



## **ACKNOWLEDGE mv**

Acquiring knowledge and  
raising the quality of services  
targeted to **minors victims** of violence



### **WP 3 COMPARISON OF THE LEGISLATION AND POLICIES**

**JLS/2008/DAP3/AG/1262 - 30-CE-0312040/00-47 - Project "Acquiring knowledge and raising the quality of services targeted to minors victims of violence"**

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## INTRODUCTION

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In this phase our aim was to draw a comparison of the different legislations and policies about minor victims of violence among the countries whose make up this Daphne III project – "Acquiring knowledge and raising the quality of services targeted to minors victims of violence: Bulgaria, Spain, France, Italy And Romania.

The task of comparing the legislation that deals with the minors' protection system of the partner countries has not been easy. This is due to several reasons, mainly and first of all the different territorial organisation of the countries to be compared. These different models can be classified into two groups: a first one of more direct countries, where the main rules come from the Central State since political decentralisation at a region level does not exist. At the most, administrative and management decentralisation exists at a local level.

The other group comprises countries with a more decentralised model, with a region or autonomous region structure and an important level of political and legislative autonomy. Moreover, there is also an important material decentralisation at a local level.

This has a clear repercussion on the distribution of the tasks and the rules announced by each instance.

It has also been a problem to overcome the fact that the different rules consider legal concepts with many differences between systems. To overcome this, each member has been asked to provide some information to compare concepts, or at least, determine the basic concepts prevailing in this matter in order to analyse them afterwards.

Last but not least, another problem to be solved is the existence of different models of minors' protection, or the different role played by the administration or judicial bodies as far as the adoption of different measures is concerned.

Taking into account all these determining factors, this report aims to show the essential characteristics of each system compare the fundamental concepts existing in each of them and specify the main rules that make them up.

Following we are going to develop the legislations and policies since international level till local level.

## INTERNATIONAL LEVEL

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The common framework for all the countries in the world is the international legislation. The main rule at this level is the ***Convention on the Rights of the Child***, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990 (in accordance with article 49). In the preamble the states parties to the convention accorded some items<sup>1</sup> as a common framework to developing legislation in each country.

The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights. In 1989, world leaders decided that children needed a special convention just for them because people under 18 years old often need special care and protection that adults do not. The leaders also wanted to make sure that the world recognized that children have human rights too.

Built on varied legal systems and cultural traditions, the Convention is a universally agreed set of non-negotiable standards and obligations. These basic standards—also called human rights—set minimum entitlements and freedoms that should be respected by governments.

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<sup>1</sup> Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

They are founded on respect for the dignity and worth of each individual, regardless of race, colour, gender, language, religion, opinions, origins, wealth, birth status or ability and therefore apply to every human being everywhere. With these rights comes the obligation on both governments and individuals not to infringe on the parallel rights of others. These standards are both interdependent and indivisible; we cannot ensure some rights without—or at the expense of—other rights.

The Convention sets out these rights in 54 articles and two Optional Protocols. It spells out the basic human rights that children everywhere have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services.

The article 19<sup>2</sup> established the framework about ill-treatment: protection from all forms of violence.

By agreeing to undertake the obligations of the Convention - by ratifying or acceding to it - national governments have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community. States parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.

On the other hand, UNICEF - the United Nations Children's Fund- is the main organization who fight to the rights of every child are realized. Nurturing and caring for children are the cornerstones of human progress. UNICEF was created with this purpose in mind – to work with others to overcome the obstacles that poverty, violence, disease and discrimination place in a child's path.

UNICEF's mission is to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided in doing this by the provisions and principles of the Convention on the Rights of the Child.

UNICEF upholds the Convention on the Rights of the Child works to assure equality for those who are discriminated against, girls and women in particular, for the Millennium Development Goals and for the progress promised in the United Nations Charter, strives for peace and security and works to hold everyone accountable to the promises made for children. It is part

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<sup>2</sup> Children have the right to be protected from being hurt and mistreated, physically or mentally. Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them. In terms of discipline, the Convention does not specify what forms of punishment parents should use. However any form of discipline involving violence is unacceptable. There are ways to discipline children that are effective in helping children learn about family and social expectations for their behavior – ones that are non-violent, are appropriate to the child's level of development and take the best interests of the child into consideration. In most countries, laws already define what sorts of punishments are considered excessive or abusive. It is up to each government to review these laws in light of the Convention.



of the Global Movement for Children – a broad coalition dedicated to improving the life of every child. Through this movement, and events such as the United Nations Special Session on Children, encourages young people to speak out and participate in the decisions that affect their lives.

## EUROPEAN LEVEL

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At European level, we want to stress the following legislation about minors:

- ✓ The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 Oct 2007. Art 2 (b) relating to the offences involving serious violence or caused serious harm to the child<sup>3</sup>.
- ✓ European Convention on the Exercise of Children's Right of 25<sup>th</sup> Jan 1996.
- ✓ Lisbon Treaty, entry into force 1st December 2009<sup>4</sup>.
- ✓ Charter for Fundamental Rights of 2000<sup>5</sup>
- ✓ The Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography<sup>6</sup>
- ✓ 2002/629/JHA the Council Framework Decision of 19 July 2002 on combating trafficking in human beings<sup>7</sup>
- ✓ Commission Recommendation of 15 September 2000 on the ratification of International Labour Organisation (ILO) Convention No 182 of 17 June 1999 concerning the prohibition and immediate action for the elimination of the worst forms of child labour
- ✓ 2003/9/EC Council Directive of 27 January 2003 laying down minimum standards for the reception of asylum seekers<sup>8</sup>.

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<sup>3</sup> We would like to highlight a paragraph because it aims at taking measures to address lack of information on sexual exploitation and abuse of children. It states the following: *"requires parties to set up or designate mechanisms for data collection or focal points at the national or local levels, in collaboration with civil society, for observing and evaluating the phenomenon of sexual exploitation and abuse of children. Although there can be no doubt that the sexual exploitation and abuse of children is a serious and increasing problem, there is a lack of accurate and reliable statistics on the nature of the phenomenon and on the numbers of children involved. Policies and measures may not be well developed and appropriately targeted if reliance is placed on inaccurate or misleading information"*. We therefore believe that it is a matter of urgency given that it aims at contributing to the development of better and more efficient policies and measures (based on accurate research) with which to tackle the problem appropriately.

<sup>4</sup> Art. 3.3 and 3.5 TEU: Protection of the Rights of the Child among the objectives of the European Union  
 Art. 79.2 (d) TFEU: competences to fight against trafficking in human beings, especially women and children  
 Art. 83 TFEU: minimum rules concerning the definition of criminal offences and sanctions in areas of particularly serious crime with a cross border dimension, including sexual exploitation of women and children  
 Art 24 refers to the UNCRC and to its principles of the right to participate and of the best interests of the child; it calls for mainstreaming children's interests across all policy areas relevant to children and thus sets the basis for child proofing of EU legislation and policy if fully implemented.

<sup>5</sup> Article 24 on the child rights.

<sup>6</sup> Art. 5.2 (b) the offences involve serious violence or caused serious harm to the child.

<sup>7</sup> Art.7.2 and Art. 2.3 on Protection of and assistance to victims granting special rights to children as the most vulnerable victims

<sup>8</sup> Article 17.1 General principle member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, (...) who have been subjected to torture, rape or other serious forms of psychological, physical or sexual

- ✓ 2005/85/EC Council Directive of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status<sup>9</sup>.
- ✓ 2004/83/EC Council Directive of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>10</sup>.
- ✓ 2008/115/EC Directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (“Return Directive”)<sup>11</sup>.
- ✓ 2003/86/EC Council Directive of 22 September 2003 on the right to family reunification<sup>12</sup>.
- ✓ 2010/13/EU Directive of the European Parliament and of the Council of 10 March 2010 On the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)<sup>13</sup>
- ✓ 2000/375/JHA Council Decision of 29th May 2000 on combating child pornography on the internet.
- ✓ European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, in Luxembourg 1980, through Law no. 216/2003 (art. 12 concerning illegal illicit transfer situations).

Next, we want to carry out in a longest way, the legislation we’ve thought most interesting in the minors’ victims of violence field. The following laws are signed by each member States of the Council of Europe:

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violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care. Art. 18 on Minors and Art. 19 on Unaccompanied Minors.

<sup>9</sup> Article 17 on the Guarantees for unaccompanied minors

10 Art. 9.2 (f) Article 9 on the Acts of persecution. Art 20.2 and Art. 20.5 on General Rules and Art. 30 on Unaccompanied Minors.

11 Art. 5 relating to non-refoulement, best interests of the child, family life and state of health. When implementing this Directive, Member States shall take due account of: (a) the best interests of the child; Art. 10 on Return and removal of unaccompanied minors and Art. 17 on Detention of minors and families.

<sup>12</sup> Art. 4 (5) on having due regard to the best interests of minor children.

<sup>13</sup> Article 12, Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see such on-demand audiovisual media services.

Article 27: 1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence. 2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts. 3. In addition, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.



*The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 Oct 2007*

This Framework Decision lists a number of behaviours which as offences related to the sexual exploitation of children are to be considered illegal:

- ✓ Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes
- ✓ Engaging in sexual activities with a child, where use is made of coercion, force or threats, money or other forms of remuneration or consideration are given as payment in exchange for the child engaging in sexual activities, or abuse is made of a recognised position of trust, authority or influence over the child

The following is deemed to be punishable conduct that constitutes an offence related to child pornography, whether undertaken by means of a computer system or not:

- ✓ Production of child pornography
- ✓ Distribution, dissemination or transmission of child pornography
- ✓ Supplying or making available child pornography
- ✓ Acquisition and possession of child pornography

Each Member State is obliged to take the necessary measures to ensure that instigation of one of the aforementioned offences and any attempt to commit the prohibited conduct is punishable.

Each Member State must make provision for criminal penalties which entail imprisonment for at least one to three years. For certain offences committed in aggravating circumstances, the penalty must entail imprisonment for at least five to ten years. The Framework Decision provides a list of aggravating circumstances, which does not preclude the recognition of other circumstances under national law:

- ✓ The victim is a child below the age of sexual consent under national law
- ✓ The offender has deliberately or by recklessness endangered the life of the child
- ✓ The offences involve serious violence or caused serious harm to the child
- ✓ The offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA

Each Member State may take measures to ensure that a natural person, i.e. an individual, convicted of one of the aforementioned offences be prevented from exercising professional activities related to the supervision of children. In addition the Framework Decision establishes the criminal and civil liability of legal persons. This liability is complementary to that which is borne by natural persons. A legal person is deemed to be liable if an offence is committed for its benefit by another person who acts individually or as part of an organ of the legal person, or who has decision-making powers.

Sanctions on legal persons must include criminal or non-criminal fines and other sanctions such as temporary or permanent disqualification from the practice of commercial activities, a judicial winding-up order or exclusion from entitlement to public benefits or aid.

To prevent a crime from going unpunished because of a conflict of jurisdiction, the Decision establishes criteria for determining jurisdiction. A State has jurisdiction if:

- ✓ The offence is committed within its territory (territoriality principle);
- ✓ The offender is a national of that Member State (active personality principle);
- ✓ The offence is committed for the benefit of a legal person established in the territory of that Member State.

