



RIGHTS OF CHILDREN IN UKRAINE

The report on the needs assessment with the respect
to policy and legal framework revision

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Synopsis

This needs assessment intends to identify the shortcomings with the rights and situation of the Ukrainian children in the light of social human rights of Europe. The assessment will be based on:

■ systematic presentation of the European *human rights and how they apply to children*

■ a *comparative study* of the Ukrainian law and practise in relation to the European rights and standards, focusing particular on children in the most vulnerable situation, such as children with disabilities, of minority cultures or living in institutions,

■ a *gap analysis* of implementation of the rights and standards,

■ *recommendations* for improving Ukrainian policy, legislation and practice.

The European rights and standards are provided by the European Convention of Human Rights (ECHR) and the European Social Charter (ESC). During recent decades, *specific norms and standards* have been defined by the monitoring bodies: the European Court of Human Rights (ECtHR) and the European Committee of Social Rights (ECSR).

After introductory remarks, the following rights of children will be discussed:

- ▶ 1) living conditions and support to families
- ▶ 2) basic and vocational education
- ▶ 3) protection of young workers
- ▶ 4) prohibition of maltreatment
- ▶ 5) child welfare and public care
- ▶ 6) legal protection.

Part I

Introduction

1.1 Treaties

At its inception (1950), the European Convention of Human Rights (ECHR) set out important principles, not only for fundamental freedoms but also for supporting disadvantaged citizens. It set as a basic requirement the respect for human dignity, which includes, as a minimum standard, that everyone is guaranteed the support they need for subsistence, necessary care and life of human value. The ECHR also protects the fundamental freedoms, such as integrity of individuals and families, and requires fairness by authorities and the possibility of recourse to an independent judicial body, ultimately to a court.

The European Social Charter (ESC) is fundamentally based on the same principles as the ECHR but with new elements. The Charter was formed in 1961 by Western European nations in the spirit of their emerging welfare systems and was revised in 1996 before the breakthrough of conceptions related to neoliberalism and globalisation. As key principles of the time, the ESC expresses the need for solidarity and equal opportunities and requires that efforts be made to bring the disadvantaged into the mainstream through positive actions. The ESC also sets new standards for the inclusion and participation of all.

Both treaties prohibit all types of discrimination and set the basic requirement of equal treatment, which opens the gate for positive measures for children with disability and of the minority cultures at least to the extent to guarantee a dignified life for everyone.

1.2 Best interest of the child

The UN Convention on the Rights of the Child (1989) calls for the best interests of the child. According to Article 3§1 of the Convention, the best interests of the child are established as a primary consideration in all actions considering children. Paragraph 1 refers to the collective interests of children, whereas paragraph 2 highlights the interests of an individual child. Also, Article 17 of the ESC expresses extensively the principle of best interest of the child.

In a substantive sense, it is in the best interests of every child to grow up in safe and just conditions, to be supported according to his or her needs, and to receive good care and an adequate upbringing offering understanding and affection. Moreover, it is in the best interests of every child to grow up free of poverty, to avoid corporal punishment and exploitation, to enjoy access to education appropriate to his or her abilities and aptitudes. The introductory phrase of Article 17 of

the ESC expresses the best interests of the child in a material sense, as it aims to promote the “full development of the child's personality and physical and mental capacities”. In taking decisions, the best interests of an individual child can be understood according to what constitutes the best possible or least harmful option for that child, here and now and in the future.

Procedural requirements to ensure the best interests of the child are: 1) ascertained consultation with the child by means of professional social work in the environment typical to the child (no minimum age), 2) recorded opinion of the child, taking it into account the age and degree of maturity (indicative age limit 10, 12, 15 years), 3) ascertained necessary legal aid and right to remedies and to appeal to an independent legal body and 4) protection the child from publicity in matters of child's privacy, integrity and family life.

Legislative bodies, institutions, administration and the courts should consider the “best interests of the child” in both the substantive and procedural sense. The child should be treated as an independent legal subject with the right to be heard and, according to age and degree of maturity, participate in decision-making along with the person under whose guardianship he or she is. Even small children can express what is good for them and what is not, especially if the questioner is a trained social worker or family counsellor. There is no minimum age for such consultation with the child. On the other hand, it is also important that the wishes and opinions of a child who has reached a sufficient degree of maturity are respected and recorded in the minutes.

In practice, the realisation of the best interests of the child requires respect for three operational principles. The integration of a child into the community should primarily occur through mainstream activities and, where equal opportunities are not achieved, through positive actions for the children concerned. Inclusion includes the idea of providing all children with the necessary support to participate in life in the same way as others.

1.3 Legal provisions

The ESC pays much attention to children's rights on a healthy living environment, wellbeing, education, protection in the family and protection from all kinds of abuse and maltreatment, as well as welfare and the public care of children and young persons and public custody over them. In fact, the ESC deals with the entire sphere of the life of children:

- (2) living conditions and protection of family (ECHR 2,3,8– ESC 8, 11, 16, 27, 31)
- (3) education (ECHR Prot. 1 Art. 2 -ESC 10, 15§1, 16, 17§1a, 27§1c)
- (4) protection of young workers (ESC 7)
- (5) prohibition of maltreatment (ECHR 3,8 -ESC 7, 16, 17§1b)
- (6) child welfare and public custody (ECHR 3,5,8 -ESC 17§1c)
- (7) legal protection of children and young persons (ECHR 6, 13).

Articles 14 of the ECHR and E of the ESC prohibit all forms of discrimination, which, inter alia, requires children to enjoy equal rights to their parents, regardless of their marital status, and to be treated equally as users of public services and as participants in educational programmes.

Other legal provisions that affect the lives of children, either directly or indirectly, are Article 8 of the ESC (protection of maternity) and 27 (reconciliation of work and family life). The first contains

provisions on maternity leave, payment of wages or social security during the period of leave and the right to breastfeed. The latter, in turn, includes standards for parental leave based on the child's need for short-term or long-term care, provisions to facilitate the return to work of parents, and increased standards for the organisation of preschool education.

1.4 Personal scope

The rights of the ECHR are universal and protect children's rights regardless of the country of origin. Everyone has the right to the protection of human dignity and fundamental freedoms!

By contrast, the additional rights provided in the ESC are limited in coverage, in particular those requiring significant financial inputs from the state. Here, the point of departure is a kind of macro-reciprocity principle. These rights are granted only to nationals of the Contracting States who are legally resident or regularly employed in the country concerned (See: "Introduction to the Appendix" of the ESC).

The wording of the Appendix to the ESC seems to leave citizens of third countries, as well as illegal residents, outside the scope of the country's welfare benefits and services. For example, at the beginning of this millennium, persons residing illegally in France, including minors, were unentitled to emergency health care. However, the ECSR has assessed the situation of children differently. Based on Article 17 of the ESC, the ECSR Committee has decided that emergency health services should be provided for all children (*FIDH v. France*, CC 14/2003, §32).

Moreover, the ECSR has recently interpreted Articles 13§4 and 31§2 of the ESC as covering also illegal adult migrants (*CEC v. The Netherlands*, CC 90/2013, p. 73-75; *FEANSA v. The Netherlands*, CC 86/2012, §141). In addition, the ECSR has decided that all children, including those without the required permit, should enjoy the same right to primary education as other children (*C 2011*, Statement of interpretation of Article 17§2; *Médecins du Monde - International v. France*, CC 67/2011, §128).

Furthermore, in the case of the prohibition of ill-treatment and abuse, such as corporal punishment or economic, sexual or other exploitation, or other fundamental protection of human dignity, the ESC has universal coverage. Here, the application of the ESC is an ancillary provision of the ECHR and must not reduce the rights established by the latter.

1.5 General situation in Ukraine

The State has ratified both key European treaties of human rights, the ECHR and the ESC. A significant positive sign in protection of children's rights in Ukraine since the ratification of the last of these documents (2006), was the decrease of child mortality. In other areas, little has been done. However, in 2012 the Family Code was amended equalising the minimum legal age of marriage to 18 for both genders. Efforts were also made to ensure that children cannot be taken into public custody just on the ground of lack of financial resources by the family.

In terms of human rights' perspective, most of the children's right care still associated with challenges.

Ukraine has committed itself to respecting almost all the European rights for the protection of children and family life but situation in the country complied only with some of the rights and standards set by the European Social Charter (ESC). The conclusions of the ECSR for 2017, 2019 and 2020 showed the following results for 29 children's rights:

■ seven (7) positive conclusions (Articles 7§7, 7§8, 7§9, 8§2, 8§3, 27§1, 27§3)

■ six (6) postponed decisions (Articles 7§4, 7§5, 7§6, 8§4, 10§5 and 17§2)

■ sixteen (16) negative conclusions (Articles 7§1, 7§2, 7§3, 7§10, 8§1, 8§5, 10§1, 10§2, 10§3, 10§4, 15§1, 16, 17§1a, 17§1b, 17§1c, 27§2)

A positive conclusion was reached concerning the protection against dismissal of pregnant women (8§2) and breastfeeding (8§3), reconciliation of work and family responsibilities (27§1 and 3) as well as paid annual leave (7§7), restrictions of night work (7§8) and medical checks (7§9) of young workers.

The European Committee of Social Rights (ECSR) still has not reached a conclusion to the following areas of law: night work during pregnancy (8§4 and 2§7), receiving free basic education (17§2), utilisation of vocational training (10§5) and conditions of employment of young workers (7§4 – 6). Based on available information on at least two more conclusions, especially on 7§4 (working hours of minors) and 17§2 (school dropouts) might have negative conclusions in 2023, if no significant progress is made.

Ukraine couldn't compliance with a major part of the obligations provided by the ESC. Violation was identified in relation to 16 rights:

- ▶ infant and maternal mortality 11§1
- ▶ maternity leave, childcare leave and corresponding payments 8§1, 27§2
- ▶ level of family social benefits §16 basic education 17§1a
- ▶ professional training 10§1-4
- ▶ training of children with disabilities 15§1 (and E)
- ▶ prohibition of child labour 7§1-2, 7§10
- ▶ extracurricular working hours 7§3
- ▶ prohibition of ill-treatment and abuse of children 7§10 and 17§1b
- ▶ social protection of children and public custody over them 17§1c

The ECHR also provides for the prohibition of ill-treatment and abuse of children (3) and the protection of family life (8).¹⁸ December 2008 in its judgment in the case *Savin v. Ukraine*, the ECHR found Ukraine had violated Article 8 of the ECHR due to inadequate conditions for public custody, refusal to hear children's opinion and separation of siblings and placing them in different institutions.

Part II

Living conditions

2.1 Healthy environment

2.1.1 European norms

In applying Article 2 of the ECHR, the European Court of Human Rights (ECtHR) has required a) the necessary prior authorization or other mandatory control system for dangerous activities in order to prevent risks, as well as a positive obligation to inform the residents about the risks (Öneryildiz v. Turkey, 2004) and b) an appropriate system of health services available to everyone in the event of a life-threatening situation. Specific threats to health and deaths related to insufficiently tested and poorly controlled vaccination programs and the disproportionate risks of the blood transfusion and patient injury as a result (Calvelli and Ciglio v. Italy, 2002).

According to Article 8 the ECtHR decided that the right to an unpolluted environment is also part of the protection of the home and family (Bacila v. Romania, 2010). Article 8 has also been applied to protect residents against imminent threat to health (noise, vibration, dust and air pollution, etc.).

Article 11§1 of the ESC sets specific hard indicators and environmental standards for the protection of minors. Infant and maternal mortality are direct indicators of how well a particular country's overall health system is operating.

The provision covers safe nutrition, drinking water, air and standards of construction as well as protection against noise, radiation and dangerous substances. Moreover, it covers product safety in both the physical and psychological senses, including the ban on dangerous toys.

The provision also requires countries to have a comprehensive health care system accessible to all children, including a child and maternity counselling system (C 2005, Moldova, pp. 450–452) and providing medical services to all children as soon as possible. This also applies to children living in child welfare institutions. Psychological protection includes legislation that restricts or prohibits obscene or harassing communication and advertising to children.

Article 11§2 provides measures to promote healthy lifestyle. The provision focuses on children's nutrition, sleep, hygiene and health education, the struggle the consumption of toxic substances (tobacco, alcohol and drugs), and infection diseases (C XV-2, 2001, Belgium, p. 96–99). Health promotion can occur in the form of general public education or based on group-oriented or

individual guidance and counselling. According to ECSR practice, health education, including sexual health education, is sufficient if it is part of the school curriculum and provided throughout primary school (Digest of the ECSR, 2018, p. 132). <https://www.coe.int/en/web/european-social-charter/home>

Article 11§3 of the ESC contains preventive measures to protect health. These measures include the reduction, prevention and early diagnosis of endemic or chronic illnesses and accidents through:

- 1. systematic work on school health care (C XV-2, 2001, France, p. 208–211)
- 2. comprehensive mass screenings (C 2005, Moldova, p. 450–452; C XV-2, 2001, Belgium, p. 96–99)
- 3. vaccination programmes for the prevention of infectious diseases and other demographic, regional or group activities
- 4. special programmes and awareness-raising measures for the elimination of accidents at home, school, during moving and free time, as well as injuries to children by animals (C 2005, Romania, p. 603–606).

Belgium and Turkey were found to be violators of this provision when their populations turned out to be insufficiently resistant to certain dangerous diseases due to inadequate vaccination programs (C XV-2, 2001, Belgium; CXV-2, 2001, Turkey).

Moreover, the state must prevent the sale of tobacco to minors and implement specific measures to combat alcohol and drug use among young people (C XVII-2, 2005, Portugal, p. 685–689).

