and parents and effectively combines an ecological social work approach with solutions-oriented family therapy. As Multi-dimensional Family

---

<sup>175</sup> Information provided by the Department for Family Policies, Presidency of the Council of Ministers, Ministry of Labour and Social Policies, Italy, in response to the survey questionnaire, 1 December 2020.

<sup>176</sup> Finnish Association for Mental Health, [Monimuotoinen Perheterapeutinen Työskentely \[Multi-Dimensional Family Therapy Work\]](#), undated. The Multi-dimensional Family Therapy is used increasingly in Finland, where the Association for Mental Health is coordinating the programme. In Estonia, the Child Protection Department under the Ministry of Social Affairs and Labour has started to promote the programme.

Therapy helps to reduce the harm done by family conflicts and to prevent the placement of children in alternative care, it is also considered a cost-effective service model.<sup>177</sup>

206. Multi-dimensional Family Therapy offers a package of methods that focus on the specific needs of the child and engage the parents. The therapy aims to understand the origin of the difficulties that the child is struggling with. To this end, the therapist assesses parenting practices and supports the family to develop problem-solving skills. Parents learn to cooperate better with each other and to address their own problems, such as mental health issues or substance abuse. All family members are supported in acquiring new skills, including communication skills, social and emotional skills, conflict resolution skills and the ability to influence the interaction between family members.

207. The therapist acts as a coordinator who manages the different levels of the therapy, which engage the child and the parents both separately and together. The therapist also involves other service providers who are important for the family, for instance psychiatric care professionals, teachers and child protection or social workers.

208. The therapy takes three to seven months and involves two to three meetings per week, each of 60-90 minutes in length. It is primarily used with children and young people aged between nine and 26 years old. The programme is considered adaptable to different cultures, family situations and backgrounds.

209. The programme has received positive feedback from children, parents, therapists and professionals working with families. It engages children and parents actively in therapy and motivates them to complete their treatment, whereas the dropout rates are significantly higher in other forms of therapy for the same target groups.

### Risk assessments

210. The Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011 (Istanbul Convention) obliges States parties to conduct risk assessments for persons who are victims of offences covered by the Convention. Article 51 requires States parties to take the necessary legislative and other measures to ensure that the risks of persons are effectively assessed by all relevant authorities and to devise a safety plan, including for children who are victims or witnesses of such offences.

211. In the context of its monitoring work, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) recommends that risk assessments are carried out according to a standardised procedure and as an integral part of criminal proceedings.<sup>178</sup> They should ideally be carried out as multi-professional assessments, under the responsibility of a single service to ensure consistency and reliability. The assessment should take into account information from multiple sources and focus on the human rights and safety of victims. As the risks of victims can be dynamic and evolve over time, the assessment needs to be periodically updated during the course of criminal proceedings. To support the progressive implementation of Article 51, guidelines and training for professionals are required.

---

<sup>177</sup> Non-Violent Childhoods Project, Expert Meeting, Riga, Latvia, 27-28 February 2018.

<sup>178</sup> This section is informed by and based on: Council of Europe, *Risk Assessment Standards and Methodologies for Diverse Stakeholders in Ukraine: Next steps in implementing international standards to ensure the safety of victims of violence against women and domestic violence*, [Analytical Report](#), 2020. Kostopoulou, Maria-Andriani, *The work of GREVIO in promoting risk assessments in accordance with the Council of Europe Istanbul Convention*, Presentation at 'Preventing secondary and repeat victimisation of child victims of crime: Risk assessments and solutions in the best interests of the child', E-PROTECT II International Workshop, 24 March 2021.