A State that refuses to extradite its nationals must take the necessary measures to prosecute them for offences committed outside its territory.

Each Member State must establish programmes of assistance for the victims and their family in accordance with Framework Decision 2001/220/JHA.

### *The Council of Europe Convention on the Exercise of Children's Rights of 1996*

The Convention aims to protect the best interests of children. It provides a number of procedural measures to allow the children to exercise their rights. It sets up a Standing Committee which shall keep under review problems relating to this Convention.

The Convention provides for measures which aim to promote the rights of the children, in particular in family proceedings before judicial authorities. The judicial authority, or person appointed to act before a judicial authority on behalf of a child, has a number of duties designed to facilitate the exercise of rights by children. Children should be allowed to exercise their rights (for example, the right to be informed and the right to express their views) either themselves or through other persons or bodies.

Among the types of family proceedings of special interest for children are those concerning custody, residence, access, questions of parentage, legitimacy, adoption, legal guardianship,

administration of property of children, care procedures, removal or restriction of parental responsibilities, protection from cruel or degrading treatment and medical treatment.

The European legal basis is carried out following:

### *Treaty of Lisbon, entry into force 1st December 2010*

Historically, before the entry into force of the Lisbon Treaty in December 2009, the legal basis for the action of the European Union in protecting children from violence was limited to the following provisions of the 1997 Amsterdam Treaty<sup>14</sup>.

In addition, free movement, immigration and asylum issues were transferred in the Amsterdam Treaty from a strictly intergovernmental approach under Pillar III onto the law-making sphere of the EU. As a result, legislative documents were produced in the field of international judicial co-operation in fighting crimes against children (in particular for combating trafficking against children), asylum and migration, and transnational divorce cases.

The entry into force of the Lisbon Treaty in December 2009 has brought about significant changes for Justice and Home Affairs through the abolishment of the pillars and *communitarisation* of the entire policy area. Moreover, with the Lisbon Treaty the protection of the rights of the child has been included among the objectives of the European Union (Art. 3.3 and 3.5 TEU). The fight against trafficking in human beings, especially women and children (Art. 79.2 (d) TFEU), and the setting of minimum rules concerning the definition of criminal offences and sanctions in areas of particularly serious crime with a cross border dimension, including sexual exploitation of women and children (Art. 83 TFEU) will be included among the areas of legislation of the European Parliament and the Council.

### *Charter of Fundamental Rights*

Charter for Fundamental Rights adopted by the European Council, European Parliament, and the European Commission in 2000 receives a single reference in the Lisbon Treaty and becomes legally binding for all Member States except for Czech Republic, Poland and the United Kingdom which have opted-out from implementation of this instrument.

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<sup>14</sup> : Art. 6.2 reaffirmed the Union's commitment to fundamental rights; art. 13 introduced the non-discrimination clause, including on grounds of age; in art. 29, the treaty provided for a basis for police and judicial co-operation in tackling crimes against children across borders; art. 137 provided the legal basis for combating social exclusion and tackling child poverty as a key objective for EU action; art. 152 listed, among the areas of cooperation between member states in matters of public health, not only diseases and major health scourges but also, more generally, all causes of danger to human health, as well as the general objective of improving health.

The Charter governs the EU institutions, which must conform to the rights and observe the principles enshrined in it. It also applies to MS, but only when they are applying EU law. The Charter includes a Statement on children's basic rights, besides general provisions which can be applied to children. Art 24 refers to the UNCRC and to its principles of the right to participate and of the best interests of the child; it calls for mainstreaming children's interests across all policy areas relevant to children and thus sets the basis for child proofing of EU legislation and policy if fully implemented.

In the ***violence and trafficking'*** field, the main legislation is:

***Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography***

This Framework Decision lists a number of behaviours which as offences related to the sexual exploitation of children are to be considered illegal:

- ✓ Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
- ✓ Engaging in sexual activities with a child, where use is made of coercion, force or threats, money or other forms of remuneration or consideration are given as payment in exchange for the child engaging in sexual activities, or abuse is made of a recognised position of trust, authority or influence over the child.

The following is deemed to be punishable conduct that constitutes an offence related to child pornography, whether undertaken by means of a computer system or not:

- ✓ Production of child pornography
- ✓ distribution, dissemination or transmission of child pornography
- ✓ supplying or making available child pornography
- ✓ acquisition and possession of child pornography

Each Member State is obliged to take the necessary measures to ensure that instigation of one of the aforementioned offences and any attempt to commit the prohibited conduct is punishable.

Each Member State must make provision for criminal penalties which entail imprisonment for at least one to three years. For certain offences committed in aggravating circumstances, the penalty must entail imprisonment for at least five to ten years. The Framework Decision provides a list of aggravating circumstances, which does not preclude the recognition of other circumstances under national law:

- ✓ the victim is a child below the age of sexual consent under national law
- ✓ the offender has deliberately or by recklessness endangered the life of the child
- ✓ the offences involve serious violence or caused serious harm to the child
- ✓ the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA

Each Member State may take measures to ensure that a natural person, i.e. an individual, convicted of one of the aforementioned offences be prevented from exercising professional activities related to the supervision of children.

In addition the Framework Decision establishes the criminal and civil liability of legal persons. This liability is complementary to that which is borne by natural persons. A legal person is deemed to be liable if an offence is committed for its benefit by another person who acts individually or as part of an organ of the legal person, or who has decision-making powers.

Sanctions on legal persons must include criminal or non-criminal fines and other sanctions such as temporary or permanent disqualification from the practice of commercial activities, a judicial winding-up order or exclusion from entitlement to public benefits or aid.

To prevent a crime from going unpunished because of a conflict of jurisdiction, the Decision establishes criteria for determining jurisdiction. A State has jurisdiction if:

- ✓ the offence is committed within its territory (territoriality principle)
- ✓ the offender is a national of that Member State (active personality principle)
- ✓ the offence is committed for the benefit of a legal person established in the territory of that Member State

A State that refuses to extradite its nationals must take the necessary measures to prosecute them for offences committed outside its territory. Each Member State must establish programmes of assistance for the victims and their family in accordance with Framework Decision 2001/220/JHA.

### *Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings*

This framework decision aims to approximate the laws and regulations of the Member States in the field of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings. It also aims to introduce at European level, common framework provisions in order to address certain issues such as criminalisation, penalties and other sanctions, aggravating circumstances, jurisdiction and extradition.

Since the adoption in 1997 of a joint action by the Council concerning action to combat trafficking in human beings and the sexual exploitation of children, initiatives have developed considerably in number at both national and regional levels. Art.7.2 and Art. 2.3 lay down rules concerning protection of and assistance to victims granting special rights to children as the most vulnerable victims. Child victims of trafficking are entitled to special assistance, in accordance with Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings.

In the *asylum' field*, the main legislation is:

*Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*

This Directive sets out minimum standards of reception conditions for asylum applicants. The aim is to ensure that the applicants have a dignified standard of living and that comparable living conditions are afforded to them in all Member States. At the same time, the Directive also limits asylum applicants' secondary movements.

It includes special provisions regarding the minors. The article 17.1 formulates a general principle for Member States to take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, (...) who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.

The article 18 sets out rules on Minors and Art. 19 on Unaccompanied Minors. According to those provisions, the Member States must pay special attention to the situation of minors, disabled people, elderly people and victims of discrimination or exploitation. In particular, they should take measures to protect children who have been victims of abuse, exploitation, torture or cruel, inhuman and degrading treatment. Additionally, as soon as possible, a guardian shall be appointed for each unaccompanied minor. In addition, the Member States will endeavour to trace the members of his family.

*2005/85/EC Council Directive of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*

This Directive is intended to lay down the minimum essential standards for the effectiveness of procedures for granting and withdrawing refugee status, to reduce the disparities between

national examining procedures and to safeguard the quality of decision-making in the Member States.

In addition to basic guarantees stipulating that:

- ✓ An application for asylum may not be refused solely on the grounds that it was not made as soon as possible. Moreover, Member States must ensure that applications are examined individually, objectively and impartially.

Applicants shall be entitled to remain in the country while their application is pending. Member States must ensure that:

- ✓ Decisions on application for asylum are communicated in writing
- ✓ If an application is rejected, the reasons are stated and information on how to challenge a negative decision is given in writing.

Applicants for asylum:

- ✓ shall be informed of the procedure to be followed, their rights and obligations and the result of the decision taken by the responsible authority \*;
- ✓ shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary;
- ✓ Shall be given an opportunity to communicate with the HCR. In more general terms, the Member States must authorise the HCR to have access to applicants for asylum, including those in detention centres, and to information on asylum applications and procedures, and enable the HCR to give his/her opinion to any competent authority;
- ✓ Must have a genuine opportunity to consult a legal adviser at their own expense. If the competent authority's decision is negative, the Member State shall ensure that legal assistance is granted on request. They may attach certain conditions to this right (limiting the option of legal advice to those specifically designated by national law, restricting proceedings to those which have a chance of success or to those persons who do not have sufficient resources).

The following additional guarantees are to apply in the case of unaccompanied minors:

- ✓ a person shall represent and help the minor with his/her application
- ✓ the representative shall have an opportunity to explain the purpose of the interview to the minor
- ✓ the interview shall be conducted by a person with the knowledge required to cater for the specific needs of minors

*2004/83/EC Council Directive of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*

The purpose of the Directive is to set out the conditions for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. This Directive requires Member States to guarantee a series of rights for persons qualifying for refugee status or subsidiary protection status, inter alia:

- ✓ the right of non-refoulement;
- ✓ the right to information in a language they understand;
- ✓ the right to a residence permit valid for at least three years and renewable for refugees and a residence permit valid for at least one year and renewable for persons with subsidiary protection status;
- ✓ the right to take up paid employment or to work on a self-employed basis and the right to follow vocational training;
- ✓ access to the education system for minors and to retraining for adults;
- ✓ Access to medical and psychological care and any other necessary form of care, particularly for persons with special needs (minors, rape victims, etc.);
- ✓ Access to appropriate accommodation;
- ✓ Access to programmes facilitating integration into society and to programmes facilitating voluntary return to the country of origin.

In addition to the basic standards, the Member States must undertake to take special account of the needs of certain categories (minors in general, unaccompanied minors, disabled people, elderly people, pregnant women, single parents accompanied by minors and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence).

In the *immigration' field*, the main legislation is:



***Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.***

This Directive establishes common standards and procedures for Member States, whereby illegally staying third-country nationals may be removed from their territories. It lays down provisions for terminating illegal stays, detaining third-country nationals with the aim of removing them and procedural safeguards.

This directive provides Member States with common standards and procedures for returning third-country nationals staying illegally on their territories, with certain exceptions. Member States must however ensure that the treatment and level of protection of third-country nationals excluded from the scope of the directive corresponds at least to certain of its provisions on coercive measures, removal, health care and detention. In all cases, Member States must respect the principle of non-refoulement and take into consideration the best interest of children, family life and the health of the person concerned.

***2003/86/EC Council Directive of 22 September 2003 on the right to family reunification***

The purpose of this directive is to determine the conditions under which third-country nationals residing lawfully on the territory of the Member States may exercise the right to family reunification. The directive also aims to highlight the importance of developing an integration policy that will grant third-country nationals rights and obligations comparable to those of citizens of the European Union (EU).