2.1.2 Situation in Ukraine and gap analysis

In 2017 conclusion the ECSR gave negative assessment for Ukraine on two issues under Article 11§1 of the ESC: the infant and maternal mortality (C 2017, Ukraine on Article 11§1).

The Committee concluded that the situation in Ukraine does not comply with the conditions of Article 11§1 of the Charter on the grounds that the measures taken to reduce infant and maternal mortality were insufficient; <http://hudoc.esc.coe.int/eng?i=2017/def/UKR/11/1/EN>

The Committee noted that the infant mortality has decreased in Ukraine. In 2006 the infant mortality rate was 20 per 1 000 live births, in 2010 this rate was 9,2 and in 2020 it was 6.7. In conclusions 2017 the ECSR noted the decline but considered that the rate (9,2) was still high in relation to other European countries. The corresponding rate in the EU in 2010 was 4.1 per 1 000.

As regards the maternal mortality rate, it increased from 15.5 deaths per 100 000 live births in 2008 up to 23.31 in 2010 but decreased slowly thereafter. In 2017, the maternal mortality rate was 19 deaths per 100,000 live births in Ukraine. This rate was considerably above the average in other European countries.

As conclusion the ECSR considered that the prevailing high infant and maternal mortality rates, examined together with the other basic health indicators, shows that the situation in Ukraine is below the European average as well as weaknesses in the health care system. It therefore found that insufficient efforts and progress had been made, and concluded that “the situation in Ukraine does not comply with Article 11§1 of the Charter due to high infant and maternal mortality rates.”

Recommendation 1

The government should continue work on strengthen the positive dynamics of changes about infant mortality and particularly with the maternal mortality. Efforts should be made for strengthening the counselling services for maternity and child on this issue.

2.2 Support for families

The cornerstone of children's well-being is the well-being of families and communities. They, in turn, function well if and when society provides families and local communities with positive incentives. When parents live in cramped, inadequate conditions, children's wellbeing suffers.

2.2.1 Decent housing standards

Children require their own space, and thus families often have to look for larger housing. The right to housing of families with children is enshrined in Article 8 of the ECHR and Articles 16 and 31 of the ESC. According to Article 31 of the ESC, a homeless family must be provided a) immediately at least a temporary shelter (§2), and b) a standard dwelling without undue delay (§1). In turn, Paragraph 3 of Article gives states a choice either to lower housing prices for families by subsidising construction costs or supporting families with rental payments.

Article 16 of the ESC requires the creation special programmes for young families to ensure access to housing as first-time buyers or recipients of social housing, and to protect them from substandard housing or slums (ERRC v. Bulgaria, CC 31/2005).

During the last years Ukraine has actively been fighting against the homelessness of children, but the evidence of the results is not yet available.

According to the Ministry's of Social Policy information: preventive measures (raids) are systematically carried out in Ukraine at the level of territorial communities. In particular, in 2020 during the relevant activities were identified 13 950 vulnerable children (4 122 in first quarter of 2021), 3 588 of which were removed from the hazardous environment (1 082 in first quarter of 2021). In 2020 Resolution of Cabinet of Ministers of Ukraine № 585 were approved the Procedure for ensuring social protection of children in difficult life circumstances, including children who have suffered from abuse. At the same time, as the analysis of this normative legal act shows, as well as data provided by Ministry, the problem of homelessness does not considered separately, but mostly as one of the components of a more complex concept of "person in difficult life circumstances".

2.2.2 Compensation for family expenses

Based on the case law of the ECSR under Article 16 of the ESC, the minimum level of child benefits is determined in relation to a country's average net salary. Child benefit should be "a significant addition to family income" and should be between 4% and 6% of median net income, depending on other supports, such as tax reductions, price subsidies and services with reduced prices or no fee. In Estonia, a level of 5% was considered sufficient due to the country's numerous free services (C 2004, Estonia, p. 215). However, child benefits were deemed to be below these requirements in Romania (C 2004, Romania) and Turkey (C XVII-1, 2005, Turkey).

Restricting the payment to the children of public sector employees (C XVI-1, 2003, Turkey) or excluding the families of Roma or any other minority is a violation of Article 16 under Article E.

2.2.3 Reconciliation of work and family life

The traditional approach to the protection of reproduction of the population protects the maternity by restricting dangerous work for pregnant women or breastfeeding mothers by providing maternity leave and security of income during that period. This approach is used in Article 8 of the 1961 ESC (in reduction of 1961).

Article 8§1 provides for a minimum maternity leave of 14 weeks. At least 6 of them must be required by law in such a way that the employee cannot waive them. For the period of the leave, a salary or social insurance benefit must be paid of at least 70% of the previous salary and never less than 50% of the country's average net income calculated according to Eurostat (C XVII-2, 2005, Latvia). However, for high salaries, reasonable reductions from that 70% level are accepted (C 2015, Statement of Interpretation on Article 8§1). The payment of a social insurance benefit may depend on a persons' presence in the labour market for a certain reasonable minimum period (C 2015, Statement of Interpretation of Article 8§1).

Under Article 8§2 of the ESC, after notification of pregnancy the employer has no right to dismiss the employee until the end of maternity leave. This rule must also be followed for employee under fixed-term employment and a civil contract. However, the provision does not preclude termination of employment at the end of maternity leave (C XIII-4, 1996, Statement of Interpretation of Article 8§2).

Article 27 of the ESC in the reduction of 1996 emphasises the mother's right to return to work and introduces new standards for preschool education. It also prolongs maternity leave, extends protection against unlawful dismissal and introduces the possibility for male parents to take childcare leave and receive appropriate assistance. The direct purpose of all this is to protect the parents of small children and as a result also ensure those children a safe start.

2.2.4 Situation in Ukraine and gap analysis

In 2017 conclusion the ECSR gave negative assessment for Ukraine in respect of its obligations under Articles 16 (child allowance), 8§1 (maternity leave and benefit) and 27§2 (parental benefit). In all three areas of law the Committee found violations of human rights.

Child allowance

In 2019, the Committee concluded that the situation in Ukraine is not in conformity with Article 16 of the Charter on the grounds that it has not been established that the level of family benefits is adequate. (C 2019 Ukraine on 16). <http://hudoc.esc.coe.int/eng?i=2019/def/UKR/16/EN>

The government didn't use the indicators of Eurostat but gave the information on the level of child allowances only in relation to the normative national minimum wage. The Committee noted that the report didn't provide adequate information on the level of the child allowance in relation to net median income. It considered that it has not been established that the amount of child benefit is adequate.

The support for families has been actively developed by the Ukrainian government during the last years. The support system for child families is based on a universal monthly paid child allowance 25,54 €, which is completed with several types of targeted benefits based on:

- unpaid alimony (close to 35,56 €);
- loss of breadwinner (71,17 € is maximum);
- care of children with disability (close to 52,52 €);

- for large families (close to 50,49 €);
- childbirth allowance 25,54 €.

The support for children under guardianship or custody is granted to persons appointed in the manner prescribed to law guardians or custodians of children who deprived from parental care. Such support is considered the property of the child. Support for children under guardianship or custody is provided in the amount of 2.5 times of subsistence minimum level for a child of the appropriate age (4 802,5 UAH (142,60 EUR) for children under 6 years and 5 987,5 UAH (177,78 EUR), for children aged 6 to 18), for children with disabilities who have been placed under guardianship or custody – 3.5 times of subsistence minimum level for a child of the appropriate age (6 723,5 UAH (199,63 EUR) for a child under 6 years and 8 382,5 UAH (248,89 EUR) for a child from 6 to 18 years)¹. Low-income families have right to social support.

One-time nature assistance “baby package” is a direct non-refundable social assistance to families with a live-born child was born, and in case of both parents’ absence – to relatives who, in the manner prescribed by law, take the child from the hospital or other health care facilities, adopter, fosters, adoptive parents, foster parents, guardian of the newborn child. Packaging the one-time nature assistance “baby package” is carried out according to the list of children’s staff approved by the central executive body, with ensures the formation and implementation of state policy in the social protection field.

To organize budget funding, the cost of the one-time nature assistance “baby package” is 3 times subsistence minimum for children under 6 years (5863 UAH or 171,11 EUR), established by law on the date of announcement of conducting the competitive procurement procedures. Unfortunately, according to the audit results, conducted by the Accounting Chamber of Ukraine ², it was revealed numerous violations, which let to loss from local and state budgets and material damage (losses) to territorial communities and to the state in the tens of thousands hryvnias, and the fact that tens of thousands of families didn’t receive assistance at all or received it incompletely.

In 2019, the Government introduced a babysitting service for children under three years old - “municipal babysitter” (hereinafter - “municipal babysitter” service) – a service that provided to support parents and child’s guardians to provide care for a child under three years old. For parents or guardians who raise a child under three years old who are officially employed or at least one of them has a disability of 1 or 2 groups, are paid monthly benefits in an amount that doesn’t exceed the subsistence minimum level for children under six years old established by January 1 of the corresponding year, for each child (as at today – 1 921 UAH or 57,32 EUR) cared by a municipal nanny. In order to receive such service, parents or guardians must, in particular, provide a contract with entrepreneur or a legal entity providing the relevant service. If a child has a disability or severe perinatal lasions of the nervous system, severe congenital malformations, rare orphan diseases, cancer, oncohematological diseases, celebral palsy, severe mental disorders, I type diabetes mellitus (insulin-dependent), acute or chronic kidney disease of IV degree, a child who has suffered a serious injury, needs an organ transplant, needs palliative care, whose disability wasn’t established, compensation for “municipal babysitter” is paid in two time subsistence minimum for children under six years, established by January 1 of the corresponding year (as at today - UAH 3 842 or EUR 114,64).

Recommendation 2

The government should further develop the statistical system to allow the level of child benefits

1. Calculated due to June 2021 state

2. https://rp.gov.ua/upload-files/Activity/Collegium/2021/10-1_2021/Zvit_10-1_2021.pdf

to be compared with the European standards (parameters of the Eurostat), which would provide sufficient information on whether the level (including other types of financial support and price subsidies for families with children or for children) 4 – 6 percent of net median equivalised income of the country.

Maternity leave and benefits

In 2017 the Committee concluded that the situation in Ukraine is not in conformity with Article 8§1 of the Charter on the ground that it has not been established that there are in law and in practice adequate safeguards to protect employees from undue pressure to take less than six weeks postnatal leave (C 2017 Ukraine on 8§1). <http://hudoc.esc.coe.int/eng?i=2017/def/UKR/8/1/EN>

Article 2§1 of the Ukrainian Labour Code can be applied and is actually applied to avoid any shortening of maternity leave. However, the ECSR found that the situation is not in conformity with Article 8§1 of the Charter on the ground that it has not been established that there are sufficient safeguards in law or in practice to protect employees from pressure to take less than six weeks' postnatal leave.

The key question to be answered is whether the rights to the compulsory six (6) weeks postnatal maternity leave are violated in practice and what are the sanctions for that.

Moreover, the Committee recalled that, under Article 8§1, the level of income-replacement benefits:

■ should be fixed so as to stand in reasonable proportion to the previous salary (it shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage) and

■ should never fall below 50% of the median equivalised income (Statement of Interpretation on Article 8§1, Conclusions 2015). If the corresponding payment is between 40% and 50% of the median equivalised income, other benefits, including social assistance and payments to cover the cost of rent, will be taken into account. On the other hand, if the level of the benefit is below 40% the median equivalised income, it is clearly insufficient and its combination with other benefits cannot bring the situation into conformity with Article 8§1.

In this case, the Ukrainian government has again given information on the level of the maternity benefit in relation to the national normative minimum wage but not in relation to previous wages of the workers. Also the sufficient information is missing, whether the income replacement covers all workers.

According to local experts, the shortest period of paid maternity leave in Ukraine is 70 calendar days before childbirth and 56 after i.e. 126 days or 18 weeks. For all days of maternity leave, the benefit is paid in the amount of 100% of the average wage, which is for an insured mother at least 739.16 € of that period (6 € per each weekday). An uninsured mother receives 16.85 € per month (0,6 € per each weekday).

Recommendation 3

The State must conduct the research, whether the right to the compulsory six (6) weeks postnatal maternity leave, provided by Article 8§1 of the ESC is violated in practise, what are the sanctions and how they are functioning.

The state should give information on the level of the maternity benefit in relation to previous wages

of the workers. Regular statistical survey should be conducted to establish the absolute minimum level of maternity and childcare benefits for the median equalised income (including wages, capital income and social income) in the country, and whether the income replacement cover all workers.

Childcare benefit

In 2017 the Committee concluded that the situation in Ukraine is not in conformity with Article 27§2 of the Charter on the grounds that the level of childcare benefit is inadequate (C 2017 Ukraine on 27§2). <http://hudoc.esc.coe.int/eng?i=2017/def/UKR/27/2/EN>

Under Article 27§2 of the ESC, the Government provided information on childcare benefits instead of earnings-related parental benefit. The possible conceptual misunderstanding led to a negative conclusion:

“The Committee reiterates that it considers it very important that national regulations should entitle men and women to an individual right to parental leave after birth or adoption. In order to promote equal opportunities and equal treatment for men and women, such the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable.”

Recommendation 4

The government needs to clarify, whether the care assistance is linked to care leave and it is replacing the previous earnings or is it another type of support for families with small children.

2.3 Rights in the family

2.3.1 Custody of the child

Children are minors, persons under the age of 18, and their parents are, in principle, their guardians. They are responsible for the upbringing, maintenance and representation of the child. The child's custodian or guardian (Western Europe) or equivalent holder of parental rights and responsibilities (similar status in Eastern Europe) has the right to exercise the child's right to express the child's right to express his or her views on matters relating to his or her well-being. However, young persons enjoy a certain maturity- and age-bound parallel right to express his or her views on such matters. Both the custodian/guardian and the young person exercising his or her own right must have access to adequate legal aid to ensure legal protection.