212. In regard to Belgium and Italy, GREVIO urged to provide for a risk assessment in cases where parental responsibility and visiting rights are determined in families with a history of violence. In regard to Austria, GREVIO noted that children under 15 years of age are automatically considered in risk assessments, whereas mothers had to be aware of the possibility to apply for protection for older children. GREVIO urged France to ensure risk assessments are carried out irrespective of whether the victim files a police report on the incident of violence. As a recurring issue in its monitoring reports, GREVIO underlines the importance of assessing the risks of girls who refuse to enter into a forced or arranged marriage. In follow-up to a risk assessment, the competent authorities and service providers have to ensure coordinated measures are in place to protect and support victims, for instance through psycho-social support, as well as protection measures in the context of criminal procedures.

213. Council of Europe member States use a diversity of methods for risk assessment, although many remain limited to law enforcement assessments and only few countries have devised multi-professional approaches, such as Belgium and Finland.

214. In Finland, the LASTA risk assessment method has been developed and used for 10 years and is today connected to the Finnish Barnahus model.<sup>179</sup> The development of this method was informed by the Multi-agency Risk Assessment Conference model (MARAC), which is an evaluated good practice.<sup>180</sup>

215. The LASTA method is a structured case assessment and decision making process that aims to identify the needs of a child in cases where there are suspicions or confirmed incidents of violence. The method was developed to improve information sharing between different state agencies and service providers already at the early stage of criminal investigations, and even before the child is interviewed. The LASTA method is initiated right after the report has been filed to the police. Its overall aim is to ensure that the best interests determination in the case is informed by all the relevant professional perspectives, including the perspective of childcare, protection and the judicial proceedings.

216. The first assessment is conducted following a half-structured interview guide, which includes a clinical assessment form and questions related to the risks of violence, the child's needs, the family situation and previous service use by the family. The LASTA Coordinator or Barnahus staff gather information from police files, child protection service records, and health care records. Once completed, a multi-agency meeting is convened with the participation of the police and prosecutor, child protection services, and health care services. The meeting enables the officials and professionals to obtain a comprehensive overview of the case and aims to arrive at a joint decision on the next steps in the investigations and the referral of the child to appropriate services. At this stage, it is also decided if the police or social services take the lead on the case management, in accordance with the severity of the violent incident and the identified risks. The multi-agency meeting guides the best interests determination, for instance with regard to the child's placement in out-of-home care. It helps the professionals to assess if a criminal investigation has to be initiated and if the child has to be referred to a forensic interview.

---

<sup>179</sup> This section is informed by and builds on: Wenke, Daja, [Service Providers as Champions for Non-Violent Childhoods](#), *Service provision for children and parents to end corporal punishment*, Non-Violent Childhoods Project, Council of the Baltic Sea States, 2018. Laajasalo, Taina, Chief Specialist and Forensic Psychologist, Finnish Institute of Health and Welfare, *LASTA – A multi-professional risk assessment method from Finland*, Presentation at Preventing secondary and repeat victimisation of child victims of crime: Risk assessments and solutions in the best interests of the child, E-PROTECT II International Workshop, 24 March 2021.

<sup>180</sup> See for instance: European Institute for Gender Equality, [Multi-Agency Risk Assessment Conference](#).

217. The evaluations of the method revealed that the structured multi-professional assessment helps to improve the information flow and cooperation between different agencies and services. The experience has shown that the method supports the police and the prosecutors to make better informed investigations and decisions, and that the service planning and delivery is more tailor-made to the child's needs. The method continues to be evaluated and scaled in the country.

### Integrated service models for families

#### **Family Centres**

218. Family centres are a common service model in use in many Council of Europe member States. The family centre is a community-based service model that has been proven to strengthen the health and well-being of children and parents, including by promoting positive parenting and preventing corporal punishment. Family centres offer a local meeting point with access to a range of services for parenting support, child protection, social welfare and health care. As family centres are open to all families with children, they enable access to universal services at a low-threshold and in a non-stigmatising way. Family centres typically target families with children up to five years old, although the service model is evolving to meet the needs of families with teenagers as well. The overall aim is to enhance the social inclusion and participation of families, to create a sense of community and to strengthen solidarity within the society.<sup>181</sup>