Art. 4 (5) stipulates due regard to the best interests of minor children, however, the mandatory horizontal clause on the best interest of the child is not implemented appropriately in some of the Member States. The implementation of the other horizontal clauses is also problematic as Member States do not consider applications on a case-by-case basis.

The Parliament sought the annulment of certain provisions contained in the directive on the grounds that they allegedly infringed fundamental rights, in particular the right to family life and the right to non-discrimination. It felt that the directive was incompatible with such rights by allowing Member States to require:

- ✓ children aged over twelve years to pass an integration test in order to rejoin the applicant's family;
- ✓ reunification applications for minors to be submitted only before they have reached fifteen years of age;
- ✓ the applicant to have resided in the country in question before he/she can be joined by members of his/her family;

- ✓ A waiting period of three years from the moment an application for family reunification is made to the moment family members may obtain a residence permit, if the Member States in question take into account their reception capacity.

The Court rejected these arguments on the grounds that:

- ✓ the various texts dealing with fundamental rights do not give the members of a family the subjective right to be admitted into the territory of a Member State;
- ✓ compulsory integration tests are not illegal; allowing Member States to assess whether a child meets a given integration criterion preserves a limited margin of appreciation for the governments of the Member States, similar to that given to them by European Court of Human Rights case-law;
- ✓ the directive authorises Member States to refuse reunification to children failing to apply before they turn fifteen, but in no way forbids them to consider applications from children over fifteen;
- ✓ as regards those provisions contested on the basis of the age limits of twelve and fifteen (above), these ages are the criteria used by the European Court of Human Rights; twelve and fifteen are the ages after which integration of the child can pose greater problems;
- ✓ a waiting period is required in order to ensure that family reunification will take place in favourable conditions;
- ✓ the directive requires Member States, when applying any of the contested provisions and in respect of all family reunification applications, to take into account the other conditions laid down in the directive, e.g. the best interests of minor children, the nature and solidity of the person's family relationships, the duration of their residence in the Member State and the existence of family, cultural and social ties with their country of origin

In the ***Media and Internet's field***, the main legislation is:

***Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)***

The Directive stipulates that the programmes that might seriously impair the development of minors (e.g. pornography and gratuitous violence) are prohibited. Those which might simply be harmful to minors must, where they are not encrypted or shown at a time when they will normally not be seen by minors (watershed), be preceded by an acoustic warning or made clearly identifiable throughout their duration by means of a visual symbol. The Commission

carried out an investigation of the possible advantages and drawbacks of further measures to facilitate parents' control of broadcasts watched by their children. Member States may derogate from the principle of freedom of reception if the TV broadcast from another Member State manifestly, seriously and gravely infringes the Protection of Minor rules (Article 3(2)-(3)). As far as advertising is concerned, Article 9 of the AVMS Directive lays down specific rules to protect minors.

Article 12 of the Audiovisual Media Services Directive states that "Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way that ensures that minors will not normally hear or see on-demand audiovisual media services". See Audiovisual Media Services Directive

The provisions of the Directive are complemented by Recommendations on the protection of minors and human dignity. The first one was adopted in 1998 and an additional Recommendation was adopted in 2006 in order to be able to keep up with the challenges which technological developments brought. It builds upon the original 1998 Recommendation which remains valid. The new Recommendation refers to media literacy or media education programmes, the right of reply across all media, cooperation and the sharing of experience and good practices between (self-) regulatory bodies, which deal with the rating or classification of audiovisual content and action against discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in all media.

The Recommendations are closely linked to the Action Plan on Promoting Safe Use on the Internet which ran from 1999 to 2004 with a total budget of 38.3 million Euros and its successor, the Safer Internet plus programme. The Safer Internet plus programme aims to promote safer use of the Internet and new online technologies, particularly for children, and to fight against illegal content and content unwanted by the end-user, as part of a coherent approach by the European Union. The first 4-year programme (2005–08) had a budget of € 45 million. Safer Internet 2009-2013 builds upon the Safer Internet plus programme and has a budget of € 55 million. Encompassing recent communications services from the web 2.0, such as social networking, the current programme will fight not only illegal content but also harmful conduct such as grooming and bullying.

#### *Council Framework decision 2004/68/JHA on child pornography in the media*

Access to the media has a number of beneficial effects for children but it also exposes them to harmful or illegal images depicting violence, pornography or racism. Children also need protection from the damaging effects of certain types of advertising, being as they are the

most vulnerable to media influence and most in need of protection against it. A number of measures have been taken to protect children from the adverse effects of the media and commercial practices.

The Council Framework decision 2004/68/JHA on child pornography (2004) sets out the minimum requirements for Member States in the definition of offences and appropriate sanctions concerning the production, distribution, dissemination, transmission, making available as well acquisition and possession of child abuse material.

The internet provides access to very many educational, relaxation and social opportunities but, at the same time, there are obvious hazards and risks for children. Against this background, the Council Framework decision 2004/68/JHA on child pornography completes the earlier Council Decision of 29th May 2000 on combating child pornography on the internet (2000/375/JHA) sets out to prevent the production, possession and distribution of material containing child pornography and to promote effective investigation and prosecution of criminal offences in this area.

## COMPARISON OF LEGISLATION AND POLICIES AMONG COUNTRIES

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Following we are going to make the comparative analysis among Spain, Italy, France, Romania and Bulgaria and deeper Valencia's Region, Lombardia's region, the cities of Paris, Bucharest and Sofia (the description of legislation and child protection systems of each region are explained in the annexes).

We've analyzed in three different frameworks:

### I. CONSTITUTIONAL FRAMEWORK

Constitutions include the main principles that regulate countries' policies, among them, social policies, which integrate all stipulations related to the protection of children.

The Italian Constitution does not specifically mention the protection of children. However, acknowledging the principles based on safeguarding values, dignity and human rights from whatever might jeopardise them, the Constitution does point out that Italian legislation introduced measures to control violence against minors and protect them.

In addition to this, the Bulgarian Constitution states as a general principle the protection of families and children by the State and society. Furthermore, it is the responsibility of the Government to protect the rights of children during every stage of their public life by adopting adequate measures (in a family environment or putting them into specialised institutions).

In Romania, the Constitution incorporates the concept respect for children. The Spanish Constitution of 1978 states, among the main governing principles of social and economic policies (article 39), the duty of national authorities to ensure families' social, economic and legal protection and, consequently, that of minors.

Constitutions are also the instrument by means of which competencies are distributed in countries with decentralised legislative and/ or administrative systems. Decentralisation is only found in Italy, where an amendment appointing exclusive competencies to the regions to draft and develop social policies was passed in the year 2000 in accordance with a framework law passed on that same year; and Spain, where the competencies on this matter are distributed between the Government and the Autonomous Regions<sup>15</sup>.

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<sup>15</sup> More specifically, article 148.1 EC 78 identifies the fields over which Autonomous Regions will have competencies, among them, as stated in section 20, welfare services. Article 149.1 lists the matters over which the Government has exclusive competence, thus preserving the competence of regulating, in the field of the protection of minors, the basic requirements to safeguard the equality of Spanish citizens when exercising their rights and complying with their constitutional duties; immigration and foreign law; criminal and procedural law, civil law, without prejudice to the preservation, amendment and execution of civil, local or special rights, wherever applicable, by Autonomous Regions.

## II. INTERNAL LAW SYSTEM: LEGISLATIVE CENTRALISATION AND DECENTRALISATION

Legislative decentralisation is only present in Spain and Italy; that is, legislation regarding attention to children includes State and regional regulations. State regulations incorporate the basic principles and content regarding attention to children, enforceable in every part of the country, whereas regional regulations implement said principles and content, but may include idiosyncrasies from the region.

In the case of Spain, decentralisation has as its main points of reference the Constitution and its respective Statutes of Autonomy. In the particular case of the Valencian Region, the Statute was passed by Organic Law 5/1982, of 1 July, and amended by Organic Law 1/2006, of 10 April. Furthermore, both State and regional rules can be considered to be statute law<sup>16</sup>, as their regulatory status<sup>17</sup>.

The Constitutions of Bulgaria, Romania and France, only refer to national legislation and there is no legislative decentralisation, although there are strategies and action plans being carried out on a local scale.

### DEFINITIONS OF THE TERMS USED

In 1989 the term **abuse** first appeared in France, but it was not until 2007 when the Record of 5 March 2007 gathered a common criterion for administrative and legal protection; consequently, the concept of children in danger or at risk can comprehend abused children. Thus, the Observatory of Decentralised Social Action-ODAS refers to **children in danger** as all children in danger or at risk of suffering abuse.

However, a distinction is made between **minor in danger**, situation in which the health, security or morality of the children are in danger, or in which their education, physical, emotional, intellectual or social conditions are being seriously jeopardised (this situation coincides with the notion of abandonment in Spain), and **child potentially at risk**, situation in which the health, security, morality, education or sustenance of the children may be at risk, but the children are never at risk of suffering abuse (this concept equates to that of **minors at risk** in Spain).

Romania does not have a definition for **risk**, but Act 272/2004, the framework law on the protection and the rights of children, includes the concept **at risk**, whereby if children are **at risk** specialised public agencies must adopt measures in order to separate them from their

<sup>16</sup> Appointed through legislative power- Parliament.

<sup>17</sup> Appointed through executive power, such as Government of Ministers/ Councillors.

family environment. Should the judge observe that the child's rights are being violated, s/he may decide on fostering or adoption. The different alternatives to separate children from their family include: Foster families and foster care, emergency fostering or dedicated surveillance (for minors who have broken the law). In order to prevent situations in which minors are separated from their families, there are several options: day care, family or residential welcome or care services.

The concept **abused child** is identified in every country as a child victim of physical or sexual abuse, cruel acts, and serious neglect with physical or psychological consequences.

All countries coincide on the interpretation of the following concepts: **Family welcome, residential welcome and day care.**

It is worth pointing out that Romania has a network of centres regulating the requirements for juvenile detention centres, such as the location and services offered (e.g. food, clothing, access to education, health services, social integration services, regulation and involvement with the children and their families<sup>18</sup>).

In Italy, for children to be considered at risk, thus requiring authorities' intervention, the following conditions must occur: detection of signs of unease/ child abuse in the context of daily life, assessment and representation of the diagnosis and predictions in order to verify the existence or evidence of abuse, distinguishing the child's social and health and educational environment, from that of the adults in his life and of the emotional relationships that are important to the child<sup>19</sup>.

### III. DIFFERENT CHILD PROTECTION SYSTEMS

France has a **dual civil/ legal child protection system**. Children are under the jurisdiction of civil administration (administrative protection) and, alternatively, of the legal system (legal protection).

Protection is undertaken by the administrative departments and the State provides legal protection through legal authorities. However, there is a difference between the administrative and the legal systems, thus:

**Administrative procedure** to be followed in order to protect children:

<sup>18</sup> (Order 89/2004 of the Ministry of Labor and the President of the national authority for the protection of minors responsible for establishing the minimum requirements of –emergency- centers for children victims of abuse).

<sup>19</sup> If necessary, provide therapy to children and their families as soon as possible.