A young person may enter into an employment contract at the age of 15 and is entitled to easy work even earlier with the consent of the custodian or guardian (Art. 7 §1 of the ESC). In matters central to the child, he or she must be heard. Article 8 of the ECHR on privacy and integrity is applicable to children by analogy.

The age of criminal responsibility must not be excessively low. In many countries it is set at 15 years. Thus far, the ECSR has monitored the situation in Contracting States and expressed concern over the age limits in Turkey (11 years), the United Kingdom (10 years) and Ireland (9 years) (C XV-2, 2001, Ireland ; C 2011, Ireland; C XV-2, 2001, Turkey ; C XV-2, 2001, United Kingdom).

2.3.2 A child's own wishes and opinion

When arranging custody of the child should take into account his or her own wishes and opinion, as well as give the child the right to express their position independently or in parallel on issues related to custody, according to age and level of maturity. The right to be heard and consulted must be established by law.

In cases where both parents are deprived of parental rights (custody rights) or if the interests of the child and the guardian contradict each other, a third person must be appointed to guard the child's interests. The appointment of an external custodian or guardian or the placement of a child outside the home does not deprive the child of the right to be heard. Neither shall it lead to child's opinion and wishes being ignored.

When a child is temporarily placed outside the home or permanently, his or her dignity, fundamental freedoms and rights must be respected as before. The director of the child welfare institution or other person responsible for the care and upbringing of the child has no authority to restrict these rights nor does not enjoy preferential rights in matters of custody or guardianship. All restrictions must be provided by law, based on justified reasons and assessed according to the principles of a democratic society as provided in Article 8§2 of the ECHR and Article G of the ESC (C XV-2, Statement of Interpretation on Article 17§1).

2.3.3 Rights in a single parent family

Children's family status and relations with their parents must be organised with respect for the equality of various forms of family (C 2004, France; C 2011, Ukraine). Children in single-parent families should enjoy the same rights to their parents as children living with both parents (C XVII-2, 2005, Malta).

The break-up of a family or serious neglect of the care of a child can lead to the limitation of custody. This does not, however, break the biological connection between the child and the parent, nor does it remove the parent's obligation to pay alimony. When the rights of a custodian/guardian are restricted, the child retains the right to visit his or her parent and vice versa, except when it endangers the child, the other parent or a third party, and this right should be provided by law (C XV-2, 2001, General Observation, p. 29; C XV-2, 2001, Austria).

Articles 16 and 17 of the ESC require that children born out of wedlock receive the same rights as children born in marriage. National law must guarantee them equal rights to the father's surname as well as alimony and inheritance from the father. The state must have functioning systems in place to establish paternity and ensure maintenance obligations and the recovery of alimony (C XVII-2, 2005, Malta, p. 567).

2.3.4 Freedom for family formation

The three main Christian denominations of Europe, Catholicism, Protestantism and Orthodoxy, have played a significant role in developing national family laws and practices. In recent decades, however, responsibility for the management of family formation, the definition and registration of families has increasingly shifted to civil administrations. Simultaneously, liberalisation of family formation and strengthening of children's status in family relations has occurred, as indicated by the case law of the ECSR under Article 17 of the ESC.

Young people must enjoy the opportunity to choose their spouses at their own discretion and be protected from unions agreed by their parents. The minimum age for marriage should, in principle, be the same for both men and women (C 2003, France).

2.3.5 Situation in Ukraine and gap analysis

In conclusion 2017, the ECSR concluded negatively for Ukraine on two issues under Article 17§1 of the ESC:

■ In 2011, Ukraine was given negative conclusion on Article 17§1, because the adopted children have no right to information about their birth parents. (C 2011 Ukraine on 17§1) <http://hudoc.esc.coe.int/eng?i=2011/def/UKR/17/1/EN>

■ In 2011 Ukraine was given a negative conclusion on 17§1, because the minimum age for women was 17 and for men 18 years. (C 2011, Ukraine 17§1) <http://hudoc.esc.coe.int/eng?i=2011/def/UKR/17/1/EN>

On the second conclusion the law has in the meantime been changed and doesn't, therefore, require any comments.

Recommendation 5

The child has the right to know his/her roots and the name of the biological parents as also of the other parent in single parent families. The government should develop the law on this point.

As part of the decentralization of the child welfare and care of children, the state has developed the system of custody and guardianship and has thus converged with the European concepts in arranging the rights and responsibilities in the family. However, the previous Soviet spirit and the provisions on a) deprivation of parental rights as a sanction and b) the option of parents to leave a child for public care are obstacles for further progress in developing a modern system of child welfare. - The issue will be discussed more closely under section 6.

Part III

Right to education

Preschool and primary education are the key public services for children and their families. They are important for all, but they are most relevant for children living in vulnerable circumstances. It is of the utmost significance for their future to be able to enjoy the same care and education as children from more affluent families. The right to low-fee or free public services, and to free education in particular, is an effective means of realising equal opportunities for all.

3.1 Preschool education

The right to preschool education is provided in three articles: Article 16 of the minimum supply of day care, Article 17§1a of the quality of all education and Article 27§1c of the increased standards for supply of preschool education.

Preschool education systems include the provision of care in a creche (Kindergarten), in family preschool, state-supported home preschool education and general preschool education provided to several families in turn. Preschool education can be organised as early preschool education groups at school or preschool facilities. Education can be private or public, and support for families can be provided as a service or as a benefit (childcare allowance, voucher). The fee that may be charged for the service must not prevent low-income families from accessing it in a similar way to other families. Group sizes and the content of day care should promote the growth of children's personalities and the development of their physical and mental characteristics (C XVI-1, 2003, Turkey).

According to Article 16, a state should have a functioning preschool system, at least for those children whose care would otherwise be endangered due to lack of income or single parenthood, or other social reasons, or who have a special need for care. The provision of preschool in Turkey has been considered clearly insufficient (C XVI-1, 2003 Turkey). If a state has ratified Article 27§1 on the reconciliation of work and family life, it is required to ensure that the organisation of preschool education takes better account of the need for care arising from the employment of parents than required by Article 16.

According to the latest statistics in 2020/2021, Ukraine had 15 319 pre-school educational institutions with 1 150 067 children, 59 190 of whom were children with special educational needs. The enrolment ratio in pre-school educational institutions in Ukraine is 58% (68% in urban areas and 40% in rural areas). There was no fee on care and education, but the parents paid for meals with the exception of a) low-income families and b) children with special needs.

Recommendation 6

The government and local governments should promote the increasing of the enrolment of children in pre-school education, especially in rural areas, including the inclusion of children with special educational needs.

3.2 Basic school

3.2.1 Access to education

Every child has the right to education according to Article 17 §1 of the ESC (MDAC v. Bulgaria, CC 41/2007, §34). Primary and lower secondary school should be accessible to all, including children with disabilities and long-term illnesses. In order to promote the integration of vulnerable children, Article 15 of the ESC requires positive action for their education. Such action should be also provided for children of migrant families to help them adopt the language of the host country and develop their mother tongue (Art. 19§11 and §12) (Autism-Europe v. France, CC 13/2002, §49; MDAC v. Bulgaria, CC 41/2007, §33-34).

Article 17§2 provides for basic education free of charge and for special measures to minimise and protect school dropouts. Vocational training is provided for in Article 10 and the right of children and young people with disabilities to special education in Article 15.

Educating the entire population as far as possible according to each individual's abilities increases the skills and capacity of future employees and entrepreneurs, the productivity of work and future employability and prosperity. This was one of the basic ideas of the Beveridge Report (1942), which guided Britain's post-war cultural and labour policies under reconstruction and on the way to a welfare society.

Basic education must extend at least until the young person is entitled to enter an employment contract (C 2003, France, p. 174; C 2003 Italy, p. 795) and tuition must be free of charge. Nevertheless, Article 17§1 of the ESC allows for some form of user charges to reimburse the cost of food and study materials and school uniforms. However, such a fee should not interfere with training. In order to support low-income families, the necessary support systems or regulations for free services must be provided.

In terms of equal treatment, the Bulgarian school system has been found wanting in its fulfilment of the educational needs of children with disabilities and children of Roma families (C 2003, Bulgaria, p. 66). Moreover, Slovenia, previously segregated Roma children into special schools, which was considered discriminatory for these children (C 2003, Slovenia, p. 513).

3.2.2 Adequacy of education

According to the case law of the ECSR, the basic education should meet the following standards (C XV-2, 2001, General observation regarding Article 17; C XV-2, 2001, Austria):

■ Education should promote the integration with other children and into society. The integration requirement also applies to children living in institutions or in hospitals. Differentiating solutions should only be taken for the best interest of the group of children and of each child.

■ Training and salaries of teachers should allow access to qualified teachers.

■ Teaching and class sizes should encourage students to develop fully their personality as well as their physical and mental capacities.

■ To keep every child in full education requires that education includes also the necessary social and health services: school health care, assistant services, curative services, support person or special education, and, if necessary, the assistance of a school curator or even a social worker to bring the pupil to school.

Article 17§2 of the ESC imposes an obligation on states to encourage children and young people to attend school regularly, which requires special support measures for children, who would otherwise be at risk of being excluded from regular education (C 2003, Bulgaria, p. 66; C 2003 Italy, p. 304; C 2005, Bulgaria, p. 42-43). –The ECSR considered as violation of children's right to education, when six (6) percent of all Romanian primary school-age children dropped out of school before the end of this stage (C 2003, Romania on Art. 17§1):

The Committee concluded that “the situation in Romania is not in conformity with Article 17§1 of the Revised Charter as the corporal punishment of children within the family is not prohibited and as the compulsory school attendance is too low.”

The position of the ECSR can be understood as requiring even more positive action on risk groups, such as migrant children, Roma children, other children belonging to ethnic minorities, children with disabilities and children living in institutions, to ensure their participation in mainstream education. If the best interests of the child so require, the education must ultimately be provided as private education in the child's own living environment, which must not mean leaving the child without proper education.

3.2.3 Situation in Ukraine and gap analysis

According to UNESCO, the net enrolment rate for primary education for both sexes was 91,66% in 2014 (the latest figures available) and the corresponding rate for secondary education 89,81.

90% of Roma children drop out of school, only completing five or six years of education, and only 6% have completed secondary education or professional training.

All textbooks are free of charge for pupils in primary and general secondary education. Local authorities provide preferential tariffs for public transport for school children travelling to and from school. Furthermore, children of low-income families receive free meals.

According to the local experts a special problem is the missing education in the institutions under the responsibility of the Ministry of Social Policy, or inadequate education in the institutions under the responsibility of the Ministry of Education and Science which are 65 sanatorium schools, 77 education and rehabilitation centres and 242 special schools.

According to the State Statistics Service of Ukraine, in 2020, the enrolment ratio in full-time general secondary educational institutions is 79.6% (except the data of temporally occupied territories).

The education situation is also alarming in the military action zones and occupied territories.

Recommendation 7

Immediate positive measures are needed to lower the rate of the dropouts. It was 8 % for both sexes, which is high and might lead to a negative conclusion for the State under Article 17§2 of the ESC. Even more alarming is that only 10 % of the children of Roma minority will complete the basic school.

The State should set up a special program to guarantee for all children an adequate basic education,

in particular for children in special institutions or of Roma minority, and add the distant learning services for children in war areas of the country.

The government should develop the adequate statistical system in order to collect relevant data on enrolment and dropouts of children in basic education.

3.3 Vocational training

3.3.1 European norms

The principles applying to basic education also apply to vocational training. All discrimination in access to training is prohibited. Personal ability must be the only prerequisite for pursuing vocational and occupational training (including already employed workers), all the way from secondary school to higher education (Art. 10 § 1) a functioning system of apprenticeship should be available for practical learning (10§2).

The sufficient guidance on options for vocational training must be part of the education system and also guaranteed as a labour market service.

States that have ratified Article 10§5 (or the corresponding Article 10 § 4 of the 1961 ESC) have committed themselves to gradually reducing and eliminating all fees for vocational training. Such training is not required to be free of charge, but the fees must not be an obstacle to anyone. In order to guarantee equal treatment, states must have a functioning support system for students that, at least, removes obstacles due to deprivation (Art. 10§5).

Students who are citizens of other contracting countries should also be entitled to grants or student benefits unless the state has set a certain minimum period of residence. According to the relevant EU directive, such a waiting period may not exceed five years. In the Nordic countries, the period required for living in the country is two years.

According to the case law of the ECSR, a student from a Contracting State who has moved to a country for purposes other than study must be given the same benefits as the nationals of that country with no waiting period (C 2012, Finland).

3.3.2 Situation in Ukraine and gap analysis

In 2020, the ECSR concluded negatively with Ukraine on three issues under Article 10 on vocational training: on secondary and higher vocational education (10§1), system of apprenticeship (10§2) and support for students (10§5).

Secondary and higher vocational education

In the last two control cycles, the ECSR made three negative conclusions on Article 10 for Ukraine. In the case of C 2020 Ukraine on 10§1, the Committee concluded that the situation in Ukraine is not in conformity with Article 10§1 on the ground that it has not been established that the system of secondary and higher vocational education operates in an efficient manner. <http://hudoc.esc.coe.int/eng?i=2020/def/UKR/10/1/EN>

The ECSR found, in accordance with Articles 1§4 and ,9 that the career guidance system was not functioning properly (C 2020 Ukraine on Article 9): "It has not been established that vocational guidance within the education system and in the labour market is guaranteed." <http://hudoc.esc.coe.int/eng?i=2020/def/UKR/9/EN>

Recommendation 8

The government should further develop the vocational training system on all levels and provide appropriate information on this in the educational system and as a measure of the labour market services:

- Total capacity (ratio of training places to candidates)
- Total spending on education and training (% of GDP)
- Completion rate of young people enrolled
- Employment rate of graduates and how long it takes them to find their first skilled job
- Vocational guidance should be taken in the school curricula.