219. Family centres promote children's well-being by supporting parents, strengthening them as caregivers and promoting positive, non-violent parenting. The family centre model enables the early identification of physical, mental and social risk factors for children and parents. The staff at the centre provide services directly to parents and children, inform families about the services that are available to them, refer families to specialised services from a network of partners and coordinate services.<sup>182</sup> Some family centres make written agreements with providers of specialised services outside the centre, such as psychiatric care, psychotherapy or treatment of substance abuse. The agreements facilitate access to specialised services, free of charge and with little waiting time.<sup>183</sup> Overall, this coordinated approach of service provision and referral under one roof helps strengthening families and preventing family separation and the placement of children in care.

#### **Family Justice Centre**

220. The Family Justice Centre model provides a range of services and expertise under one roof, which are accessible at a low threshold. The overall objective is to ensure sustainable safety for the whole family. The Centre deals typically with high-risk families that are struggling with multiple difficulties, where a coordinated approach between police, social welfare, child protection and justice is needed.

221. The Family Justice Centre in Limburg, Belgium, receives a report when an incident of violence is reported to the police, or when the police identifies a case.<sup>184</sup> The Centre collaborates closely with

---

<sup>181</sup> Family centre models differ from country to country. The Swedish family centres, which were created in the 1970s, provide maternal healthcare, child healthcare, open early childhood education and care and preventive social services. In Norway, family centres are primarily health care centres that provide antenatal care, preventive child welfare services, educational psychological services, as well as open day care for children. The family centres in Finland include maternity clinics and child welfare clinics. See: Nordic Council of Ministers, *Family Centre in the Nordic Countries, A meeting point for children and families*, 2012. Nordic Centre for Welfare and Social Issues, *Nordic Children, Development of Nordic family centres*, Results of the 'Early Intervention for Families' project, 2012.

<sup>182</sup> Nordic Council of Ministers, *Family Centre in the Nordic Countries, A meeting point for children and families*, 2012, pp. 10-11.

<sup>183</sup> Heino, Tarja, *Family Group Conference from a Child Perspective*, Nordic Research Report, National Institute for Health and Welfare, 2009, pp. 26-28.

<sup>184</sup> Family Justice Centre Limburg, Belgium, <https://www.cep-probation.org/family-justice-center-limburg-together-we-really-make-a-difference-concerning-violence/>. Reggers, Sabrina, *Multi-disciplinary risk assessments in the context of a Family Justice*

the prosecution services and the police in the assessment and investigation of the case. The Centre develops a case file and, in more severe cases or with repeated reports, carries out a risk assessment for the family, with specific attention to the children in the family. The aim is to understand if the children are victims or witnesses of violence, if the family has a history of violence, substance abuse, financial or housing problems. The cases are ranked according to a low, medium or high risk. In low risk cases, the public prosecutor sends a letter to inform the family that the police is investigating the case and encourages the parents to seek help, while also offering support in referring them to the right services. In medium risk cases, the Centre informs the parents that their case has been referred to the Family Justice Centre and carries out a case assessment gathering information from different services. This assessment helps to understand if the Family Justice Centre should provide services to the family or if they are already followed by other services who could step up their support to the family.

222. Over the past three years, the Centre has dealt with 100 cases and the experience thus far shows a positive impact of the multi-agency approach. Risk assessments are carried out consistently and reliably, with specific attention on the child, and referral to appropriate services in follow-up. The evaluations show that all clients are satisfied or highly satisfied with the services they received. The service model helps to strengthen the knowledge of all agencies and services involved and is connected to a training programme.