- Treatment protocols are put in place by **local units**, which study the case initially. In serious situations, legal authorities are notified.
- **Measures:** measures are proposed by the Child Welfare Department jointly with Social Services (Multipurpose Social Service Sector PSS) and implemented by the Chair of the General Council. Parents and guardians are notified and an agreement is usually required for the measures to be put in place.
- **Resources:** Day care centres, family or residential welcome, dedicated attention to minors with specific difficulties (family, centre, social or socio-medical services) and assistance in emergency situations<sup>20</sup>. If there is no consent by the parents or guardians, the legal authority will have to intervene and execute the appropriate measures.

### **Legal procedure (judicial)**

- Legal authorities only stand in if the health, security or morality of a child is at risk, or if the child's education is jeopardised.
- **Intervening parties:** juvenile judge and prosecutor. The judge may request the implementation of educational assistance programmes and the prosecutor can conduct the procedure to be followed by social protection services.
- **Measures (on an educational level):** The judge may hear the family, the minor, the prosecutor; the services involved, and decide that the minor should remain at home with several family support measures. However, if the situation is very serious, the judge may decide on sending the minor to a foster family or put him/her into foster care. The judge, moreover, determines the duration of the measure in question<sup>21</sup>.

In Bulgaria, the responsibility of the child protection system<sup>22</sup> lies with the civil public administration. There is no legislative decentralisation but regarding intervention, powers are

<sup>20</sup> 72 hours maximum and, if it is decided that the minor should not go back home, s/he is put into ESA until the required conditions to return home are fulfilled.

<sup>21</sup> In the event of foster care, it cannot exceed two years. This period may be extended if the situation is serious.

<sup>22</sup> Bulgarian partners harshly criticise their child protection system:

#### 1st. CHILD ABANDONMENT AND ABUSE

- There are shortcomings in the prevention of child abuse due to a lack of detection mechanisms, information and register of abuse cases. Moreover, there is a lack of legal procedures to look out for/ determine the best interest of children and of a framework of support and recovery services for children who have been victims of abuse. The establishment of this sort of resources is more a desire than common practice.
- There are no clear roles established in education and health services, nor for the detection and register of child abuse cases. Moreover, no policies are being implemented to ensure children's security. Hence the great increase of violence between children in schools. Actions are more focused toward restriction and repression and not so much toward care



distributed; thus, the development and coordination of social policies is appointed to the Ministry of Labour and Social Security, but their implementation requires cooperation between *regional governments, local government bodies and non-profit organisations*. Cooperation is organised through the Social Welfare Council (advisory body of the Ministry).

Romania also has a **dual civil/ legal child protection system**. Children are under the jurisdiction of civil administration and legal authorities (in very serious cases). The aforementioned authorities intervene whenever specialised public agencies request the adoption of a decision based on risk of abuse, parents' inability to properly exercise their childcare duties due to their situation, or minors who break the law.

Furthermore, Romania does not have legislative decentralised powers, but it does, however, distribute competencies when it comes to intervention at local level (in counties). The General Directorate for Social Assistance and Child Protection (GDSACP) and the Public Service of Social Assistance (PSSA) are coordinated by the local council. The GDSACP's duties are stipulated by the Romanian Ministry of Labour, Family and Social Protection, and are approved by decisions or measures adopted by the Government. PSSA covers mainly social services, including minors at risk.

In Italy the responsibility of the child protection system falls both on civil administration and legal authorities (dual system). Italy does have a decentralised legislative system, whereby regions legislate over children protection issues because, in accordance with their Constitution, regions have exclusive competence to draft and develop social policies. Consequently, Lombardy's regional government established in 2004 the reorganisation and orientation guidelines toward the protection of children victims of violence. By means of this decision, Lombardy passed the document *Guideline to protect children victims of violence*, which points out:

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- and support.
  - The procedure of hearing minors, who are victims of violence or have witnessed crimes, does not follow the same standards as in other countries. Children are repeatedly interviewed during this type of procedure (excessively) by people who are not specialised in dealing with damaged children.
  - Difficulties when trying to find out or clarify the real situation of issues related to child abuse. There are no figures by items (how many, type of abuse, etc.) regarding the number of abuse cases affecting children.
  - Lack of data regarding child trafficking and exploitation. The main reason behind the fact that children are subject to trafficking and exploitation is because of the poverty situation of their families and the cultural practices of few minority communities. EU services, which promote the social integration of these children, are not enough, because children are only fostered for a maximum of 6 months and, exceptionally, for one year. In the long term they return to their community and there are no further opportunities for them to integrate.

#### 2nd. CHILDREN AND JUVENILE JUSTICE

- It gathers the shortcomings in the field of juvenile justice (equivalent to re-education of minors)

#### 3rd STREET CHILDREN

- This issue mainly affects the capital, Sofia, and 2 or 3 other big cities in Bulgaria. Most of these children do not go to school and thus continue to be at high risk of abuse, trafficking, sexual and other forms of exploitation.

- ✓ The need for global intervention regarding the prevention and care of minors and their families.
- ✓ The acknowledgment of several institutions and organisations eligible to take on issues related to minors victims of violence.
- ✓ The need to incorporate health, socio-welfare and educational services to this field.

Said document also stipulates:

- ✓ Objectives and contexts surrounding intervention
- ✓ General principles of methodological organisation
- ✓ Training of public and private service operators

Basic legal concepts applicable to violence and abuse:

- ✓ The creation and increased cooperation between different departments (social, health, socio-welfare and education, in cooperation with legal authorities), which are in charge of several stages of intervention. The document, moreover, connects the services involved in every stage<sup>23</sup>.
- ✓ Furthermore, experts in this field are required to:
- ✓ Have the capacity of quick intervention with the aim of protecting minors and helping families manage crisis situations.
- ✓ Have the capacity to carry out actions in order to re-establish functional relationships within the family.
- ✓ Ensure effective intervention to enable cooperation between all professionals working in other fields.
- ✓ Protection measures are adopted bearing in mind the particularities of every specific case and are intended to reduce the possibility of worsening the trauma for victims and guarantee their protection.

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<sup>23</sup> Municipality, social services, emergency services, children psychiatry services, mother-and-child services, addiction services, pediatricians, structures to take in minors separated from their families, school systems, sectors with social, health and education competences.

## ANNEX 1- LEGISLATION AND CHILD PROTECTION SYSTEM IN SPAIN

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### RULES FRAMEWORK FOR THE PROTECTION OF MINORS IN THE VALENCIAN REGION

#### STATE RULES

**The Spanish Constitution of 1978** enumerates in the chapter III of the Title I, the governing beginning of the social and economic politics: article 39, the obligation of the public power to ensure the social, economic and juridical protection of the family and the minors.

The international instruments to protect minors are established as a part of the juridical Spanish classification (article 39.4, in connection with the article 10.2) and the distribution of competences between the State and the Regional Government in this matter is also established. Specifically, the article 148.1 CE 78 determines the matters which the Regional Government will be able to assume, like in the article 20 (social assistance). Finally, the article 149.1 establishes the State's exclusive competence, in the area of the protection of minors, the regulation of the basic conditions that guarantee the equality of all Spanish in the exercise of their rights and the fulfilment of the constitutional duties; immigration; the penal and procedural legislation, the civil legislation, without prejudice of the conservation, modification and development for the Regional government laws, that exist.

**Civil Code:** establishes the minors' protection juridical frame regulating the paternal-filial relationship (filiations, native legal authority and marriage economic regime) and the guard figure, foster care, the adoption, the guardianship or partial guardianship.

**Law 21/1987, 11th November,** modifies the Civil Code and the Law of Civil Prosecution as for adoption. It establishes in his Additional Disposition: "the public Entities mentioned in this Law are the organisms of the State, of the Regional Government or of the Local Corporations which are responsible for the minors' protection of his own territory".

**Organic law 1/1996, 15th January,** on Minor's Juridical Protection, which modify the Civil Code and the Prosecution Civil Law

Title I. - defines the minor's basic rights and establishes the measures and governing beginning of the administrative action relative to the minors

Title II. - regulates the actions in minor social vulnerability situations (prevention, improving the situations of risk and, in the cases of abandonment, the guardianship for the department of the Law, the exercise of the guard and the family or residential care) and the minors' protection institutions (guardianship and adoption).

Organic law 4/2000, 11th January, about the foreigners' rights and freedoms in Spain and their social integration and the Royal decree 2393/2004, 30th of December, by which the Regulation of execution of the Organic Law 4/2000 is approved. It adapts the general forecasts to the foreign minors.

**Law 54/2007, 28th December**, on International Adoption

This law conceives the international adoption as a protection measure for a minor who cannot find a family in his native land and establishes the necessary and appropriate guarantees to ensure that international adoptions are carried out, first of all, in top interest of the child and respecting his/her rights. Moreover, it tries to avoid and to prevent the subtraction, the sale or the children's traffic, making sure at the same time that the minor is not discriminated for any reason or personal, familiar or social circumstance.

**Organic law 5/2000, 12th January**, Regulatory of the Minor Penal Responsibility, although it is formally penal and it has penalty nature, at the same time it makes sure that the juridical reaction of the young offender is an educational intervention and expressly rejects certain essential purposes of the adults' Criminal law. To prevent all the negative effects for the minor it is important to stress the interest of the minor as a priority of the minors' Criminal law.

## REGIONAL RULES

**Organic law 5/1982, 1st July**, on Self Governing Valencian Region modified by the Organic Law 1/2006, of 10th April.

Article 10.3 establishes that the action of the Valencian Regional Government will focus basically on the integral defence of the family, the minor's specific protection and social guardianship, the social assistance to the persons who suffer from marginalisation, poverty, exclusion or social discrimination.

Article 49, paragraphs 24, 25, 26 and 27, establishes the exclusive competence for social services, youth, woman's promotion and public institutions for the protection of and support to minors, young women, emigrants, third age, disabled people and other groups or sectors that need special protection, including the creation of protection, reintegration and rehabilitation centres, by the Valencian Regional Government.

Law 5/1997, 25th June, of the Valencian Regional Government, which regulates the Social Services System in the Valencian Region, and regulates the basic aspects of the social services as an integral, harmonious, interdependent and coordinated system, distributed between the Valencian Regional Government and the Local Corporations and jointed in social general services (basic needs' primary care) and specialised social services (towards population due to

the fact that the circumstances need a more specific technical and professional attention). This last item contains the specific protection to the infancy and youth.

This law states the equipments (Community Social Services Centres, Temporary shelters for the homeless, day services, Homes and shelters for the battered, social dining rooms, residential services, ...), programmes and economic provisions which the social services system needs, foresees the participation and social initiative and the voluntary work, and regulates the public financing foreseen by the Valencian Regional Government in this area, as well as the inspection function and the offences system and sanctions.

**Law 12/2008, 3rd July**, of the Valencian Regional Government, about Integral Infancy's Protection and Adolescents in the Valencian Community

It establishes the rights, duties, guarantees, special protection and promotion of children and teenagers, gathering in the "Charter of Minors' Fundamental Rights in the Valencian Community". It stresses the protection of the child's respect in some socially demanded areas, as minors advertising that uses them or the minors' protection regarding the TV programming, or a bad use of the products, IT services, telephone services and Internet.