System of apprenticeship

In case of the conclusion on 2020 on Ukraine`s compliance with 10§2 the Committee concluded that the situation in Ukraine did not comply with 10§2 that it was not established that it was an effective system of apprenticeships. <http://hudoc.esc.coe.int/eng?i=2020/def/UKR/10/2/EN>

Recommendation 9

The government should develop the system of apprenticeship and provide appropriate information on it.

Support for students

In case of the conclusion on 2016 on Ukraine`s compliance with 10§5 the Committee concluded that the situation in Ukraine did not comply with 10§5 that it was not established that there is a system of financial assistance for vocational education and training. <http://hudoc.esc.coe.int/eng?i=2016/def/UKR/10/5/EN>

Based on the Ukrainian report 2020, the ECSR noted that according to Article 1 of Law No. 2145 of 5 September 2017 'On Education', the State shall ensure social protection of applicants for education in cases provided for by legislation, and equal access to education for persons belonging to socially vulnerable groups. According to Article 56 of this Law, applicants for vocational education and training, pre-tertiary vocational education and higher education may receive financial support from the State, subsidised loans and guarantees for obtaining loans.

Detailed information on the functioning of the system was so limited that the Committee was unable to conclude positively. In 2020 the ESCR concluded that the situation in Ukraine is not in conformity with any of the systems above on the ground that it has not been established that the systems of operates in an efficient manner.

Recommendation 10

The government should develop financial support system for students and provide propriate information on it.

3.4 Education and training of children with disabilities

3.4.1 European norms

The main issue for children with disabilities is the transition from segregation to inclusion, the key requirements of which concern housing, mainstream education and positive action to be able to cope with the others.

Both Article 17§1 and E (basic education) and Article 15§1 (vocational training) of the ESC make it an obligation for States Parties to provide quality education for children with disabilities. Priority should be given to inclusive education in the mainstream school system. States parties must demonstrate that tangible progress has been made in setting up inclusive and adapted education systems (Press Briefing Elements 2020). <https://www.coe.int/en/web/european-social-charter/-/states-parties-still-struggle-with-problems-related-to-social-rights-discrimination>

In order to assess the effective equal access of children with disabilities to education in the coming years, the ECSR asks States Parties to provide information, covering the reference period, on:

■ the number of children with disabilities, including as compared to the total number of children of school age

■ the number and proportion of children with disabilities educated respectively in

- mainstream classes
- special units within mainstream schools (or with complementary activities in mainstream settings)
- in special schools

■ the number and proportion of children with disabilities out of education

■ the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school

■ the number and proportion of children with disabilities in other types of educational settings, including:

- home-schooled children
- attending school on a part time basis
- in residential care institutions whether on a temporary or long-term basis

■ the drop-out rates of children with disabilities compared to the entire school population.

In addition to the statistical information on children with disabilities in mainstream education, the ECSR have asked the governments to provide the following additional information:

■ measures to ensure that teachers and assistants dealing with pupils and students with disabilities are adequately qualified.

■ whether the qualifications that learners with disabilities can achieve are equivalent to those of other learners.

■ whether such qualifications allow persons with disabilities to go on to higher education

(including vocational training) or to enter the open labour market.

■ information on the percentage of learners with disabilities who go on to higher education or training.

■ percentage of learners with disabilities, who enter the open labour market.

In the supervisory cycle 2020, the ECSR gave the following principal statement (Press Briefing Elements 2020): <https://www.coe.int/en/web/european-social-charter/-/states-parties-still-struggle-with-problems-related-to-social-rights-discrimination>

“The Committee recalls that Article 15§1 of the Charter makes it an obligation for States Parties to provide quality education for persons with disabilities, together with vocational guidance and training, and that priority should be given to inclusive education in mainstream school. States parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.”

Furthermore, the Committee found several violations against Article 15§1, such as: Luxembourg and the Russian Federation were found not to be in conformity on the grounds that it could not be established the appropriate remedies in the event of discrimination on grounds of disability in education. Montenegro, Serbia and Turkey were found not to be in conformity on the ground that it has not been established that the right of children with disabilities to mainstream education and training is effectively guaranteed. However, in 3 other cases, Poland, Romania, Ukraine the ECSR concluded that in the light of the information available that the right of children with disabilities to mainstream education is not effectively guaranteed and hence it found the situation not to be in conformity with the Charter. (C 2020 Ukraine on 15§) <http://hudoc.esc.coe.int/eng?i=2020/def/UKR/15/1/EN>

3.4.2 Situation in Ukraine and gap analysis

Housing and income are basic conditions for living outside the institutions. However, relevant information is missing on the measures against homelessness and poverty of disabled persons. Since 2016 the ECSR has concluded negatively on the ground that it had not been established that the anti-discrimination legislation covers the fields of housing.

In 2020, the Committee requested for updated information on different allowances and benefits available to persons with disabilities in order to enable them to live independently in the community. Until it reserved the Committee doesn't express its position on this issue.

The Law of Ukraine No. 2145-VIII “On Education” was adopted in 2017. According to Articles 19 and 20 of the Law, state authorities and bodies of local self-government must create the conditions to ensure the rights and opportunities for persons with special educational needs to gain education at all its levels based on their individual needs, capabilities and interests. The state shall ensure the training of professionals to work with persons with special educational needs at all levels of education.

Education shall be provided to persons with special educational needs on a par with other persons, through the provision of funding, staffing, infrastructure adjustments and the provision of reasonable adjustment based on the individual needs of such persons identified in individual development programmes.

Persons with physical, mental, intellectual developmental disorders and sensory impairments

shall be provided with auxiliary aids necessary for their studies as well as other supports.

In 2017, the Inclusive Resource Centre was set up to ensure the right of children with special educational needs to pre-school and general secondary education, including vocational education, through the provision of comprehensive psychological and pedagogical assessments and the provision of psychological and pedagogical, correctional and developmental services.

In 2018, 516 inclusive-resource centres and 24 regional resource centres were created by local self-government authorities and local executive authorities to support children with disabilities and special educational needs (SEN). At present 2021, there are 638 inclusive-resource centres and 24 regional resource.

According to the national report 2020, the number of general secondary education institutions (institutions providing compulsory education) with inclusive classes increased 2.5 times during the reference period (1518 schools in 2016, 2620 schools in 2017 and 788 schools in 2018). In 2017-2018, 10,000 teachers who work in inclusive classes were provided with additional training. In 2018, 7,633 teacher assistants worked in inclusive classes. The number of pupils with special needs increased almost 3 times (4 180 pupils in 2016, 7,179 pupils in 2017 and 11,839 pupils in 2018).

In 2021, there are 18 681 classes with inclusive education in 6 394 mainstream schools that provide educational services to 25 078 pupils with SEN.

The ECSR noted the measures taken during the reference period (see above) to promote inclusive education. However, the Committee considered that it did not have enough information to change its previous assessment. It recalled from its previous conclusion (Conclusions 2016) that out of a total of some 168 280 children reported as having disabilities, only a minority appeared to be attending mainstream schools. It noted from other sources (UNICEF) that in 2015 70 000 children with disabilities lived in institutions and hence were not attending mainstream schools.

In 2019, the ECSR concluded that the situation in Ukraine is not in conformity with Article 17§1 and in 2020 not with Article 15§1 of the Charter on the ground that the right of children with disabilities to mainstream education is not effectively guaranteed.

In 2021 the number of 79 316 children with SEN in full-time general education was the following:

■ in inclusive classes 25 075

■ in special institutions 36 461

■ in special classes of mainstream schools 5 844

■ under individual education 11 933

According to the local experts, Ukraine still has the medical model of inclusive education, which limits the identification of the special educational needs of the children with disability and does not lead to provision of real indicators and statistics on children who have SEN due to social, cultural, religious or other circumstances.

Recommendation 11

All children, children with disabilities included should provide access to basic education in law and in practise. The priority should be given for mainstream education and inclusion of children with

disabilities to mainstream society and if necessary, with positive action for them.

The State should take measures to significantly increase the number of children with disabilities in public education system.

In addition, the children in institutions should also have access to education and the education at home should be developed to comply with the requirements of the school curriculum. In order to reach each child, the child and maternity counselling centres should inform the educational authorities of the need for special education so that all children with disabilities would be reached.

In addition, the State should ensure to the children with disabilities an equal access to standard housing and inclusion in the community, which are necessary conditions for inclusion and for mainstream education. The state should set up a program for support housing that should also serve families with children with disabilities.

The government should integrate The International Classification of Functioning, Disability and Health into the educational system of Ukraine, in order to provide the transition to biopsychosocial model of disability and inclusive education according to the European norms and standards.

Recommendation 12

The government should make the new law to function also in relation to the rights of children with disabilities in vocational training on equal basis as required in Article 15§1 of the ESC. The State should take seriously its commitment “to take the necessary measures to provide guidance, education and vocational training persons with disabilities in the framework of general schemes wherever possible or, where this is not possible, to ensure the provision of appropriate education through specialized public or private organizations.”

The access to vocational training must be based only on individual aptitude (10§1). All children, children with disabilities included should be ensured the equal access to vocational training and to positive action, when needed.

Part IV

Protection of young workers

4.1 Prohibition of child labour

4.1.1 European norms

Child labour is prohibited in all the key treaties of human rights, and the ILO has declared this prohibition one of the four fundamental rights of workers (1998). Article 7§1 of the ESC prohibits the use of the labour of children under the age of 15 (CI, 1969, Statement of Interpretation on Article 7§1). The ECSR considers the prohibition part of the fundamental protection of human dignity. The Committee has required clear legislation, effective supervision and introduction of practices aimed to eradicate the use of child labour. The use of children as a tool in third sector activities has also been equated with a ban on the use of child labour (C 2019, Albania, p.4).

The use of child labour can take the form of ongoing care for siblings or other relatives, domestic work as well as work in a family business or on a farm that could be considered payable work by a non-family member (CI, Statement of Interpretation on Article 7; International Commission of Jurists v. Portugal, CC 1/1998). Repetitive tasks performed on behalf of an association, even for one's own association, can also be considered work.

In contrast, everyday domestic chores or normal maintenance or care for one, and neither are occasional assignments for the benefit of one's own association, even if they are intended to raise money for that association another are not considered work. Moreover, prohibited work does not include voluntary work or cultural heritage work performed by most participants without pay.

In addition, Article 7§1 allows for an exception concerning light work, i.e. work which entails no risk to the health, moral welfare, development or education of children. States are required to define the types of light work, or at least draw up a list of work outside this category. Furthermore, work that is deemed light ceases to be so if it is performed for an excessive duration (International Commission of Jurists v. Portugal, CC 1/1998, §§29-31). The conditions and duration of the work, a maximum of six hours per day and 30 hours per week, must be regulated by law or other binding regulations (C 2015, Statement of Interpretation on Articles 7§1 and 7§3)

Under national law, the absolute minimum age for employment is usually between 11 and 13 years. In the Nordic countries, young persons are entitled to engage in temporary light work from the age of 14, whereas in Italy they must reach the age of 16. However, the ECSR has considered education, not work, a clear priority in the lives of young persons.

4.1.2 Situation in Ukraine and gap analysis

According to Article 188 of the Ukrainian Labour Code, the minimum age for employment is 16 years. As an exception, under Section 188 (2) of the Labour Code, children at the age of 15 could be employed with the consent of one of the parents or guardian (Conclusion 2011).

Earlier, the Committee noted that 14-year-old children enrolled in secondary, vocational and specialized secondary schools are allowed to perform light work with the concern of one of the parents or guardian (Conclusion 2011 and 2015). The Committee concluded that the situation does not comply with Article 7§1 of the Charter on the ground that the definition of light work was not sufficiently precise (Conclusions 2011 and 2015).

The Committee notes from the results of the National Child Labour Survey 2014-2015 – published in 2017 and conducted by the ILO, the Ukrainian Centre for Social Reforms and the State Statistics Service of Ukraine – that 607,400 (11.6%) of the total number of children aged 5-17 years perform work in Ukraine. Of these, 264,100 children were involved in child labour (43.5% of the working children and 5.1% of the total number of children aged 5-17 years). Moreover, 76,400 working children (28% of the total number of children in child labour, and 1.5% of the total number of children aged 5-17 years) were performing hazardous work.

In particular, the survey indicated that “among children 5–11 years old who were economically active, the share of the agricultural economy constituted 98.5%, as they were involved in economic activity almost only because of the need to work in private farm”.

In the case C 2019 Ukraine on 7§1, the Committee concluded that the situation in Ukraine did not comply with Article 7§1 on the grounds that:

- the definition of light work is not sufficiently precise;
- the prohibition of employment under the age of 15 is not guaranteed in practice. <http://hudoc.esc.coe.int/eng?i=2019/def/UKR/7/1/EN>

Recommendation 13

The State should define in law or by other binding norms in a concrete way, what is light work. Furthermore, it should be ensured the sufficient guaranties to eliminate all violations of the ban on employing children under the age of 15, as it provided in Article 7§1 of the Charter.

4.2 Prohibitions on heavy, dangerous and night work

4.2.1 European norms

The special protection of young workers requires also that minors do not perform dangerous or harmful work (Art. 7§2) except when it is part of their vocational education and performed under close supervision (Digest 2018, p. 108). <https://www.coe.int/en/web/european-social-charter/home>

A minor, i.e. a person under the age of 18, must not perform in heavy or hazardous work. It is the responsibility of the employment services of each country to draw up and issue a list of heavy or hazardous work or of physical, chemical, biological or radiological risks (C 2006, France. p. 310–313).