#### *Barnahus and comparable child-sensitive justice models*

223. In cases where children are victims of violence or at risk, the Barnahus and comparable interagency and multi-disciplinary models promoting child-sensitive justice, are evaluated and widely recognised good practice models that deliver child-centred services under the same roof. In a child-friendly setting, the officials and professionals at the Barnahus assess the child's case, carry out best interests determination procedures, collect evidence through forensic interviews and medical examinations, and provide or coordinate the provision of treatment services. The evidence collected at the Barnahus is admissible in court and holds a high probative value if the case is taken to court. This coordinated and child-centred approach helps to prevent repeated interviews and to prevent secondary or repeat victimisation of child victims of violence in the course of investigations and judicial proceedings. The Barnahus model, initially developed in Iceland and the Nordic countries, is today in place in many Council of Europe member States. Although it focused initially on children who are victims of sexual violence, the scope of the services provided at Barnahus and comparable models is gradually expanding. It is directly relevant to a broad range of child protection matters, including preventive services.<sup>185</sup> The Barnahus model and comparable models could therefore be promoted more proactively also for the context of civil proceedings, including care proceedings and the correlated best interests determination procedures.

#### *Monitoring of residential care institutions for children*

##### **System-based auditing of residential institutions for children**

224. Inspections of residential institutions for children are a useful method to monitor the implementation of national laws by the institution. They can take place as preventive measures or in follow-up to reports or complaints about cases of violence against children in the institution. The Council of the Baltic Sea States has promoted since 2012 the AudTrain programme, a system-based

---

Centre, Presentation at 'Preventing secondary and repeat victimisation of child victims of crime: Risk assessments and solutions in the best interests of the child', E-PROTECT II International Workshop, 24 March 2021.

<sup>185</sup> Further information available from: [PROMISE Barnahus Network](#),

auditing method for residential childcare and educational institutions.<sup>186</sup> As a system-based audit, the programme focuses on the management of the institution and assesses whether it operates in accordance with national law. The method includes an inspection of the institution, as well as interviews with children and staff members, to take their views into account. This approach enables the auditors to identify weaknesses in the management of the institution, training needs, as well as lessons learned for the institution and the supervising state authority.

## 7. Proposals for policy instruments and practice-oriented tools

225. This study aimed to assess the international and European standards relevant to the best interests of the child in domestic law proceedings concerning the limitation of parental responsibility and the placement of a child in care. The overall objective of this study is to inform the deliberations of the Council of Europe Committee of Experts CJ/ENF-ISE with regard to the most appropriate policy instrument and/or practice-oriented guidance documents or tools to be developed to strengthen the progressive implementation of international and European standards in this field in Council of Europe member States.

226. In light of the findings that emerged from the analysis and review undertaken, the feasibility study concludes that the complexity of the issues at stake, and their significance, might best be represented by a set of instruments:

### Policy instrument

227. A Committee of Ministers Recommendation, Guidelines or other policy instrument on the best interests of the child in administrative and judicial proceedings concerning childcare, the limitation of parental responsibilities and parental separation.

228. By focusing on the best interests determination procedure as a formal decision making process, a single recommendation or guideline would address matters relating to the limitation of parental responsibility, the placement of a child in alternative care, as well as cases of parental separation where a best interests determination for the child becomes necessary, and provide guidance to member States and other stakeholders in this field.

229. A policy instrument appears to be particularly useful to systematise international and European legal standards relevant for the promotion of the best interests of the child in domestic care proceedings to limit parental responsibility and to place a child in care. Considering that the concept of the best interests of the child is represented in numerous international, European and national legal instruments, while the wording typically remains vague and undefined, a clarification of its meaning from a child rights-based approach and with a focus on procedural matters would be useful to promote law and policy reform, policy planning and practice in this field. The consensus on human rights principles and procedural safeguards of a best interests determination as a formal procedure has the potential to significantly advance the progressive implementation of the rights of the child in this specific field, particularly if expressed by a Committee of Ministers Recommendation or Guideline.

---

<sup>186</sup> See: Council of the Baltic Sea States, *AudTrain – System Based Audit of Child Welfare, The AudTrain Programme*, <http://www.childrenatrisk.eu/audtrain/>



*A handbook for officials and practitioners*

230. A handbook for officials and practitioners appears to be particularly meaningful in light of the complexity of the issues at stake and the identified need to strengthen and standardise procedures, to promote the use of systematic evidence-based methods, as well as training in this field to strengthen the capacities and qualifications of officials and professionals involved, as well as their cooperation.