It regulates in a comprehensive way (prevention, situations, measures) the minor who is at risk or in a situation of abandonment, a re-education and social rehabilitation systems, arranges the distribution of competences between the Regional Government and the Local Corporations, sanctioning regime; it creates the Family and Infancy's permanent Observatory (responsible for the study and the detection of the needs and social demands and the promotion of initiatives improving the levels of prevention, care and protection of the families and the children in the Valencian Community), and the specific figure of the "Commissioner of the Minor- Pare d'Orfens ", for the defence and protection of his rights and interests.

**Law 6/2009, 30th June**, of the Valencian Regional Government, about Maternity Protection

It stresses the mothers and parents' responsibility and the child's right to develop itself in a family in an alternative area than the biological one when this one is impossible. It also promotes the taking in and the adoption as an alternative to allow pregnant woman to carry out their pregnancy. Moreover, it gives support to upbringing and to minors' protection measures as a subsidiary measure of an integral policy of attention to pregnant women and to the maternity, under the beginning of minors' supremacy interest.

**Decree 93/2001, 22nd May**, of the Valencian Regional Government which has approved Minor Juridical Protection's Regulation in the Valencian Community (modified by Decree 28/2009, 20th February, of the Council).

It establishes, in a comprehensive way, the protection measures to exercise on minors in risk and abandonment situation in the Valencian Community, the procedures of the different

institutions of minors' protection, the guardianship, the guard, the residential welcome, the family welcome and the national and international adoption. Furthermore, it establishes the bases of the Registry Foster families and of Requests of Adoption of the Valencian Community, also arranging the organs of offers and decision of protective measures.

**Order 19th June, 2003**, of the Conselleria de Bienestar Social, which regulates the typology and material conditions and the management of the Minors' Protection Centers in the Valencian Community.

**Order 17th January 17, 2008**, of the Valencian Regional Ministry for Social Welfare (Conselleria de Bienestar Social), which regulates the organisation and management of the protection centres, the residential welcome and day residence of minors in the Valencian Community.

#### *THE MINORS' PROTECTION SYSTEM IN THE VALENCIAN COMMUNITY*

Three fundamental notes:

In Spain, the Minors' Protection System is under the responsibility of the civil public administrations, considering that these are sufficiently capable of ordering and organising the necessary institutions to take care of minors in situation of vulnerability.

Moreover, this is a decentralised intervention system, where the local administrations play a fundamental part. At a first level, the municipal teams of social services are the gateway to the Minors' Protection System, carrying out eminently preventive work. At a second level, there are the Specialised Services of Care to the Family and Children (SEAFI), who undertake a more specialised intervention.

The Valencian Regional Government intervenes when the preventive actions at a local level have not borne fruit and it is necessary to separate the minor from his family, or when those responsible for the minor hand over the guardianship or when the judicial system agrees to it. It also takes part by adopting a legal protection measure: by assuming the guardianship at the parents' request or due to a judicial agreement, or by declaring the minors' neglect and assuming his guardianship.

The Valencian Regional Ministry for Social Welfare is the competent body to adopt and apply measures to protect minors, without detriment to the functions that it attributes to the Public Prosecutor or to the judicial bodies.

These measures to protect minors are:

- A. In a *situation of risk*: family support or help.
- B. In a *situation of neglect*:
  1. The assumption of guardianship by operation of law, prior to a declaration of the minors' situation of neglect.
  2. Guardianship.
  3. Family foster care.
  4. Residential foster care.
  5. Adoption.
  6. Whatever may be of advantage to the minor, considering his personal, family and social circumstances.

In addition to these precepts minor's protection measures, the Valencian Regional Ministry for Social Welfare has started various complementary services such as the Minor's Phone, the Socio-labour Orientation Service for Minors and Young People, the Psychological Care Service for Minors Victims of Sexual Abuse and Young Aggressors, or the Support Service to the Adoptive Family.

#### SITUATION OF RISK: FAMILY SUPPORT (MUNICIPAL COMPETENCE)

The situation of risk for the minor is that which for personal, interpersonal or environmental circumstances causes damage to the minor's development and/or personal or social well-being, but without it being necessary to have his guardianship assumed by operation of law to adopt measures aimed at his correction. In these cases the harm affecting the minor does not reach a sufficient gravity to justify his separation from his family circle, which is why the Administration's intervention is limited to the attempt to eliminate, within the family institution, the risk factors.

The risk situations are solved through family support measures, which are aimed at covering the minor's basic needs and improving his family environment, with the aim to maintain him in that environment in conditions that enable him to fully develop himself.

These measures can be of a technical character<sup>24</sup>, or of an economic character<sup>25</sup>, or day care in centres<sup>26</sup> aimed at providing preventive support to the social maladjustment of minors, with complementary support and family help services, in order to help alleviate their lacks and improve their social, family and work integration process.

Some protocols exist with Health, Education and the Police sector, to detect, tackle and divert the situations of child vulnerability.

The appreciation and intervention confronted to hazardous situations, as well as the development and application of measures to support the family, are of a municipal competence, through the general social services or, in this case, through the specialised services of care to the family and children called SEAFI's<sup>27</sup>.

The SEAFI's are interdisciplinary teams of a municipal character that, in coordination with the teams of general social services, deal with the problems linked with any type of family conflicts that need psychosocial orientation, mediation or family therapy to be solved (families with minors in a situation of risk or neglect or with a maladjusted conduct, situations that imply a risk of family breakup, specific orientation in particular family situations, etc).

#### SITUATION OF NEGLECT (REGIONAL COMPETENCE)

A situation is considered of neglect when it happens due to non-fulfilment, or to the impossible or inappropriate exercise of the rights of protection established by law for the guardianship of minors, when they are deprived of the necessary moral or material support and when the seriousness of the facts advise us to separate him from the family circle responsible for such a situation.

Neglect is declared by the Valencian Regional Government, through the Valencian Regional Ministry for Social Welfare, which acts by means of its territorial services.

The legal consequences of the declaration of neglect are the following:

- A. The Valencian Regional Government, when it declares neglect, assumes by operation of law the minor's guardianship (also called automatic or administrative guardianship), by virtue of article 172 of the Civil Code, without it having to be constituted by the judicial bodies. This guardianship leads to the suspension of parental or ordinary

<sup>24</sup> Interventions of a socio-educational or therapeutic character developed by professionals in favour of the minor and of his family, aiming at the prevention of situations of family uproot and also the services rendered to the family by the different institutions that facilitate the development of family life and allow for a better care of minors.

<sup>25</sup> The assistance or help provided when the main cause of the risk to the development of the minor comes from situations of lack of economic resources.

<sup>26</sup> Day centres, of coexistence or educational support, or of socio-labour insertion.

<sup>27</sup> Family and childhood attention specialized services



guardianship and has a provisional vocation, maintained while the causes that determined the intervention of the public entity persist.

- B. The Valencian Regional Government temporarily assumes the minor's guardianship as a protection measure when it assumes the guardianship by operation of law, under the protection of article 172.1 of the Civil Code, as well as when the parents or guardians ask for it to the Valencian Regional Government, justifying that they cannot take care of the minor due to serious circumstances, and when the judge stipulates it so in the cases that are of his jurisdiction.

Whatever the motive for which the Valencian Regional Government has assumed the guardianship, it will take place through family or residential foster care.

- A. Family foster care will be carried out by the person or family circle that determine the territorial directions of the Valencian Regional Ministry for Social Welfare, who will be obliged to watch over the minor, keep him in their company, feed him, educate him and provide him with complete training, in order to integrate him into a family life that replaces or temporally completes his original family.
- B. Residential foster care is undertaken by the director of the centre where the minor is taken in, where he will receive services of accommodation, maintenance, educational support and complete attention. He will have to try to manage that the minor stays in a centre the least time possible and that he is taken in within the centre that, while being the most appropriate for his concrete necessities, is the closest to his family or social environment, so as to avoid the relation with them from being disturbed, except if the minor's interest requires the opposite.

When the minor arrives, the centre will elaborate an individualised intervention programme for him, according to his personal and socio-family circumstances, fixing objectives on the short, medium and long term.

- C. Adoption (that can be national or international) is a legal institution constituted by judicial resolution that creates a family affiliation between the adopter(s) and the minor adopted and puts an end to the legal ties between the adoptee and his previous family. It is conceived as a suitable institution for cases in which the stay in the family of origin or the return to it proves to be unviable, because it is impossible or harmful, and the interest of the child, his age and other circumstances definitely recommend towards his full integration in a new family, that fulfils the legal requirements and suitability criteria for his adoption.

The Valencian Regional Government, as a public entity that is competent in matters of minors' protection in the Valencian Community, is the institution that suggests the minor's adoption to the judicial body, when the legal circumstances for this adoption are met, and is also the one that accepts the collaborative entities of international adoption (the ECAIS, that are non-profit legally constituted associations or foundations, the statutes of which stipulate that their aim is the protection of minors) to take part in mediation functions in international adoption.

## ANNEX 2- LEGISLATION AND CHILD PROTECTION SYSTEM IN ITALY

Further to the ratification of the New York UN Convention of 1989, enacted in Italy with Law No. 176 of 27 May 1991, Italy has started to work in the area of cultural and legislative innovation for the promotion, prevention, care and protection of children and adolescents which have been implemented both through the approval of ad hoc statutory laws and through important amendments to the civil and penal codes.

The system of values and principles which inspires the legislation and the activities of the Regions and of the local institutions since then presupposes the recognition of the rights of minors and has as prerequisite that minors be considered persons entitled to enjoy the right to personal dignity, in favour of whom suitable policies and consistent actions should be developed (Arts. 3-4 of the Convention).

The development of national legislation with regard to children's rights has resulted in the setting up, with Law No. 451 of 23 December 1997, of the following guidance, monitoring and control bodies/instruments:

- ✓ the Parliamentary Committee for childhood , which, in the exercise of its powers of consultation, acquires data, supports the exchange of information and promotes suitable synergies with bodies and institutions for the promotion and protection of childhood and adolescence operating in Italy and abroad, and with the associations, non-governmental organisations and all the other bodies operating within the framework of the protection and promotion of children's rights and of foster care and adoption.
- ✓ the National Observatory for Childhood, which, every two years, prepares the National Action Plan of interventions for the protection of the rights and the development of minors during the age of development with the aim of prioritizing programs for minors and strengthening cooperation for the development of children throughout the world. The Observatory draws up the biennial report on the condition of children in Italy and on the achievement of their rights.

This Body avails itself of a National Documentation and Analysis Centre on childhood, established through the same law.

In compliance with articles 2, 3, 13, 29, 30, 31 and 32 of the Constitution, which affirm the principles that safeguard the values, dignity and rights of human beings to be protected against all situations, occasions or contexts that jeopardize their existence and development, Italian legislation has been enhanced with new norms aimed at fighting the phenomenon of violence against minors by upholding the need to protect minors as subjects of the law.

In 2000, a constitutional and legislative process was also initiated which has led to significant changes in the institutional system in terms of the progressive enhancement of the autonomy and role of local and regional authorities (pursuant to the principles both of horizontal and of vertical subsidiary) and to the planning and implementation of policies in favour of childhood and adolescence, in particular:

- ✓ the entry into force of Law No. 328 of 8 November 2000, “framework law for the implementation of an integrated system of interventions and social services”, which established a single National Fund for Social Policies and identified a common basis of social services for the entire national territory in the Essential Levels of Social Services (LIVEAS).;
- ✓ the amendment of heading V of the Constitution, which assigns exclusive competence to the Regions for the planning and scheduling of Social Policies, in accordance with the above-cited framework law 328/2000.