However, minors may engage in hazardous work (Art. 7§2) for educational purposes when it is educationally important for the person's future work, has received permission from the authorities

and is performed under controlled conditions (C 2006, Norway, p. 631; C 2006, C 2006, Sweden, p. 868) or when a minor has been trained for such a task (C 2019, Albania, p. 5).

In addition, the law must ensure that persons under the age of 18 cannot be engaged in night work (Art. 7§8) except in certain occupations provided for by national laws or regulations.

The provision in Article 7§9 of the ESC on regular medical examinations for minors applies, in particular, to work which is considered heavy and dangerous. The provision has been considered to require that a medical examination be performed for the first time before the start of the work, or at the latest three months after that, and then regularly at least once a year. Biennial inspections are considered too infrequent (C 2011, Estonia)

4.2.2 Situation in Ukraine and gap analysis

Under Article 190 of the Ukrainian Labour Code, persons under 18 years of age may not be employed in hard work, work in unhealthy or hazardous working conditions, as well as in underground work.

The ECSR recalled that in the application of Article 7§2 there must be an appropriate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may occur during the work (C 2006, France).

The National Child Labour Survey 2014-2015: 607,400 (11.6%) of the total number of children aged 5-17 performed work in Ukraine. Of these, 264,100 children are involved in child labour (43.5% of the working children and 5.1% of the total number of children aged 5-17). Moreover, according to the survey, 76,400 working children (28% of the total number of children in child labour, and 1.5% of the total number of children aged 5-17) were performing hazardous work.

In C 2019 Ukraine on Art. 7§2, the Committee concluded that the situation in Ukraine did not comply with Article 7§2 on the ground that the prohibition of employment under the age of 18 in dangerous or harmful activities is not effectively guaranteed. <http://hudoc.esc.coe.int/eng?i=2019/def/UKR/7/2/EN>

Recommendation 14

The State should provide effective guarantees for the prohibition of employment of minors (under 18) in dangerous or harmful activities as required in Article 7§2 of the ESC. The list of the prohibited dangerous or harmful work must be concrete and actually implemented.

4.3 Protection against physical and moral danger

Furthermore, Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment (C XV-2, Statement of Interpretation on Article 7§10, pp. 26–27). This protection applies to all children and young people in the country, including third country citizens (Defence for Children International (DCI) v. Belgium, CC 69/2011 §§ 85-86).

Article 7§10 covers the protection of children and young persons from all forms of exploitation, including grave forms of exploitation such as sexual abuse and trafficking (C 2004, Bulgaria, p. 55 and Norway, p. 412).

All Ukrainian children under the age of 18 are not protected against their use in pornographic information technologies, trafficking and sexual exploitation. Assessments and recommendations on these serious violations, however, are beyond of our mandate.

4.4 Protection of young workers

4.4.1 Regular working hours

Under Article 7§4, national law must limit the working hours of persons under 18 years old who are no longer under the law subject on compulsory education. The regular working time of young people under the age of 16 who have completed primary school must be less than eight hours a day and 40 hours a week (C XI-1, 1989, Netherlands). This provision rarely apply in countries, where the compulsory education continues for more than 16 years.

The limitation may be the result of legislation, regulations, contracts or practice but it must be carried out effectively (C 2006, Albania, p. 55). By decision of 2017, the Committee of Ministers of the Council of Europe specified that regular working time for minors may generally be limited to 6 hours per day and 30 hours per week (DCM No. 108/2017):

“Working time for children from 16 to 18 years old is limited up to 6 hours a day and 30 hours a week, including up to 2 hours in a school day and 12 hours a week for work in extracurricular time. This limit may be increased to 8 hours in the case of children who have reached the age of 16. They are entitled to at least 4 weeks of annual holidays.”

4.4.2 Fair wage

In application of Article 7§5, national law must provide the right of young workers to a fair wage and students for appropriate scholarships. This right may be the result of the application of law, collective agreements or other means. The young worker’s wage can be less than the adult starting wage, but any difference must be reasonable and the gap must be reduced rapidly (C II (1971), Statement of Interpretation on Article 7§5). For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference should not exceed 20% (C 2006, Albania).

The adult reference wage must be sufficient in all cases to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker’s wage which respects these percentage differentials is not considered fair (C XV-2, 2001, Malta).

The “fairness” or “appropriateness” of wages is assessed by comparing young workers’ remuneration with the starting wage or minimum wage paid to adults (persons over the age of eighteen) (C XI-1, 1991, United-Kingdom). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are net wages, those after deduction of taxes and social security contributions.

Pupils may be paid lower wages, as the value of on-the-job training they receive should be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the scholarship should be gradually increased throughout the contract period (C II, 1971, Statement of Interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and reaching at least at two-thirds at the end (C 2006, Portugal).

In 2015, the ECSR concluded on Ukraine that the minimum wage corresponded to only 34.44% of the net average wage, which is too low to secure a decent standard of living for young workers. Accordingly, the situation in Ukraine was not in conformity with Article 7§5 of the Charter.

Recommendation 15

The State should provide a minimum wage of young workers and trainees in law following the rights and standards of Article 7§5 of the ESC.

4.4.3 Training and holidays

Based on the conditions of Article 7§6, the time spent in vocational training is part of working time (C XV-2, 2001, Netherlands). Such training must, in principle, be related to the young person's work and be carried out with the employer's consent, although it is not necessarily financed by the latter (C V, 1977, Statement of Interpretation on Article 7§6). Training time must be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would actually increase the total number of hours worked (C V, 1977) Statement of Interpretation on Article 7§6).

Persons under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay (Art.7§7 ESC). The duration of an ongoing period of rest during the summer holidays must not be less than 2 weeks. The assessment of compliance with these requirements during the school year take into account the duration and distribution of holidays/vacation, the period of ongoing rest, the nature and the duration of light work, as well as the effectiveness of control by the labour inspectorate (C 2011, Statement of Interpretation on Article 7§3DCM No. 108/2017). The four weeks holiday provided by Article 7§5 cannot be replaced with additional pay.

4.4.4 Medical check-ups

According to Article 7§9 of the ESC, national law must provide for compulsory and regular medical check-ups for persons under the age of 18 whose work is used in work specified by national laws or regulations.

Applying Article 7§9, national law must provide for compulsory regular medical check-ups (CIV (1975), Statement of Interpretation on Article 7§9) for persons under the age of 18 whose work is used in work specified by national laws or regulations. These check-ups must be adapted to the specific situation of young workers and on particular risks to which they are exposed (C 2006, Albania). They may, however, be carried out by the occupational health services, if these services have the specific training to do so (C VIII, 1984, Statement of Interpretation on Article 7§9).

This commitment provides a full medical examination on recruitment and regular check-ups thereafter (Conclusions XIII-1, 1993, Sweden). The intervals between check-ups must not be too long. In this regard, an interval of two years is considered too long (C 2011, Estonia). The medical check-ups foreseen by Article 7§9 should take into account the skills and risks of the work envisaged (C XIII-2, 1994), Italy).

4.5 Employment of school children

Over the decades, the ECSR has created, on the basis of Articles 7§3 and 7§4 of the ESC, an extremely detailed set of rules to protect children's attendance at school from excessive temporary employment. Work must not undermine this priority status, which requires States to include in their legislation detailed provisions on permitted light work and working hours.

Conditions of employment of young persons:

■ work must not perform regularly or has an excessive duration,

- work must not perform after 22:00 or before 6:00,
- work hours must not perform before an early-starting school day,
- work hours and school hours together must be less than 8 hours,
- work hours on school day must not exceed 2 hours and 12 hours weekly working hours,
- the time of weekly consecutive rest must be at least 36 hours,
- at least two consecutive weeks of summer vacation and at least half of all other school holidays during the year are provided.

In the case C 2019 Ukraine on 7§3, the Committee concluded that the situation in Ukraine is not in conformity with Article 7§3 of the Charter on the grounds that:

- ▶ the definition of light work is not sufficiently precise;
- ▶ the duration of working time for children aged 16-18 who are still subject to the law on compulsory education is excessive and therefore the work they do cannot be qualified as light.
<http://hudoc.esc.coe.int/eng?i=2019/def/UKR/7/3/EN>

Recommendation 16

The State should include in the legislation provisions: 1) norms on permitted light work, 2) maximum working hours for minors aged 16 – 18 and 3) detailed maximum working hours for children attending school, following the conditions set by the case law of the ECSR that:

- work must not perform regularly or has an excessive duration,
- work must not perform after 22:00 or before 6:00,
- work hours must not perform before an early-starting school day,
- work hours and school hours together must be less than 8 hours,
- work hours on school day must not exceed 2 hours and 12 hours weekly working hours,
- the time of weekly consecutive rest must be at least 36 hours,
- at least two consecutive weeks of summer vacation and at least half of all other school holidays during the year are provided.

Part V

Prohibition of maltreatment and abuse

5.1 Legal provisions

All key treaties of human rights set absolute prohibition of inhuman or degrading treatment of a child, violence included which a state cannot waive, not even in a national emergency. Whatever are the circumstances, the States must take necessary actions to ensure that children under state jurisdiction, are not threatened by inhuman or degrading treatment whether by public authorities or private citizens.

5.1.1 The ECHR

According to the ECHR, it is prohibited to endanger the life of a child (Art. 2), as well as to subject children to inhuman or degrading treatment or punishment, to leave them without garnishment or subject to corporal punishment (Art. 3). Article 5 prohibits the deprivation of the liberty of a child, supplemented by Article 8 on the protection of family life and integrity.

Article 3 of the ECHR imposes an absolute ban on inhuman and degrading treatment, including assault. The state can be prosecuted for human rights violation if the law does not provide adequate protection for citizens in this regard. Vulnerable individuals, children in particular, have the right to effective state protection of their integrity (X and Y v. Netherlands, Decision 26 March 1985, §§21- 27). Protection must also cover the threat of inhuman treatment (Dudertre, G. 2003, p. 56). The treatment can be degrading and humiliating even if it is not its goal. Thus, the absence of intent does not negate this violation (Raninen v. Finland, 1997, §55).

5.1.2 The ESC

A prohibition on the violation of children's dignity is provided by Articles 17§1b and 7§10 of the ESC. The former intends are to protect children against neglect, violence and exploitation. The second focuses on the children protection against moral hazards in working life, violent communication and the dangers of tobacco, alcohol and drugs (C XIII-2, 1993, General Observation on Article 17).

According to Articles 7§10 and 17§1b of the ESC, children are protected against:

- 1. degrading treatment
- 2. corporal punishment

3. sexual abuse and exploitation: incest, paedophilia, child prostitution, trafficking

4. other exploitation: use of child labor, use as a tool for begging or criminal activity, use as a donor of organs or human tissues, immoral and violent communication and child pornography.

In case of moral protection of children, Articles 7§10 and 17§1 are parallel. The protection is required although a state has ratified only one of them (C XV-2, 2001, General Observation regarding Article 17, p. 26-32); (C XV-2, 2001, Austria).

5.2 Removal of insecurity

5.2.1 The most exposed – the street children

The ECSR has repeatedly referred to the general position of the UN Committee on the Rights of the Child, which calls on states to develop long-term guidelines for tackling the problem of homeless children:

Recalling that children living on the street are particularly exposed to trafficking and worst forms of child labour, the Committee refers to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children living on the street using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child, which has been ratified by Albania.(C 2019, Albania on Article 7§10)

In C 2011 Ukraine on 7§10, the Committee concluded that the situation in Ukraine is not in conformity with Article 7§10 of the Charter on the grounds that measures taken to address the problem of homeless children are insufficient and disproportionate in the circumstances. <http://hudoc.esc.coe.int/eng?i=2011/def/UKR/7/10/EN>

When the Revised ESC was enacted in the 1990s, the problem of homeless children was still commonplace in South-Eastern Europe. It was, inter alia, precisely in order to eliminate this issue that a separate point was introduced in Article 17§1b of the ESC, according to which the state is required to “protect children and young people from neglect, violence or exploitation” by all necessary means. The starting point was the view that the existence of a large number of abandoned or homeless children represents a collective violation of human rights against such a vulnerable group as children. This was considered evidence that the state had failed to provide sufficient protection to its children and young people.

The transfer of homeless children to institutions was not accepted as a general solution within the meaning of the educational objectives of Article 17 of the ESC. The ECSR’s supervisory practice has thus far addressed this issue by taking a stand on the segregated education of Roma children and by insisting that the number of placements in institutions does not exceed that of placements in foster families (C XV-2, 2001, General Observation regarding Article 17).

It is understood that the problem of child homelessness was solved in Ukraine at the beginning of the 2000s. However, according to local experts the issue exists although no statistics on it are available.

Recommendation 17

The State must develop an urgent program and allocate sufficient resources to remove all kind of violation against dignity of children and to ensure that no child has to live on the street.

5.2.2 Neglect, violence, abandonment

Abandoned children are prone to vulnerability and exploitation. National law must not allow the neglect care of children or one-side waiver of parental responsibilities. In terms of policy measures and legislation, priority must be given to strengthening family ties and rehabilitating children and families in difficult life situations. On the other hand, the relocation and placement of a child necessitates special effort to ensure the full development of child's personality, physical and mental capacities, as required by the first sentence of Article 17.

The ESC prohibits all forms of violence against and ill-treatment of children, as well as other forms of violence in society (C XV-2, 2001, General Observation regarding Article 17, pp. 26–32; C XV-2, 2001, Austria). Violence against children includes physical abuse, coercion, subjugation and any other degrading treatment that is physically or psychologically harmful. Corporal punishment is also considered violence (C 2011, Statement of Interpretation on Articles 16 and 17).