231. A handbook would be useful to translate the policy instrument to practice-oriented guidance and propose a package of working methods and tools that are evidence-based, child-centred and sensitive to the needs of the child, while also strengthening the confidence, skills and techniques of officials and professionals working with and for children and families in the context of care proceedings. The handbook might include chapters that are specifically targeted to the different professional groups and disciplines, while also proposing practical guidance for interagency and multi-disciplinary cooperation.

232. The main target groups could include the following:

- Social workers and child protection officials conducting best interests assessments and determinations in the context of service provision for children, parents and families;
- Judges at family courts and other relevant officials and professionals in judicial bodies involved in care proceedings;
- Lawyers, guardians and representatives supporting children and parents in the context of care proceedings;
- Other relevant professional groups that may be identified during the consultation phase.

233. While targeting primarily the professional groups who are directly involved in service provision for children and families, alternative care, best interests determinations and care proceedings, the handbook would provide state of the art information and orientation also for professionals involved in programming, advocacy, monitoring and training. For the context of monitoring and oversight, the handbook might consider the translation of human rights, general principles and procedural safeguards in best interests determination in child rights-based indicators, which facilitate the monitoring of the progressive implementation of Council of Europe policy instruments relevant for this field. Training on the best interests determination procedure and related matters might be supported and promoted also through the Council of Europe HELP training modules in different languages.

234. In addition, the development of a chapter or stand-alone handbook for Parliamentarians might be considered, possibly in collaboration with the Council of Europe Parliamentary Assembly and with an associated training strategy for Parliamentarians on the best interests of the child in care proceedings, with a focus on the best interests determination procedure, including the assessment and decision making process. If the Committee of Experts decides against the development of a policy instrument, a handbook for Parliamentarians should be considered as a stand-alone guide to address key considerations relevant for law reform and Parliamentary oversight.

*Child-friendly material*

235. In light of the identified need to develop and disseminate child-friendly information material for children involved in care proceedings, and the interest expressed in this issue by some member States, the development of a child-friendly version of the policy instrument or related child-friendly material is strongly recommended. It would be the objective of this document to strengthen the knowledge and awareness of children involved in care proceedings and related decision making

processes and to empower them to exercise and claim the respect for their rights in this context. Child-friendly material might be developed in consultation with children, in accordance with the established tradition of the Council of Europe, as a separate initiative or in the course of the consultations with children planned to inform the development of the policy instrument and/or practical guide. Child-friendly material could include a set of brochures on specific thematic focus areas complementing the existing material in this field combined with a video or an application for children to be disseminated in social media. A format that would allow for adaptation to national languages and contexts could be preferable.

*Proposed stakeholders for consultation by the Committee of Experts*

236. The following stakeholders are proposed for consultation:

- a. **Committee on the Rights of the Child:** The CRC Committee convenes a Day of General Discussion on children's rights and alternative care on 16-17 September 2021.<sup>187</sup> In addition, there are several cases pending before the Committee on the Rights of the Child under the individual complaints procedure, with potential relevance for the best interests of the child in the context of domestic care proceedings concerning the limitation of parental responsibilities and the placement of a child in care.<sup>188</sup> The Committee on the Rights of the Child might further brief the Committee of Experts CJ/ENF-ISE on observations and recommendations issued in respect of Council of Europe member States emerging from the Committee's monitoring work.
- b. **European Network of Ombudspersons for Children (ENOC):** Consultation of Ombudsoffices for Children on specific strengths and opportunities, weaknesses and gaps at the national levels in Council of Europe member States to promote the best interests of the child in domestic care proceedings concerning the limitation of parental responsibilities and the placement of a child in care. Based on the monitoring work of the Ombudsoffices, ENOC representatives might be invited to present findings of the monitoring work, complaints received from children, outcomes of consultations with children, as well as recommendations for the policy instrument and/or practical guide to be developed by the Committee of Experts CJ/ENF-ISE.
- c. **Members of national Parliaments and Parliamentary Commissions** who have a working record on promoting law reform and oversight with a specific focus on questions related to the best interests of the child in domestic care proceedings concerning the limitation of parental responsibilities and the placement of a child in care. The consultation might aim to hear the views of Parliamentarians on how a policy instrument and/or practical guide could contribute to strengthening the law reform and oversight work of Parliamentarians in this specific field in member States. The Parliamentarians would be identified in consultation with the national delegations and the Council of Europe Parliamentary Assembly.
- d. **Council of Europe groups of experts** mandated to monitor the implementation of Council of Europe Conventions by member States, such as GREVIO, GRETA and the Lanzarote Committee. The aim of these consultations would be to foster cross-sectoral and