A bill is currently under examination in Parliament regarding the ***“Ratification and implementation of the Convention of the Council of Europe for the protection of minors against sexual exploitation and abuse, drawn up a Lanzarote on 25 October 2007, as well as norms for adapting the internal order”***, which provides for additional important modifications to the penal code and to the code of criminal procedure applicable to child abuse.

Finally, we should point out that most of the Italian Regions have reformed their legislation on Social Policies, in particular, with regard to minors. Some examples are:

- ✓ Lombardy (see detail);
- ✓ Abruzzo, which approved the “Regional Guidelines on maltreatment and abuse of minors”, through Regional Council resolution no. 58/5 of 31 January 2007;
- ✓ Emilia Romagna, which approved the “Guidelines on the sexual abuse of minors” through Regional Council resolution of 24 November 1999, and also regional law no. 14 “Legislation on policies for the younger generations”;
- ✓ Piemonte, which approved the “Guidelines for the reporting and taking charge of cases of child abuse and maltreatment by the social assistance and health services” through Regional Government Resolution 42-29997 of 2 May 2000;
- ✓ Liguria, which approved the “Guidelines on the maltreatment and sexual abuse and exploitation of minors” through Regional Government Resolution no. 1079 of 1 October 2004;

- ✓ Veneto, which approved the “Regional guidelines for the development of protection services for children and adolescents” through Regional Government Resolution no. 2416 of 8 August 2008.

In the light of what we have briefly set forth above, it is possible to state that from the 1990s on we have witnessed a profound cultural and legislative change both at the regional and national levels, which has focused, on the one hand, on the interest and rights of minors, no longer considering them as passive subjects, and has, on the other hand, supported the implementation of interventions and activities aimed at preserving the psychophysical well-being of minors from the viewpoint of prevention, support and reparation .

#### *REGIONAL FRAMEWORK FOR THE PROTECTION OF MINORS IN ITALY*

#### REGIONAL RULES

##### **REGIONAL LAW NO. 34 OF 14 DECEMBER 2004, "REGIONAL POLICIES ON MINORS"**

This law introduces policies designed for minors within an organic framework based on the following basic principles:

- the right of minors to have a family;
- the best interest of minors;
- the centrality of the family.

Reforms were made in the system of services by introducing new types of family services, such as family centres and family type communities and by modifying already existing services to make them more similar to a family environment.

An Observatory on minors was also established with the objective of:

- promoting the achievement of the rights of minors and of their families;
- promoting the awareness of institutions and of civil society to the need to protect minors as subjects of the law and as citizens;
- supporting the Region in the promotion and definition of integrated intervention policies for minors.

And with the task of performing the following activities:

- acquiring statistical data to support those who work with children and adolescents with varying responsibilities at the political, institutional, social and cultural levels;
- promoting ad hoc research and in-depth studies;
- monitoring the significant experiences that exist on the regional territory in order to provide suitable responses to needs.

**REGIONAL GOVERNMENT RESOLUTION VII/20100 OF 23 DECEMBER 2004: GUIDELINES FOR THE REORGANIZATION AND ORIENTATION OF SERVICES FOR THE PROTECTION OF MINORS VICTIMS OF VIOLENCE.**

With this resolution, Lombardy approved the document “Guidelines for the Taking Charge of Minors Victims of Violence”, intended for operators and persons involved at the institutional level in the prevention of abuse, taking charge and treatment of minors victims of maltreatment and abuse.

This document provides for:

- the need for an effective global intervention for minors and for their families both in terms of prevention and care;
- the recognition of the various institutions and organizations that take charge of minors victims of violence;
- The need for integration between the different players of the health, sociomedical, educational services, etc.

The main elements contained in the guidelines include:

- definition, type and characteristics of the phenomenon;
- objectives and context of interventions (promotion of the psychophysical health of the minor, identification of problem issues and reparation of damage);
- general principles regarding organizational methodologies;
- training of operators of public and private services;
- Juridical-legal rudiments applicable to maltreatment and abuse.

The guidelines aim to create and increase integration and collaboration between the services operating in the different areas (social, health, sociomedical and educational, in association with the Judicial Authority) that deal with the various phases of intervention linked to the malaise and violence. The services that participate in the phases of taking charge are:

- Approved public and private family guidance centres;
- Services for the protection of minors managed by the national health care system, delegated by the municipality, or managed by the same municipality;
- Social services;
- Emergency services;
- Children's neuropsychiatric services;

- Mother and child services;
- Psychiatric services;
- Addiction services;
- Paediatricians and general practitioners;
- Structures for accommodating minors outside of the family;
- School structures of every type and level;
- Third sector with special social, health and educational competencies.

In order to pursue fully the interests of minors, professionals operating in the above-cited service areas must:

- be capable of intervening rapidly with the aim of protecting minors and helping the family to handle the crisis;
- be capable of taking actions aimed at restoring healthy, functional relations within the family;
- Ensuring effective interventions by providing for the collaboration of all the professional figures working in the other disciplines.

In order for intervention on minors victims of violence to be effective and global, it must provide for: the detection of the signs of the minor's malaise in the context of daily life; protection of the minor in cases of documented situations of malaise by adopting the emergency measures of juridical protection; evaluation, i.e, the performance of all the different diagnostic and prognostic operations aimed at verifying the existence of an evident situation of malaise and at defining the sociomedical and educational framework of the same minor, of the adults of reference and of the emotional relationships that are important to him/her. And finally the therapeutic or support therapy that the services in charge must provide to the minor and to his/her family as soon as possible.

We point out that all the protection measures are to be adopted taking each single situation into account in order to reduce the possibility of worsening the trauma for the victim and to ensure his/her protection; special attention should also be placed in protecting minors in judicial proceedings.

In conclusion, it is possible to state that these guidelines are a valid indicative and methodological tool for service operators because, in addition to providing a theoretical framework for interpreting the phenomenon of child abuse and maltreatment, they outline a specific framework of actions to be taken to fight the phenomenon itself.

#### DEFINITIONS OF THE TERMS USED

**Risk** = in the Italian civil code, the term *prejudice* is applied to indicate the risks that minors may be subject to in given conditions. For example:

**Art. 330. Loss of Parental Custody.** “A judge may pronounce the loss of parental custody when a parent violates or neglects to fulfil the duties connected with parental custody, or abuses of these powers to with serious prejudice to the child. In these cases, and for such serious reasons, the judge may order the estrangement of the child from the family home, or the estrangement of the parent, or the person living with the parent, who mistreats or abuses the minor”.

**Protection:** Article 343 and subsequent articles of the civil code provide for the institution of the **protection of minors**: if parents are unable to exercise parental custody, owing to death or other reasons, the juvenile court initiates a proceeding to protect the minor. Once the judge supervising a guardianship has been informed of the reasons why the proceeding has been initiated, he proceeds to appoint a guardian and a deputy guardian. If no guardian has been appointed by the parent who last exercised parental custody, the guardian is chosen preferably from among the minor’s relatives in ascending line, or from his/her other closest relatives or kindred persons. In any case, the choice must fall on a suitable person of unexceptional conduct who can be entrusted with the minor’s upbringing

The guardian takes care of the minor, represents the minor in all civil proceedings and manages the minor’s property, while the deputy guardian represents the minor when the guardian’s interests go against those of the minor.

In some cases, the judge supervising a guardianship may defer the protection of the minor to the welfare services of the city where the minor resides.

#### Host Family

In Italy, there are two types of regulated child custody procedures for families that are not the minor’s natural family: the institution of adoption and foster care (Law No. 184 of 4 May 1983,):

- The requisite for **adoption** is that the minor be declared adoptable by the Juvenile Court in those cases in which both parents have lost parental custody: this legal institution is capable of guaranteeing minors, who have suffered serious abandonment and maltreatment, the right to live peacefully in a family that is not the minor’s biological family.
- **Foster family care**, is instead designed for minors who are temporarily deprived of a family environment that is able to support, bring up and educate the minor. It is



usually a temporary measure that does not last more than two years, in any case, it does not last longer than the period of time specified in the judgment issued by the Court. It is intended to be a protection for the minor, but also a help for the minor's family of origin: the new family to which the child is entrusted replaces the child's natural family for the time that is necessary. Foster care allows the minor to be taken in by a family that has requested fosterage and that has been selected by the local social services. The foster family's task is to ensure the minor support, upbringing, education and emotional relationships, without taking the place of the family of origin. The social services of the minor's city of residence provide a financial contribution to the foster family for the child's care.

Family foster care is completely different from adoption and differs from it in the following ways:

- ✓ **Temporariness:** foster care provides that the minor return to his/her family of origin; instead, adoption is a process in which the minor's relations with his/her natural family are definitively interrupted;
- ✓ **Preservation of relations with the family of origin:** foster care presupposes that the minor maintain constant and frequent relations with his/her natural family for the entire period of fosterage;
- ✓ **Minor's return to family of origin:** at the end of the period of estrangement;
- ✓ **Legal nature:** legally, foster care does not change the minor's relationship with his/her parents, whereas, through adoption, the minor becomes the child of the new couple in every respect, including a change of the minor's last name.

When family foster care is not possible, the minor may be accepted in one of the residential care centres run by the social services.

### Residence Centres:

In the Region of Lombardy, the host infrastructure for minors run by the social services takes in:

- ✓ Minors who are temporarily lacking the family support they need, and for whom staying within the family household prevents the harmonious development of their personality and of socialization;
- ✓ Troubled minors who are in urgent need of being taken in by a family different from the family of origin;
- ✓ Mothers with children who are in serious difficulty;

- ✓ Young people who continue to remain in a protected environment even though they have become adults.

The following types of residence centres are provided:

- ✓ **Educational community:** private or public host infrastructure for social and educational care which is provided on a continuous basis by qualified personnel.
- ✓ **Family community:** non-profit, host infrastructure for social and educational care provided by a family or by several families within their homes.
- ✓ **Apartments for achieving independence:** apartments for young people who have become adults and who require further support in order to achieve independence.

The city of residence of the minors hosted in the above communities must contribute economically to these services.

#### LEGAL FIGURES

In the Italian system, the Judge is the fundamental juridical figure within the legal system, even with regard to minors. However, he may be called with a different name depending on the functions he performs and the places in which he operates.

Therefore, for clarity we should speak of “**Juvenile and Family Courts**”.

Various judicial offices are involved with minors and the family; they have different competencies; there is no single judicial office for all of the matters covered.

The **Juvenile Court (JC)** is the main and central juridical office with district jurisdiction (one for each Appeal Court district). However, jurisdiction over juvenile and/or family matters is also held by the Ordinary Court, the Judge Supervising a Guardianship, the juvenile and family section of the Court of Appeal and the investigating bodies (the Attorney-General’s Office, the Public Prosecutor’s Office for juveniles, and the General Prosecutors’ Office).