The starting point is that violence against children must be punishable. National legislation must prohibit all forms of violence against children at school, preschool and other institutions, and in the domestic environment. Appropriate agents should be appointed, and appropriate services should be set to protect children and prevent violence against them.

Simple criminalisation of assault or increased penalty scales are insufficient when the child is the target of violence. Article 17§1b of the ESC is considered to require that corporal punishment be explicitly prohibited and sanctioned either in criminal law or in civil law (OMCT v. Greece, CC 17/2003; OMCT v. Ireland, CC 18/2003; OMCT v. Italy, 19/2003; OMCT v. Portugal 20/2003; OMCT v. Belgium, 21/2003).

The degrading treatment and physical abuse of children may sometimes be structural or endemic to a particular group or particular area. When the state does not strive a sufficiently effective policy to maintain the child-parent relationship, strengthen family ties, rehabilitate families, or sufficient protection of children in difficult life situations, violations are structural and communal.

According to a public opinion poll on the topic "Violence against children in Ukraine" (2015), psychological violence turned out to be the "leader". Almost half of the children experienced it (45%). Physical abuse was the next most common one – almost a third of children experienced it (27%). Every fourth child experienced economic violence (25%). 21% of the children surveyed had experienced sexual violence.

5.2.3 Other forms of exploitation

The ECSR has long demanded states to prohibit the exploitation of children as cheap or free domestic labour in family enterprises or agriculture, or as instruments of begging and crime.

Moreover, the ECSR has considered that determining the age of paperless children entering the country only by skeletal testing is an uncertain and inappropriate method and should be considered a human rights violation (European Committee for Home Based Priority Action for the Child and the Family, EUROCEF v. France, CC 114/2014).

Special measures must be taken to protect vulnerable children, especially homeless children, from abuse by criminal gangs and other profit-seekers (C 2004, Bulgaria, p. 57; C 2006; Albania, p. 62). States should also address the issue of organ removal from children.

Organ transplantation without medical justification and necessary permits should be treated as

criminal offenses. It is forbidden to trade in children`s renewable tissues and to donate them free of charge without proper permission. - Thus far, the ECSR has not decided whether, in addition to the provisions of the Penal Code, states should legislate specifically on organ transplantation and introduce detailed provisions for those situations where the donation of tissues could exceptionally be permitted and the conditions under which this could occur.

Issues of sexual abuse and exploitation will be analysed and assessed in measures of another project.

Part VI

Child welfare and public care

6.1 General principals

The concept of child welfare and public care varies across Europe. This concept largely reflects the different purposes set for the care controlled by the public authorities in each country. The conditions of public care are provided under Article 17§1c of the ESC and Article 8 of the ECHR.

Generally, the term 'child' denotes all minors, including young persons, for whom measures of after-care can continue even after reaching the age of 18.

If parents neglect their duties or the young person's behaviour may risks his or her physical or mental development, society is obliged to intervene by applying measures of social protection and public care of children based on Articles 3 and 8 of the ECHR and Article 17§1c of the ESC.

6.1.1 Objective

According to the introductory sentence of Article 17 of the ESC, all support and care for children and young persons must be directed to balanced development of the child's personality and physical and mental capacities. This general goal of education, growth and development of children provides a basis for determining what should be considered the best interests of the child, both for the entire child population and the individual child. Consequently, the best interests of the child must be pursued not only in terms of procedure but, in particular, in terms of substance.

The goal of child welfare and care is to improve the circumstances of both the child and the family, whenever possible, and, at the very least, provide safe living conditions with positive human relations for the child.

The legal standards of children protection are largely based on the decisions taken by the ECtHR over the years and the conclusions made by the ECSR in its statement of interpretation in 2001 (C XV-2, 2001, General observation on Article 17). Both bodies give priority to preventive, non-institutional services over placement of the child or young person in an institution. This is a paradigm shift from the child welfare and care of earlier times.

6.1.2 Situation in Ukraine and gap analysis

One of the main questions in protection of children is the poverty of the family. The obligation of

states to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need, is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion. The other key issue in prevention of the need for public care would deal with the active social housing policy, in particular by ensuring the access of young couples to standard housing.

The World Bank data indicates that poverty is widespread in Ukraine: in 2014, 15% of the population of Ukraine lived below the national poverty line and in 2018 this share was 25%. The United Nations Development Program in Ukraine has stated that, despite economic growth, about 60 percent of Ukrainians live below the official poverty line.

Recommendation 18

Further development of child welfare in Ukraine should focus strongly on eradication of child poverty and on ensuring a standard housing for young couples as preventive means for public care of children.

6.2 Public care

6.2.1 Interference

Public custody and care outside the parental home is the ultimate measure to protect the child, and it represents a serious intervention in family life. It could be described as a tripartite drama between the child, the parents and the local authority, where the latter has a positive duty to intervene in cases where serious negative symptoms are evident. The children, in turn, have the right to be appropriately protected from harmful development but should also be protected from excessive and unjustified interventions in their private and family life.

The UN Convention on the Rights of the Child (Art. 9) and the European Convention of Human Rights (Art. 5 and 8) contain similar provisions on the protection of family life and interventions in parental rights. In the ESC, the corresponding provision occurs under the rights of children (Art. 17§1c), which focuses primarily on consideration of the best interests of the child. They all, however, emphasize that possible public custody should be an exceptional and temporary measure.

6.2.2 Article 8 of the ECHR

The objective of Article 8 of the ECHR is two-fold: to define the sphere of fundamental freedoms concerning private and family life and also to set out the conditions for justified intervention. Consequently, it does not merely compel the public authorities to abstain from interference (§1) but provides additional positive obligations to protect the child (§2).

In the case law of the ECtHR the concepts of family and family life are understood to correspond to a factual situation based on close personal ties (*Marcks v. Belgium*, Judgment of 13 June 1979, Series A No. 31, §31), i.e. ties with parents, siblings and others with whom children live or enjoy a close relationship in their daily life.

The contracting states enjoy a certain but not unlimited discretion as to the imposition of restrictions, but it is for the Court to provide the final decision on their compatibility with the Convention.

In 1984, the Court clarified the legally defined (clear) criteria for the dissolution of parental rights in *Malone v. United Kingdom* and also required that children would be able to contact and communicate with persons important in their life even after replacement. The ECtHR has adopted

a strict stance concerning any additional restrictions of rights in the exercise of public custody as reflected in *Olsson v. Sweden* (1988).

In *Olsson v. Sweden*, three children whose treatment and care by their parents with mental disability was considered seriously negligent by the local social service authorities were taken into public custody. The oldest child was placed 100 kilometres away from home, the second 500 km away and the third equally far and over 100 km away from the second child. In addition, social services decided not to inform the parents of the whereabouts of the foster homes or their addresses.

The Court accepted the decisions to exercise public custody but found no grounds for either separate placement of the siblings or for placing them far away from home and from each other, which was considered to prevent visitation and communication between family members. Moreover, the long duration of the restrictions on visitation and communication was considered to constitute unreasonable interference in family life.

In addition, in child welfare issues, the Court has traditionally emphasised the principle of the rule of law in any interference in private or family life, and, beginning with the *Golder* case (1973), it has required states to provide appropriate legal remedies, i.e. the right of appeal to the courts, an effective complaint system and legal aid for the family and child (*Golder v. United Kingdom*, judgment of 21 February 1975, A18).

6.2.3 Article 17§1c of the ESC

In 2001, the ECSR adopted a Statement of Interpretation concerning the principles of child welfare and public care under Article 17§1c of the ESC (C XV-2, 2001, Statement of Interpretation on Article 17§1, p. 29–31), which provided grounds for case law to strengthen the rights of children subject to child welfare measures in the following ways:

1. More intrusive forms of intervention should not be undertaken if appropriate support can be provided through non-institutional outpatient activities (C XIX-4, 2011, Statement of Interpretation on Articles 16 and 17).

2. The children should be consulted using established social work methods to identify their own wishes and opinions (C,XIX-4, 2011, Statement of Interpretation on Articles 16 and 17).

3. The criteria for taking a child under public custody must be set out in law in sufficient detail. The criteria should be appropriate and reasonable, and public care should not be exercised against the best interests of the child (C XV-2, 2001, General observation regarding Article 17§1, p. 29).

4. Children should be placed close enough to their own home and parents to allow continued visitation and communication. Siblings should be placed together unless grounds exist for separation to different foster families or institutions (*ibid.*).

5. The long-term care of children outside their home should occur primarily in foster families that are suitable for the children concerned. The majority of public care placements should be non-institutional (C XV-2, 2001, General observation regarding Article 17§1, p. 30).

6. Selection criteria are required for foster parents, who should also receive training for their task. They should receive full remuneration for meeting the child's special needs and reimbursing the costs of childcare.

7. Any restrictions or limitations of parents' custodial rights should be based on criteria set

out in legislation and should not exceed what is necessary for the protection and best interests of the child and the rehabilitation of the family (C 2003, France, p. 175).

8. Child welfare and care workers should be sufficiently qualified for their tasks, particularly in the case of institutional staff. Foster families and institutions must be appropriately supervised. To ensure the desired results, institutional care must resemble a family setting as closely as possible; the number of children in institutional units must not exceed 10 (C 2005, Moldova, p. 474). Here, 'unit' refers to children and their personal caretakers and other close care staff who enjoy sufficient autonomy and privacy to act separately from other units.

9. Finally, the child clients of social welfare services also have the right to integrity, to move freely and express themselves, to meet and communicate with close persons, to act and decide on matters concerning them and to enjoy protection of their privacy wherever they are, even when in institutional care. Children under public care also have the right to know their origins (C XV-2, 2001, General observation regarding Article 17 §1, p. 31).

Consultation with the child begins from his or her birth. Even small children are able to indicate preferences regarding the situations and company in which they feel safe and nurtured. The child's right to a procedural hearing and parallel right to be heard with his/her parents.

6.2.4 Conditions for restrictions in the ESC

Whether children are placed in foster care or institutions, any restriction of their basic freedoms must be 1) prescribed by law, 2) necessary in a democratic society and 3) based on a justified reason, such as the protection of the rights and freedoms of others or the protection of public interest, national security, public health, or morals. These conditions are provided in Article G of the ESC and closely resemble those under Article 8§2 of the ECHR. On this issue, the two key human rights' treaties are, indeed, indivisible and interdependent in many ways.

Any of the following restrictions must be prescribed by a parliamentary law (Art. 8§2 of the ECHR and Art. G of the Revised ESC):

- restrictions of personal integrity and privacy
- aberration from confidentiality
- restriction of movement and disciplinary restriction of fundamental freedoms
- criteria for isolation, which must be appropriate and reasonable
- restriction of parents' or custodians' rights
- restriction of contact with persons close to the child

The social support provided by Article 17 cannot remove the abovementioned freedoms but should be respected in all circumstances. Children's right to communicate and have contact with persons important to them, i.e. parents, siblings, other close relatives and close friends, must not be restricted only in the interest of the institution or based on administrative instructions. Freedom of communication can only be restricted for the safety of the children themselves or of other persons, or in order to eliminate a threat.

Isolation, exclusion or stigmatisation plays no part in an upbringing intended to promote the balanced development of the child. In the case of severe psychosis requiring separation from other children, isolation should occur for a short period only, be based on the instructions of a physician well informed of the child's health, be supervised by the child's personal caretaker and terminated when no longer necessary.

6.2.5 Situation in Ukraine and gap analysis

The ECtHR found Ukraine to violate Article 8 of the ECHR (*Saviny v. Ukraine*, 2008) because of inappropriate conditions for public custody, lack of hearing of the children and separation siblings and their placing in different institutions. <http://hudoc.echr.coe.int/eng?i=001-90360>

The Ukrainian concept of child welfare and public custody was very different from the corresponding European way of organizing private and public care of children. Instead of custodial restrictions, in Ukraine the decisions concerned temporal or permanent deprivation of parental rights with restrictions of communication as well. Furthermore, the replacement took in general place in institutions instead of foster family care. These are the reasons why the non-residential services and alternatives for institutional care are less developed. Many of the gaps compared to the European norms and practices derive from different background, objectives and structures of the public services.

However, steps towards the European concept of child welfare and public custody have been taken. The national report of 2019 states that in accordance with Article 254 “The rights of the child placed with a foster family” of the Family Code of Ukraine (as amended by the Law No. 936 of 26 January, 2016), the placement of a child with a foster family requires the consent of the child if he/she has attained the age and level of development of being able to express it. The placement of the child in foster caregiver family (“foster family”) has a temporary nature (3 + 3 months) and in principle it requires the written consent of his/her parents or other legal representatives. The child, who is placed in foster family, has the right to maintain personal contacts with his or her parents and other relatives.

There were 68 855 orphans and children deprived of parental care in Ukraine as of 01.01.2021. In general, 92.2% of children are covered by family forms. The rest receive care and upbringing in institutions.

The total number of children in foster families and family-type children’s homes is still low but is increasing. In late 2019, there were 1,153 family-type children’s homes and 3,346 foster families; in late 2020, their number was 1,235 and 3,172, respectively.

The National Strategy to Reform the Institutional Childcare System for 2017-2026 had a plan to stop placing children under the age of three in institutional care facilities from 2020, but no such moratorium has been established to date and 38 baby homes of the Ministry of Health system continue to accept children of this age.