---

<sup>187</sup> Committee on the Rights of the Child, Day of General Discussion: Children's Rights and Alternative Care, 16-17 September 2021, <https://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2020.aspx>.

<sup>188</sup> Pending cases as of 15 March 2021: 127/2020, France, Institutionalisation of a child with autism and a heart disease. 133/2020, Spain, Irregularities during the adoption proceedings of the author's two daughters. 135/2021, France, Institutionalization of two girls. 137/2021, France, Placement in foster care of a new born premature baby girl. 139/2021, Czech Republic, Placement in institutional care of two siblings to ensure their rights to health and education. Committee on the Rights of the Child, [Table of Pending Cases](#) before the Committee on the Rights of the Child, Last update: 15 March 2021.

transdisciplinary attention to the best interests of the child in care proceedings and ensure that the development of the policy instrument and/or practical guide is informed by the expertise of each of these bodies.

- e. **Academia:** Members of the Committee CJ/ENF-ISE and national delegations could be encouraged to nominate leading experts from the academia and national research institutions, representing a diversity of fields such as law and justice, child rights, child development, medical sciences, sociology, social work and law enforcement, to share state of the art research relevant to the issues at stake. In addition, Universities offering Master Programmes on the rights of the child, such as the University of Geneva, and other academic experts to share research findings with regard to evidence-informed policymaking, implementation measures and decision making concerning the best interests of the child in domestic care proceedings.
- f. **Individual high-level experts**
- g. **International Association of Youth and Family Judges and Magistrates (IAYFJM):** The international association is an NGO that promotes contacts and exchange between judges from different countries and with other international associations working in the field of family justice. The association carries out research on international issues concerning the operations of courts, as well as international and national laws relating to youth and family.<sup>189</sup> The consultation would aim to solicit the views and perspectives of family judges with regard to the best interests of the child in care proceedings and how the policy instrument and/or practical guide could address the needs of family judges and magistrates and offer innovative value.
- h. **International Association of Schools of Social Work (IASSW)** is an association of schools of social work, other tertiary-level social work educational programs, and social work educators with a worldwide reach. The IASSW promotes the development of social work education in Europe and globally, develops standards to enhance the quality of social work education, encourages international exchange, creates platforms for sharing social work research, and promotes human rights and social development through policy and advocacy activities. The consultation with IASSW would focus on the perspectives of schools of social work on the best interests of the child in domestic care proceedings, state-of-the are research in the field and the views of the Association on how a policy instrument and/or practical guide could offer innovative value.
- i. **International Federation of Social Workers – IFSW Europe:** IFSW Europe focuses on social work in response to austerity measures, people affected by individual and family challenges, conflict and migration.<sup>190</sup> The consultation would focus on the perspectives of social service providers on the best interests of the child in domestic care proceedings and the views of the Federation on how a policy instrument and/or practical guide could offer innovative value.

---

<sup>189</sup> <http://www.aimjf.org/en/about/?about-organigramme>.

<sup>190</sup> <https://www.ifsw.org/regions/europe/>.