The Juvenile Court is a court of first instance with composed in a special manner (with two stipendiary judges and two lay judges, a man and a woman, specialized in “human” issues). It is a judicial body that specializes in juvenile matters.

It has **civil and penal jurisdiction**:

- ✓ in criminal matters, the Court deals with all proceedings regarding juvenile defendants, regardless of the seriousness of the offence;

- ✓ in civil matters, the Court deals with actions for limiting parental custody, foster care, adoption, issuing authorizations for weddings, acknowledgment of paternity of minors, administrative operations, and other matters..

The **Attorney-General's Office** within the Juvenile Court performs the public prosecutor's functions in criminal proceedings against minors, in addition to promoting measures, by placing requests to the JC, for the protection of minors in the civil code, (limiting of parental custody, debarments, estrangement from family home, initiating adoption proceedings, and other matters).

The **Ordinary Court** deals with separation and divorce proceedings and some actions regarding family "status".

The **Judge Supervising a Guardianship** decides the appointment of a guardian to exercise parental authority for minors without parents (who are dead or have lost custody); has powers of supervision for the enforcement of measures decided by judges regarding the custody of minors; exercises the powers stated in Law 184/83 (declares and enforces the family custody decisions taken by local authority, expresses his opinion on adoptions, and other matters).

Once a measure has been taken to protect the best interest of the minor, it is enforced through the Municipality's social services on the initiative of the Judge Supervising a Guardianship.

#### DECENTRALIZATION OF THE SYSTEM FOR PROTECTING MINORS

We would like to repeat that, following the entering into force in Italy of Law No. 328 of 8 November 2000, "Outline Law for the Implementation of an Integrated System of Interventions and Social Services" and of Law No. 3 of 18 October 2001 for the reform of Heading V of the Constitution, social policies, which also include policies in favour of minors, are the exclusive competence of the Regions, while the functions pertinent to social interventions are exercised by the Municipalities.

### ANNEX 3- LEGISLATION AND CHILD PROTECTION SYSTEM IN FRANCE

#### ACT No. 2007-293 OF 5 MARCH 2007

For over 30 years, the criterion of danger based on sharing expertise in child protection (found under the threat of justice, the potential danger of department). In 1989, the criterion of abuse has emerged.

The Act of March 5, 2007 retains a common criterion for administrative and judicial protection, that of the child in danger or at risk of being broader test than child abuse

Thus, the law of 5 March 2007 amended the Act of July 10, 1989 which established the CASF Chapter VI entitled "Protection of minors abused". It now refers not to the concept of abuse but to the danger or potential danger; so the Chapter VI is now entitled "Protection of minors in danger and gathering information of concern." The device of child protection is underpinned by the notion of children at risk.

#### I. DEFINITION OF CHILD IN DANGER OR LIKELY TO BE

The ODAS (Observatory of Decentralized Social Action) refers to "children in danger all children in danger or at risk of being maltreated as children". The minor in danger must be understood within the meaning of section 375 of the Civil Code, that is to say that health, safety or morals are endangered or whose conditions of education or physical, emotional and intellectual and social severely compromised.

The child potentially at risk is a child who knows the lives that could endanger their health, safety, morals, education or maintenance, but not for much abused.

The term "child at risk" insists that the child is in a situation where "the potential danger that exposes her home environment" is sufficiently proved to warrant intervention.

The abused child is "a child victim of physical abuse, sexual abuse, acts of cruelty, gross neglect of having serious consequences on their physical and psychological.

#### II. ADMINISTRATIVE PROTECTION: THE CENTRAL DEVICE (ARTICLES L. 226-1 AND FOLLOWING OF THE CODE OF SOCIAL ACTION AND FAMILY).

##### 1. The transmission device information of concern:

The law of 5 March 2007 the council has the backbone of the protection of children, charging him to collect, evaluate and process information of concern relating to children at risk or likely to be.

It aims to improve the system of departmental reporting children at risk and to better coordinate with the educational assistance procedure implemented by the juvenile judge.

Any information that may raise concerns that a child is in danger or risk of danger may be in need of help, must be transmitted to the local unit for evaluation and action give. Specialized cells for collecting, processing and evaluating information of concern, responsible for centralizing information has been established for this purpose.

The president of the council is at the center of the circuit for transmitting information from a minor concern in danger or at risk of being communicated to it by those who implement the policy of child protection as well as those it helps. The purpose of the new provisions of the Act of March 5, 2007 is to allow the president of the council to know all the children in difficult situations in the department.

After evaluation, the individual data are, if necessary, the subject of a report to the judiciary by the President of the General Council (the most serious situations where you have such as removing a child from the family against the will of parents or inability to provide sufficient administrative protection).

## 2. Administrative protection measures.

The administrative protection measures are decided by the President of the General Council after a review panel and conducted by the department of Welfare of Children in conjunction with maternal and child health (PMI) and Multipurpose Social Service Sector (PSS). The father, mother, any other person exercising parental authority or tutor shall be informed, unless that information is contrary to the interests of the child, especially if it endangers.

The administrative protection measures normally require the agreement of the legal representatives of the minor. These safeguards may include minor children (under 18) but also major under 21 who are experiencing difficulties that may seriously compromise their balance.

### Different modes of reception:

- Day care: Article L. 224-2 of CASF

By decision of the President of the General Council, the service can accommodate any minor ESA for all or part of the day in a place, if possible, near his home. This home was not only intended to provide educational support to children but also provide support to his family in the exercise of parenting.

- The timely and sequential Home: Article L. 222-5 of CASF

By decision of the President of the General Council are taken care of minors who cannot remain temporarily in their usual living environment and whose situation needs a home full or part-time, scalable to their needs, especially emotional stability, and that children with special difficulties requiring specialized care, family or in an institution.

- Specialized schooling in case of special difficulties: Article L. 222-5 of CASF

For minors who face particular difficulties, it is possible to propose a special reception, family or in an institution or a social service or medico-social experimental.

- Reception of emergency in case of danger: Article L. 223-2 of CASF

In case of immediate danger or suspicion of immediate danger on a minor who has left the family home, the service of the Child Welfare may, within the framework of its prevention, for a maximum of 72 hours, welcome minor. He must inform the minor's legal representative and the prosecutor.

If at the end of this period, the return of the child in his family could not be organized, a procedure for admission to the ESA or, failing agreement between the parents or guardian, the judicial authority is seized.

When it is impossible to obtain the consent of the minor's legal representatives to take a measure of administrative protection, when the representatives are unable to comply with the prescribed action or when the maintenance of the child in the home does not guarantee its security, the authority may take legal action for a measure of legal protection is ordered.

### III. LEGAL PROTECTION: AN ALTERNATIVE MECHANISM (ARTICLES 375 TO 375-3 OF THE CIVIL CODE).

Legal services may not, in principle, intervene in cases of grave danger and impossibility of intervention from social protection.

#### ✓ **The actors.**

The judicial authorities intervene if the health, the safety or the morality of the child is in danger or if the conditions of its education are seriously compromised. They can be directly seized or as a result of the social services of the department. All the minors are concerned, unconditional of nationality. The minor can be confided by the judicial authority either to the Social security in the childhood or in the judicial protection of the youth.

- Children's judge: article 375 and following ones of the Civil code.

If the health, the safety or the morality of a not emancipated minor is in danger, or if the conditions of its education are seriously compromised, children's judge can take measures of educational assistance.

- public prosecutor: article 40 of the Code of criminal procedure.

Public prosecutor can receive descriptions concerning the minors in danger. When he considers it necessary, he can ask for further information in particular the educational service with the court, Which will establish a fast evaluation of the situation of the young person.

He can direct the procedure to the services of administrative protection if the shape which takes this ill-treatment does not put in danger the life of the child. He can bring in children's judge and/or investigating judge when the ill-treatment is qualified as crime or as offence by the Penal code (article 40 of the code of criminal procedure). Finally, he can proceed himself exceptionally to an emergency placement if the situation requires him. In case of emergency, the parquet (public prosecutor's department) arranges the same powers as children's judge to order a measure of educational assistance (audience), in load (responsibility) for him to seize in 8 days children's judge.

✓ **The measures of educational assistance (audience).**

· conditions of implementation and guiding principles:

Children's judge can act at the request of father and mother, of the person or the service to whom the child was confided(entrusted), of the guardian, public prosecutor (informed by thirds(third parties), social workers, etc.) or about the very child. Children's judge can also seize himself. Having heard the minor, his family and the witnesses he will take the protective measures which are imperative. Every time it is possible, the minor is maintained in its environment; a person or a service is then in charge of bringing help and advice to the family.

When it is necessary to remove the child of its environment, the judge can decide to confide him to that of the parents who was not given custody of it, in a member of the family or for one person reliable, in a service or in a specialized establishment. They can nevertheless during a judgment delegate a part or all their privileges. In certain cases very grave, the civil judge can pronounce the loss of parental rights. These measures may always be revised by the judge.

Children's judge always has to try hard to collect the support of the family in the envisaged measure and to pronounce in strict consideration of the interest of the child. Indeed, the interest of the child, the consideration of its fundamental, physical, intellectual, social and emotional needs as well as the respect for its rights have to guide all the decisions concerning him (article L. 112-4 of the CASF).

The judge fixes the duration of the measure in his decision. When the child is placed, it cannot exceed 2 years. This deadline can be lengthened if the relatives present grave, severe and chronic relational and educational difficulties, and which affect durably their skills in the exercise of their parental responsibilities.

· The rights of the minor in the procedure:

The minor, his relatives, their lawyers, the person or the service to whom the child was confided can appeal of the decision returned by children's judge in 15 days which follow his announcement. The appeal is also opened to public prosecutor.

The law of March 5th, 2007 dedicates the right for the child to be heard by the judge, in the affairs which concern him, on two conditions: That he made the demand, and whether he is old enough to difference. Furthermore, the judge has to inform the child that he has this right and that he also has the right to be assisted by a lawyer. These measures are in accordance with the article 12 of the International Convention on the Rights of the Child.

Are in accordance with the article 12 of the International Agreement one the Rights of the Child. This measure. It puts an obligation to denounce ill-treatment imposed on minors: the fact, for whoever having had knowledge of hardships, ill-treatment or sexual infringements imposed on a fifteen-year-old minor not to inform the judicial or administrative authorities about it is punished for three years of detention and for 45000 euro of fine.

#### *DEFINITIONS OF THE TERMS USED*

**Familiar Welcome:** Family or single person who welcomes in his/her home minors entrusted to child welfare. The activity of the residential welcome is home to accommodate children of Social Assistance for Children of the geographical area where it is located.

- Day care: Article L. 224-2 of CASF

By decision of the President of the General Council, the service can accommodate any minor of Social Assistance for Children for the day, in a place, if possible, near his home. This home was not only intended to provide educational support to children but also provide support to his family in the exercise of parenting.

- Reception point and sequential: Article L. 222-5 of CASF

For minors who face particular difficulties, it is possible to propose a special reception, family or in an institution or a social service or medico-social experimental.

For over 30 years, the criterion of danger based on sharing expertise in child protection (found under the threat of justice, the risk of danger in the department). In 1989, the criterion of abuse has emerged. The Act of March 5, 2007 retains a common criterion for administrative and judicial protection that of the child in danger or at risk of being broader than child abuse.