As of 1 January 2020, there were 96,577 children (42% are girls and 58% are boys) in 697 institutional care facilities. 54,859 children stay there overnight, with 88% of them having at least one parent. In terms of subordination, 89,387 (92.56%) children receive care in facilities of the Ministry of Education and Science, 2,819 (2.92%) of the Ministry of Health and 4,371 (4.52%) of the Ministry of Social Policy. 17,258 children raised in institutional care facilities have disabilities, 2,046 of whom have disabilities of subgroup A.

The activation of the modernisation process of child welfare and well-being of children should be based on trained social workers and their resources to support families in a difficult life circumstances. A clear obstacle for the constructive dialogue between parents and social worker is the mechanism of deprivation of parental rights. They can be restricted as far as necessary to improve the situation and future of the child, but not to use restrictions as sanctions of the system.

Recommendation 19

The State should adopt the European concept in organizing the custodial rights and responsibilities, social care and public custody of children.

6.3 Structure of services

6.3.1 Organisation and resources

Structurally, child welfare and care comprise preventive measures, supportive non-institutional social services, foster family care, different forms of rehabilitative care, support housing, institutional care and post-foster care. Alternative weightings and the convergence of these factors are essential in determining the compliance of the social protection service for children with needs. The more alternatives there are available, the easier it is to meet the special needs of children.

In this spirit, the ECSR developed concrete standards for Article 17§1c of the ESC by assigning priority to:

- 1. financial support, social housing, home help and other services for families
- 2. physical and mental health and social services for children and young persons
- 3. criteria-based selection of foster families
- 4. guidance, support and supervision for foster families
- 5. home-like quality of institutional care units with rehabilitative activities
- 6. respect for the dignity and fundamental freedoms of the child in substitute care
- 7. the right of children to know their origin
- 8. the preservation of contacts between children and parents
- 9. rehabilitation of the biological family
- 10. after care to help the young person cope with future challenges

The Statement of Interpretation of Article 17§1 (2001) requires a unit of the institution of social protection of children resemble the home environment, which led the ECSR to limit unit size and stressed the provision of its functional resources. Such care unit must be clearly distinguishable from other units in the institution. It should be identifiable as a close community or a family unit which children can attach to and which treats others as guests. The requirement of a home-like environment also limits the number of children to no more than 10 (per unit), which is the norm followed by the ECSR for the maximum size of units in child welfare institutions (C 2005, Moldova, p. 474).

6.3.2 Support and non-institutional care

Ultimately, the best interests of the child must be assessed from every child's individual viewpoint. Thus, the most beneficial or least harmful support must be determined for a particular child, here and now and in the longer term. The substantive interests of the child require the sufficient

availability of options to enable the best possible action plan for every individual child.

Support should be provided primarily in the child's natural environment as part of other mainstream activities, with the aim of integrating the child into life with others. It is essential that preventive measures (family and child welfare clinics, special attention in preschool care, the curative services of schools and counselling services (psychological) for families in crisis) are effective and act to promote common pedagogical aims while preventing the development of more serious family problems. In addition, rehabilitation of the whole family functions as a preventive measure against the arising of serious problems among children.

When children are at risk of abuse or exploitation, they must be provided with proper financial and other support and the housing required by their life situation, and this obligation includes not only children from the native population but also undocumented children (International Federation of Human Rights Leagues (FIDH) v. France, CC 14/2003, §36 Defence for Children International (DCI) v. Netherlands, CC 47/2008, §§70-71; European Federation of National Organisations working with the Homeless (FEANSA) v, Netherlands, CC 86/2012, §50).

The public authorities' obligation to provide child welfare must continue for as long as the needs of a child or young person require so and serve the best interests of the child, up to the age of 18 if necessary. In the process of creating an independent life, a young person must receive access to appropriate post-foster services, which include support for housing and sufficient financial and other aid to begin an independent existence.

The aforementioned support and standards should be applied also to the provision of children's psychiatric services. The ECSR has also adopted a Statement of Interpretation on support for persons with disabilities and children with disabilities (C XVI-2, Introduction to Article 15), which largely follows the principles of the statement on Article 17§1 examined above. The core idea is to strive towards equal opportunities for all children by means of positive measures. Support must be organised primarily in a setting familiar to the child and as a part of other social policy measures that follow the 'mainstreaming' principle and aim to allow children with disabilities to participate in life with others.

The transition from institution-centric to non-institutional care is manifest throughout Europe, but many factors hamper this progress and the optimal fulfilment the rights of children, especially children under institutional care.

6.3.3 Substitute families

When families are going through hard times and when their living conditions are insufficient for normal functioning, children's wellbeing suffers. Insecurity in the life of a child may lead to placement with another family on the basis of:

- 1. (full) adoption
- 2. upbringing by relatives
- 3. foster family care

Adoptive parenting should lead to a good and gratuitous child-parent relationship. The criteria for accepting parental responsibility must be laid down by law. Moreover, adoption must be so-called 'full adoption', which can only be cancelled in exceptional cases.

Foster parents must be suitable for their task, and the criteria for acceptance must also be provided for by law. The foster parent must be instructed and, if necessary, advised on his or her role and

must be reimbursed for the child's expenses (C XV-2, 2001, General observation regarding Article 17, p. 26–32; C XV-2, 2001, Austria).

A child in foster care should also enjoy the right to maintain contact with his or her biological parents and other important persons (Article 8 of the ECHR). In all situations, children have a fundamental right to know their origin (C 2003, France, p. 173).

6.3.4 Situation in Ukraine and gap analysis

In conclusion 2019, the ECSR concluded negatively with Ukraine on two issues under Article 17§1 c of the ESC:

■ Referring to the judgment of the ECtHR, *Saviny v. Ukraine*, the ECSR asked in 2011 the government to provide a list of information on public care. (C 2011Ukraine on 17§1 ESC). <http://hudoc.esc.coe.int/eng?i=2011/def/UKR/17/1/EN>

■ The other negative conclusion of 2019 was: "The Committee concludes that the situation in Ukraine is not in conformity with Article 17§1 of the Charter on the ground that the ratio of children in institutional care to children in foster care or other forms of family-based care is too high." (C 2019 Ukraine on 17§1 ESC) <http://hudoc.esc.coe.int/eng?i=2019/def/UKR/17/1/EN>

According to other sources [Opening Doors for Europe's Children, Country factsheet Ukraine 2017] as of 1 September 2017, a total of 104,000 children lived in 759 institutions, with some of them were accommodating 300-400 children. Out of this total, 2,755 children between 0 and 3 years old were living in 38 baby homes. More than 90% of these children have parents who are not deprived of parental rights but due to such reasons as poverty, social vulnerability of families, lack of services or inclusive education in the community are in institutions.

According to UNICEF, alternative family-oriented care systems were underdeveloped and, as a result, in 2017 there were around 106 000 children separated from their families and living in various child-care institutions. Information was missing on types of facilities, coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents.

According to data of the State Statistics Service, by the end of 2017 there were 3677 foster families in Ukraine, in which there were 6880 foster children. At the beginning of 2018 there were 13,689 children in foster families and 51,101 children under relatives' care. Furthermore, due to the lack of capacity and the reduction in the number of social workers, as well as insufficient training of potential foster careers and their insufficient support after the child's placement, the number of children who were returned to institutions from family-based care has increased. At the same time, there is an eight-fold increase in the number of children successfully re-integrated with their biological families: from 83 in 2016 to 694 by the end of 2017. However, in relation to the whole, the result is still modest.

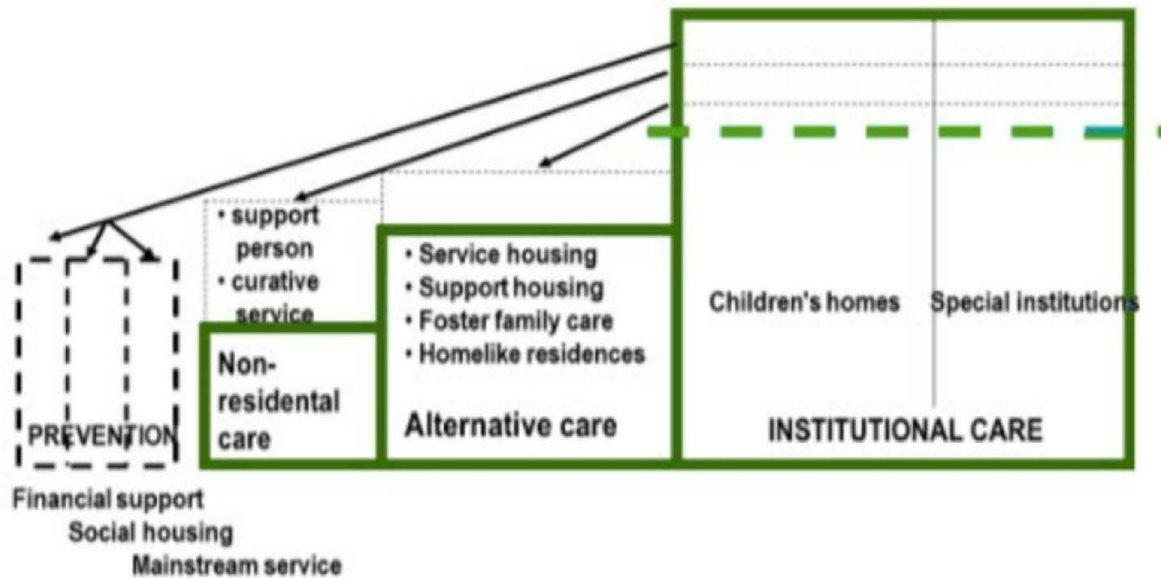
In summary, the Ukrainian structure social care and public care for children concentrates on reparative care in institutions, which is less human, lead to poorer results and is in the longer run more expensive than any other alternative form of public care.

Recommendation 20

Following the European normative basis, the state should develop the structure of services of social care of children and public care from institution-oriented towards other alternatives to family

replacement and increase the efforts of non-institutional care and support for children and their families as preventive measures.

Direction of the development and priorities of child welfare towards mainstream and inclusion



While developing the structure of child welfare and public care the state should note the standards of Article 17§1c of the ESC by assigning priority to:

1. financial support, social housing, home help and other services for families
2. physical and mental health and social services for children and young persons
3. criteria-based selection of foster families
4. guidance, support and supervision for foster families
5. home-like care units with rehabilitation facilities
6. respect for the dignity and fundamental freedoms of the child in substitute care
7. the right of children to know their origin
8. the preservation of contacts between children and parents
9. rehabilitation of the biological family
10. after care to help the young person cope with future challenges

Simultaneously with the changes of the structure of the services also the quality of institutions should be developed so that

- a unit in a child welfare institution should resemble the home environment
- a unit should clearly be distinguishable from other units in the institution. It should be

identifiable as a close community or a family unit which children can attach to and which treats others as guests.

■ a home-like environment also limits the number of children to not more than 10 (per unit), which is a norm followed by ECHR while determining the maximum size of units in child welfare institutions

6.4 Young offenders

6.4.1 European norms

In addition to the prohibited act itself, a criminal offense is also based on the perpetrator's unacceptable state of mind and the reprehensible nature of the behaviour in question. Crime has both objective and subjective aspects on the basis of which the perpetrator is punished. In the case of young offenders, the options for punishment are various types of disciplinary measures intended primarily to foster their social integration. Another basic assumption is that the mind of a child is not fully developed and thus cannot be considered to have criminal intent. Consequently, a certain minimum age is required for the application of criminal law.

The general point of departure is that the age of criminal responsibility must not be excessively low. Thus far, the ECSR has monitored the situation in the Contracting States and expressed concern over the age limits in Turkey (11 years), the United Kingdom (10 years) and Ireland (9 years) (C XV-2, 2001, Ireland; C 2011, Ireland; C XV-2, 2001, Turkey; C XV-2, 2001, United Kingdom).

Integration necessitates alternative punishments to fines and prison sentences that are better adapted to the needs of children. Prison sentences for minors are permissible only in exceptional circumstances, such as in the case of committing serious crimes (C XVII-2, 2005, Turkey, p. 795; C 2005, Lithuania, p. 371; C 2005, Slovenia, p. 650).

A further requirement is that young offenders be subject to more lenient punishments than adults. In this context, Turkey's legislation was found to diverge from the requirements of the ESC, as it permitted prison sentences of over 10 years for 11–15-year-old offenders and even 15–20-year sentences for 15–18-year-olds (C XVII-2, 2005, Turkey, p. 795).

Likewise, the duration of periods of arrest and pre-trial detention must respect the requirements of the ECHR, which have been followed also in the case law of the ESC. In the case of arrest, the maximum duration of detention is hours or days, while with remand it is weeks or months (C 2011, Denmark; C 2011, Norway). The ECSR has considered pre-trial detention periods of up to two years a violation of the human rights of young people (C XV-2, 2003, Statement of Interpretation on Article 17§1, pp. 660–661).

The ECSR requires that crimes committed by young offenders be tried in juvenile courts, or in separate sections for juvenile courts of regular courts, which should draw on the experience of youth social care services.

Furthermore, young offenders must be allowed to serve their prison sentences separate from adult prisoners and to maintain contact with parents, other family members and persons close to them (C XV-2, 2003, General Observation regarding Article 17§1; C XV-2, 2001, Belgium).

A prison sentence as such necessarily includes the physical separation of a prisoner from other people, which in itself is a restriction of free movement. Certain other precautionary measures

to prevent escape or the smuggling of unwanted objects or substances into prison premises constitute restrictions of basic freedoms that are permissible when appropriate and prescribed by law.