## 8. References

The following reference documents have significantly informed the literature review conducted for this study. The complete list of sources used is referenced in the footnotes.

Cantwell, N., Davidson, J., Elsley, S., Milligan, I., Quinn, N., *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'*, UK: Centre for Excellence for Looked After Children in Scotland, 2012.

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), [CRC/C/GC/14](#), 2013.

Committee on the Rights of the Child, General Comment No. 5 (2003), General Measures of Implementation for the Convention on the Rights of the Child, CRC/GC/2003/5, 3 October 2003.

Council of Europe, *How to Convey Child-friendly information to children in migration*, A handbook for frontline professionals, Building a Europe for and with Children, 2018.

Council of Europe, Committee of Ministers, [Guidelines on Child-friendly Justice](#), 2010

Council of Europe, Recommendation [CM/Rec\(2019\)11](#) of the Committee of Ministers on effective guardianship for unaccompanied and separated children in the context of migration, 2019.

Council of Europe, Recommendation [CM/Rec\(2011\)12](#) of the Committee of Ministers to member states on children's rights and social services friendly to children and families, 2011.

Council of Europe, Committee of Experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE), *Best interests of the child in care proceedings – compilation of excerpts of relevant international and European instruments*, First meeting (24-25 September 2020), Agenda Item 6, CJ/ENF-ISE(2020)INF3prov, 3 September 2020.

Council of Europe, *Report on the Protection of Children's Rights*, International standards and domestic constitutions, European Commission for Democracy through Law (Venice Commission), Adopted by the Venice Commission at its 98<sup>th</sup> Plenary Session, Venice, 21-22 March 2014, pp. 11-12.

Council of Europe, *The Best Interests of the Child*, A dialogue between theory and practice, 2016.

Council of the Baltic Sea States, *Family Support and Alternative Care in the Baltic Sea Region*, Background Paper, 2015.

Council of the Baltic Sea States, [Guidelines on the Human Rights and Best Interests of the Child in Transnational Situations](#), Council of the Baltic Sea States Children's Unit and Expert Group for Cooperation on Children at Risk, 2015.

European Expert Group on the Transition from Institutional to Community-based Care, [Common European Guidelines on the Transition from Institutional to Community-based Care](#), Guidance on implementing and supporting a sustained transition from institutional care to family-based and community-based alternatives for children, persons with disabilities, persons with mental health problems and older persons in Europe, Brussels, November 2012.

European Union Agency for Fundamental Rights and Council of Europe, [Handbook on European Law Relating to the Rights of the Child](#), 2015.

Hodgkin, Rachel and Peter Newell, [Implementation Handbook for the Convention on the Rights of the Child](#), Third edition, United Nations Children's Fund, 2007.

Lerch, Véronique and Anna Nordenmark Severinsson, *Feasibility Study for a Child Guarantee*, Target Group Discussion Paper on Children in Alternative Care, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Luxembourg: Publications Office of the European Union, 2020.

Ruggiero, Roberta, Diana Volnakis and Karl Hanson, The inclusion of 'third parties': The status of parenthood in the Convention on the Rights of the Child, *Children's Rights Law in the Global Human Rights Landscape*, Isolation,

*inspiration, integration?*, Edited by Eva Brems, Ellen Desmet and Wouter Vandenhoe, Routledge Research in Human Rights Law, 2017, pp.71-89.

Stalford, Helen, The broader relevance of features of children's rights law: the 'best interests of the child' principle, *Children's Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?*, Edited by Eva Brems, Ellen Desmet and Wouter Vandenhoe, Routledge Research in Human Rights Law, 2017, pp.37-51.

United Nations High Commissioner for Refugees, United Nations Children's Fund, *Safe and Sound, What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, 2014.

Wenke, Daja, [Service Providers as Champions for Non-Violent Childhoods](#), *Service provision for children and parents to end corporal punishment*, Non-Violent Childhoods Project, Council of the Baltic Sea States, 2018.