6.4.2 Situation in Ukraine and gap analysis

Under article 22 of the Criminal Code, persons who have reached the age of 16 are criminally liable. Those who committed crimes between the ages of 14 and 16 are criminally liable only if they have committed violent or property crimes, such as :premeditated murder;intentional grievous bodily harm;intentional moderate bodily injury;diversion;gangsterism;terrorist act;hostage-taking;rape;sexual violence;theft;looting;brigandage;extortion;intentional destruction or damage to property;damage to roads and vehicles;theft or seizure of railway rolling stock, aircraft, sea or river vessel;illegal possession of a vehicle;hooliganism;encroachment on the life of a statesman or public person.

The Committee previously required confirmation that legislation allows children to be detained for 12 months pending trial.

According to the information of local experts by the Order of the Cabinet of Ministers dated 17 December 2018, No. 1027, the National strategy of the juvenile justice reform until 2023 was approved. The following Strategy contains general objectives in the following key areas: 1) juvenile delinquency prevention; 2) protection of the rights of minors prosecuted for administrative offences; 3) pre-trial investigation; 4) judicial proceedings; 5) sentencing minors and its execution; 6) rehabilitation of minors.

The Strategy as well as Action plan on implementation the Strategy contain weaknesses on planning and timing.

In addition, the official statistics fail to fully represent data related to ensuring the right of children and youth (minors) to a fair trial in terms of their access to justice in criminal, administrative and civil proceedings and to legal aid. Thus, to analyse the case law in criminal cases, it is quite complete in terms of the involvement of minors in criminal proceedings, mainly as defendants, but not fully monitored in relation to persons, such as witnesses; in cases of administrative offenses, juveniles are not allocated to separate category; in civil proceedings, official data mostly reflect the participation of children in family disputes.

Recommendation 21

Introduce regular conducting of comprehensive statistical and analytical studies on ensuring the right of children and youth (minors) to a fair trial, namely, in the context of access to justice in criminal cases, cases of administrative offences, civil cases, as well as access to legal aid.

Continue the introduction of restorative justice in the Ukrainian criminal process, in particular, by legislative establishing the features of reconciliation in cases involving minors.

Ensure the adoption of comprehensive measures both with the resocialization of minors and the prevention of offences and conduct the initial-oriented approach to assessing the efficiency of the measures taken.

Part VII

Legal protection

7.1 Procedural guarantees

In a legal sense, the child is the subject of his or her own rights from birth. In the case of small children, parents or other possible custodians and factual caretakers assume the child's authority, as the subject of representation of his/ her rights,. However, children should enjoy the possibility of representation alongside their parents and other custodians, and even independently, according to their level of maturity. Nevertheless, no common age limits concerning representation exist in Europe.

To ensure the fulfilment of the best interests of the child, a key procedural requirement is nonetheless that the child be heard, regardless of age or developmental stage, to ascertain the child's own wishes and preferences, which may be achieved by means of social work and psychological approaches.

Hearings and authority for representation

1. Hearings as part of child welfare:

- ▶ no minimum age
- ▶ intended to ascertain the best interests of the child: a) what is best for the child at present and in the long term, b) what is least harmful for solving the child's problems and for the future of the child, and c) who the most important person is for the child emotionally and socially
- ▶ conducted in the child's own natural environment

2. Procedural hearing:

- ▶ accommodation of the child's opinions and preferences, depending on the maturity of that child
- ▶ creation of a system of recording the child's opinions and preferences

3. Representation alongside the custodians:

- ▶ maturity and age limits
- ▶ decision, after consulting the child, according to the child's own wishes or independently
- ▶ effective legal remedy with the right to appeal to the court ensured in the case of independent decisions

Representation, either alongside parents or independently, requires that the child's opinions and preferences must not be overlooked and decisions be taken in accordance with the child's opinion. Legitimate grounds for exceptions to these principles are provided by Article 8§2 of the ECHR and Article G of the ESC. The ECSR has neither developed case law on children's right to represent themselves nor taken any stand on age limits.

7.2 Legal remedies

Children must be provided with sufficient legal remedies to protect them from violations of their rights. If a child's fundamental rights are violated, the child must have the possibility of appeal to an independent body, as provided by Articles 6 and 13 of the ECHR. Where dynamic welfare rights are concerned, there must be at least a possibility to complain to a higher or supervisory authority or 'ombudsperson'.

Legal remedies available to the child

- 1. Right to appeal in matters concerning human dignity, basic freedoms and subjective rights
- 2. Right to lodge complaints in other matters
- 3. Sufficient legal aid to fully exercise rights
- 4. Right to reinstatement and/or full compensation of damage

In any case, the child must be granted sufficient legal aid for the exercise of his or her legal rights.

Recommendations

The report has ended up to 21 recommendations for Ukrainian government and regional authorities on fundamental rights of children. The biggest concerns are the children a) not attending the basic education, b) living in institutions or c) being segregated because of their disability. 21 recommendations are the following:

Recommendation 1

The government should continue work on strengthen the positive dynamics of changes about infant mortality and particularly with the maternal mortality. Efforts should be made for strengthening the counselling services for maternity and child on this issue.

Recommendation 2

The government should further develop the statistical system to allow the level of child benefits to be compared with the European standards (parameters of the Eurostat), which would provide sufficient information on whether the level (including other types of financial support and price subsidies for families with children or for children) 4 – 6 percent of net median equivalised income of the country.

Recommendation 3

The State must conduct the research, whether the right to the compulsory six (6) weeks postnatal maternity leave, provided by Article 8§1 of the ESC is violated in practise, what are the sanctions and how they are functioning.

The state should give information on the level of the maternity benefit in relation to previous wages of the workers. Regular statistical survey should be conducted to establish the absolute minimum level of maternity and childcare benefits for the median equalised income (including wages, capital income and social income) in the country, and whether the income replacement cover all workers.

Recommendation 4

The government needs to clarify, whether the care assistance is linked to care leave and it is replacing the previous earnings or is it another type of support for families with small children.

Recommendation 5

The child has the right to know his/her roots and the name of the biological parents as also of the other parent in single parent families. The government should develop the law on this point.

Recommendation 6

The government and local governments should promote the increasing of the enrolment of children in pre-school education, especially in rural areas, including the inclusion of children with special educational needs.

Recommendation 7

Immediate positive measures are needed to lower the rate of the dropouts. It was 8 % for both sexes, which is high and might lead to a negative conclusion for the State under Article 17§2 of the ESC. Even more alarming is that only 10 % of the children of Roma minority will complete the basic school.

The State should set up a special program to guarantee for all children an adequate basic education, in particular for children in special institutions or of Roma minority, and add the distant learning services for children in war areas of the country.

The government should develop the adequate statistical system in order to collect relevant data on enrolment and dropouts of children in basic education.

Recommendation 8

The government should further develop the vocational training system on all levels and provide appropriate information on this in the educational system and as a measure of the labour market services:

- Total capacity (ratio of training places to candidates)
- Total spending on education and training (% of GDP)
- Completion rate of young people enrolled
- Employment rate of graduates and how long it takes them to find their first skilled job

Vocational guidance should be taken in the school curricula

Recommendation 9

The government should develop the system of apprenticeship and provide appropriate information on it.

Recommendation 10

The government should develop financial support system for students and provide appropriate information on it.

Recommendation 11

All children, children with disabilities included should provide access to basic education in law and in practise. The priority should be given for mainstream education and inclusion of children with disabilities to mainstream society and if necessary, with positive action for them.

The State should take measures to significantly increase the number of children with disabilities

in public education system.

In addition, the children in institutions should also have access to education and the education at home should be developed to comply with the requirements of the school curriculum. In order to reach each child, the child and maternity counselling centres should inform the educational authorities of the need for special education so that all children with disabilities would be reached.

In addition, the State should ensure to the children with disabilities an equal access to standard housing and inclusion in the community, which are necessary conditions for inclusion and for mainstream education. The state should set up a program for support housing that should also serve families with children with disabilities.

The government should integrate The International Classification of Functioning, Disability and Health into the educational system of Ukraine, in order to provide the transition to biopsychosocial model of disability and inclusive education according to the European norms and standards

Recommendation 12

The government should make the new law to function also in relation to the rights of children with disabilities in vocational training on equal basis as required in Article 15§1 of the ESC. The State should take seriously its commitment “to take the necessary measures to provide guidance, education and vocational training persons with disabilities in the framework of general schemes wherever possible or, where this is not possible, to ensure the provision of appropriate education through specialized public or private organizations.”

The access to vocational training must be based only on individual aptitude (10§1). All children, children with disabilities included should be ensured the equal access to vocational training and to positive action, when needed.

Recommendation 13

The State should define in law or by other binding norms in a concrete way, what is light work. Furthermore, it should be ensured the sufficient guaranties to eliminate all violations of the ban on employing children under the age of 15, as it provided in Article 7§1 of the Charter.

Recommendation 14

The State should provide effective guarantees for the prohibition of employment of minors (under18) in dangerous or harmful activities as required in Article 7§2 of the ESC. The list of the prohibited dangerous or harmful work must be concrete and actually implemented

Recommendation 15

The State should provide a minimum wage of young workers and trainees in law following the rights and standards of Article 7§5 of the ESC.

Recommendation 16

The State should include in the legislation provisions: 1) norms on permitted light work, 2) maximum working hours for minors aged 16 – 18 and 3) detailed maximum working hours for children attending school, following the conditions set by the case law of the ECSR that:

- work must not perform regularly or has an excessive duration,
- work must not perform after 22:00 or before 6:00,
- work hours must not perform before an early-starting school day,
- work hours and school hours together must be less than 8 hours,
- work hours on school day must not exceed 2 hours and 12 hours weekly working hours,
- the time of weekly consecutive rest must be at least 36 hours,
- at least two consecutive weeks of summer vacation and at least half of all other school holidays during the year are provided.

Recommendation 17

The State must develop an urgent program and allocate sufficient resources to remove all kind of violation against dignity of children and to ensure that no child has to live on the street.

Recommendation 18

Further development of child welfare in Ukraine should focus strongly on eradication of child poverty and on ensuring a standard housing for young couples as preventive means for public care of children.

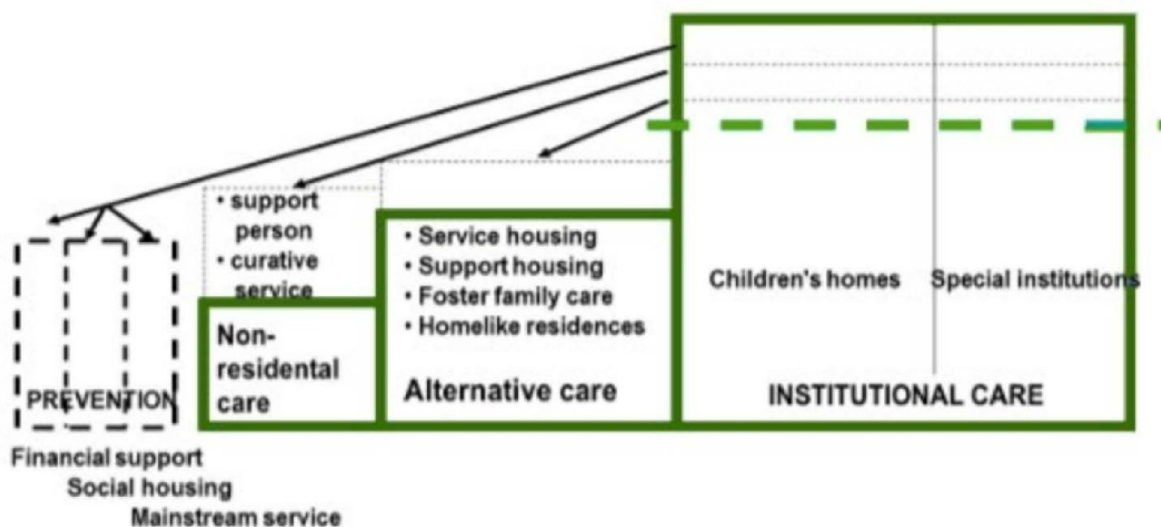
Recommendation 19

The State should adopt the European concept in organizing the custodial rights and responsibilities, social care and public custody of children.

Recommendation 20

Following the European normative basis, the state should develop the structure of services of social care of children and public care from institution-oriented towards other alternatives to family replacement and increase the efforts of non-institutional care and support for children and their families as preventive measures.

Direction of the development and priorities of child welfare towards mainstream and inclusion



While developing the structure of child welfare and public care the state should note the standards of Article 17§1c of the ESC by assigning priority to:

- 11. financial support, social housing, home help and other services for families
- 12. physical and mental health and social services for children and young persons
- 13. criteria-based selection of foster families
- 14. guidance, support and supervision for foster families
- 15. home-like care units with rehabilitation facilities
- 16. respect for the dignity and fundamental freedoms of the child in substitute care
- 17. the right of children to know their origin
- 18. the preservation of contacts between children and parents
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- 20. after care to help the young person cope with future challenges

Simultaneously with the changes of the structure of the services also the quality of institutions should be developed so that

- a unit in a child welfare institution should resemble the home environment
- a unit should clearly be distinguishable from other units in the institution. It should be identifiable as a close community or a family unit which children can attach to and which treats others as guests.
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Recommendation 21

Introduce regular conducting of comprehensive statistical and analytical studies on ensuring the right of children and youth (minors) to a fair trial, namely, in the context of access to justice in criminal cases, cases of administrative offences, civil cases, as well as access to legal aid.

Continue the introduction of restorative justice in the Ukrainian criminal process, in particular, by legislative establishing the features of reconciliation in cases involving minors.

Ensure the adoption of comprehensive measures both with the resocialization of minors and the prevention of offences and conduct the initial-oriented approach to assessing the efficiency of the measures taken.

The European Social Charter, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a broad range of human rights related to employment, housing, health, education, social protection and welfare.

No other legal instrument at pan-European level provides such an extensive and complete protection of social rights as that provided by the Charter.

The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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