Thus, the law of 5 March 2007 amended the Act of July 10, 1989 which established the CASF Chapter VI entitled "Protection of minors abused".



There is now no longer refers to the notion of abuse but to the danger or potential danger, so Chapter VI is now entitled "Protection of minors in danger and gathering information of concern." The device of child protection is underpinned by the notion of children at risk.

**Child in danger or likely to be:** The ODAS (Observatory of Decentralized Social Action) refers to "children in danger all children in danger or at risk of being maltreated as children.

*The minor in danger* must be understood within the meaning of section 375 of the Civil Code, that is to say that health, safety or morals are endangered or whose conditions of education or physical, emotional , intellectual and social development are seriously compromised.

*The child potentially at risk* is a child who knows the lives that could endanger their health, safety, morals, education or maintenance, but not for much abused. *The abused child* is "a child victim of physical abuse, sexual abuse, acts of cruelty, gross neglect of serious consequences HAVING on Their Psychological and physical.

**A guardian** is a person responsible for ensuring the interests of a minor or an incompetent adult placed under guardianship.

**Abandonment** is the act of abandoning, neglecting or voluntarily separate the concept of a minor is caught by the definition of harm (Article 375 of the Civil Code, that is to say that health, safety or morals are endangered or whose conditions of education or physical, emotional, intellectual and social development are seriously compromised).

#### LEGAL FIGURES

- ✓ The role of juridical figure (as judges, public prosecutor) in the minors' protection system: justice service versus civil service.

The judicial authorities intervene if the health, safety or morals of children are in danger or if the conditions of his education are severely compromised. They can be entered directly or consecutively social services department.

All minors are involved, irrespective of nationality.

The minor may be given by the judicial authority either in Child Welfare is the judicial protection of youth.

- ✓ The juvenile judge: article 375 and following of the Civil Code.

If health, safety or morals of an unemancipated minor is in danger or if the conditions of education are seriously compromised, the juvenile judge can take educational measures.

- ✓ Attorney of the Republic: Article 40 of the Code of Criminal Procedure.

The district attorney can receive alerts on minors in danger. Where it considers it necessary, he may request further information including educational service with the court (SEAT), which will establish a rapid assessment of the child's situation. It can refer to the procedure of administrative protection services if the form of this abuse does not endanger the life of the child. It may involve the juvenile court and / or the judge when abuse is defined as a crime or offense by the Penal Code (Article 40 of the Code of Criminal Procedure).

Finally, it can make itself an exception to the placement of emergency if the situation requires.

In an emergency, the floor has the same powers as the juvenile judge to order a measure of educational assistance, provided that it seized in the eight days the juvenile judge.

#### DECENTRALIZATION OF THE SYSTEM FOR PROTECTING MINORS

France has a dual system of child protection which falls under the jurisdiction of the administration (administrative protection) and the alternative, that of justice (judicial protection).

The protection is entrusted to administrative departments and the State provides legal protection of youth through the judicial authority.

#### *LEGAL FRAMEWORK FOR THE PROTECTION OF MINORS IN FRANCE*

##### NATIONAL RULES

##### *Law n°2000-196 of March 6th, 2000*

It establishes a Defender of the children, the independent authority, asked to defend and to promote children rights. It receives the individual complaints of minors or their legal representatives who consider that a public or private person did not respect children rights. The complaints can be presented to him) by the state-approved associations which defend children rights.

The defender of the children carries in the knowledge of the judicial authority the affairs susceptible to give rise to a measure of educational assistance such as planned by the article 375 of the civil code. He informs competent chairman of the General Council of the affairs susceptible to justify an intervention of the service of the social security in the childhood.

#### ANNEX 4- LEGISLATION AND CHILD PROTECTION SYSTEM IN BULGARIA

In 1991 the Republic of Bulgaria ratified the UN Convention on the Rights of the Child. In 1992, ratified the Convention on Human Rights and Fundamental Freedoms in 1994 - the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, 2001 - Convention № 182 concerning the Prohibition and Immediate Action for Elimination of Worst Forms of Child work in 2002 - the Convention for the Protection of Children and Cooperation in Respect of Intercountry Adoption in 2003 - the Hague Convention on Civil Aspects of International Child Abduction and the European Convention on Recognition and Enforcement of Decisions for custody and restoration of the exercise of custody.

#### *LEGAL FRAMEWORK FOR THE PROTECTION OF MINORS IN BULGARIA*

In 2001 the Republic of Bulgaria ratified by law Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography.

Regulation of public relations related to child protection is based on principles set out in the Bulgarian Constitution<sup>28</sup>.

The basic principle enshrined in the Constitution and elaborated by special laws and regulations is the commitment of government to protect and ensure the fundamental rights of the child in all spheres of public life by providing and maintaining measures to protect children's rights, as in a family environment and through placement in specialized institutions.

*Constitution of the Republic of Bulgaria* adopted in 2001 determines every citizen has the right to life, and encroachment on human life shall be punished as the most serious crime (art. 28) and nobody may be subjected to torture or to cruel, inhuman or degrading treatment, and forced assimilation (art. 29, para1).

Bulgarian legislation is constantly changing since 1990 towards ensuring the rights and child protection.

*Child Protection Act* has been adopted in 2001. The Act is one of the main instruments and regulations to guarantee children rights and protection measures for children at risk.

Besides, Bulgaria has a *Family Code*<sup>29</sup> which its main objective is overall protection of children, their upbringing and safeguarding and the consolidation of the family (Article 2).

The Family Code sets provisions for any relations based on marriage, kinship and adoption; guardianship and trusteeship. Articles 49 to 67 set the provisions regarding adoption; guardianship and trusteeship are provided for in Articles 109 through 128. According to the Family Code, the key bodies in the process of adoption are the Regional Directorates for Social Assistance (RDSA) and the Directorates for Social Assistance (DSA); the first maintaining registers of children eligible for full adoption (Article 53c, Paragraph 1 ), as well as registers of prospective adoptive parents, willing to undertake full adoption (Article 57b, Paragraph 1). Both Directorates are involved in the process of adoption. The court procedures for inclusion in the adoption register may be initiated by the Director of the Regional Directorate for Social Assistance (Article 53e, Paragraph 1). A representative of the Directorate is participating in the court proceedings. The officials of the Directorate for Social Assistance explain to the individuals willing to adopt a child the consequences of the adoption being approved prior to their consent. The Directorate for Social Assistance conducts a social study on the individual with regards to his/her suitability to become an adoptive parent.

A report containing the relevant conclusions must be drafted (Article 57a). The Directorate for Social Assistance is bound to assist and supervise upon adoption by monitoring the child's upbringing and ascertain that his/her rights and legal interests are observed. Annual reports are prepared for this purpose and presented to the respective RDSA (Article 63a).

*The Social Assistance Act* (SAA) regulates the general framework of the overall social assistance policy. The Council of Ministers sets out the state's policy on social assistance (Article 4, Paragraph 1 of the SAA). It is the discretion of the Minister of Labour and Social Policy to independently develop, coordinate and implement the state policy in the field of social assistance (Article 4, Paragraph 2 of the SAA).

The state policy in the field of social assistance is implemented in co-operation with regional administrations, local governance bodies and non-profit entities creating opportunities and assisting with the implementation of programmes and projects in this sphere (Article 4, Paragraph 3 of the SAA). This co-operation is implemented through the Social Assistance Council – a public advisory body to the Minister of Labour and Social Policy.

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<sup>29</sup> "Art. 14. Family, motherhood and children are protected by the state and society and art. 47 that raising and upbringing of children until their majority is right and duty of parents and is supported by the state, paragraph1 and paragraph4 children left without care of their relatives, are under the protection of the state and society.

*Penal Code* of Bulgaria defines minors not turned 14 years old; no criminal responsibility. Minors (aged 14 years but not over 18) or are criminally liable as they are reduced down time for custody. With recent changes in the Penal Code of 2002 and 2003 is compounded to criminal liability and increased penalties for the periods<sup>30</sup>.

Measures are identified and adopted changes to the Labor Code, to institutional measures to reduce the worst forms of child labor.

There was no difference based on gender violence in the definition of some crimes, however, refer only to children of female art.177

In criminal law a distinction is made age of minors, both perpetrators and victims of crime. Regarding the age of the offender - minors (14 years according to the Bulgarian legislation) shall not bear criminal responsibility for minor special rules apply (PC)

Penal Code provides, in certain cases, the offense committed by a juvenile, to consider punishment and be determined not by a court of a special committee on special administrative procedures provided for in ZBPPMN. For crimes and offenses committed by minors (aged between 8 and 14 years) that committee ruled only since minors are not held criminally liable.

In Penal Code is criminalized violence against children by parents, incest, crimes committed by the woman, the murder of a parent / guardian. However, NK assumption that if it followed the marriage between the perpetrator of forced sexual intercourse or acts of sexual gratification and the victim, the perpetrator is not punished or sentence is not executed.

According to the *Law on Execution of Penalties* (last amended. and supplemented 2002) currently serving a sentence minors "Imprisonment" separate from the adults and light regime. Early next year is scheduled to begin implementation of the sentence by the court "Probation" with regard to perpetrators of minor crimes.

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<sup>30</sup> Murder or manslaughter of a child under 18 of age, committed by their parents (art. 116); Murder of a newborn child (art. 120); Assisting suicide or solicitation of minors (art. 127); Bodily injury to a child (art. 131); Infected with venereal disease minors (art. 135); Abduction (art. 142) and unlawful imprisonment (art. 142a) minors; Fornication with a minor (art. 149) minor and (art. 150); Intercourse with minors, as far as the act committed is not art. 152 - rape (art. 151); Rape of a female person under 18 years (Art. 152); Solicitation of prostitution, fornication or acts of intercourse minors (art. 155); Abduction of a female person under 18 years of age in order to be granted for perverse action (art. 156); Homosexuality with minors (art. 157); Creation, distribution and possession of materials containing pornography involving minors or anyone looking like minors (art. 159); Trafficking in persons under 18 years (Art. 159a); Leaving of a person under guardianship or parenting without adequate supervision and care, which creates a danger to his physical, mental or moral development (art. 182); Torture of minors person located under the care of the perpetrator or whose education is entrusted (art. 187); Coercing a minor to commit a crime or prostitution (art. 188); Systematic use of begging to do a child by a parent or guardian (art. 189); Forcing his child under 16 years of age by the parent to live with the basis of married adult (art. 190); Solicitation or facilitation of a minor under 16 years of age and the minor to live in a conjugal basis with the offender (art. 191); Receiving a ransom of a parent or other relative, to allow his daughter or kinswoman not reached the age of 16 years to live with another spouse (art. 192); Upivane or sale of alcoholic beverages to a person, not over 18 years (Art. 193); Or solicitation to support the use of drugs to minors (chl.354b).

**Law on combating human trafficking:** In 2003 Law was adopted to combat human trafficking, which regulates the measures for the protection and assistance to victims of trafficking, especially women and children. And secondary legislation thereto: Rules for shelters and temporary accommodation centers for protection and assistance to victims of trafficking and Rules of Organization and Procedure of the National Commission for Combating Human Trafficking. With these rules created a central authority to combat trafficking and local structures to it. A system of care for victims of trafficking was set up.

### **Interrogation of Minors witness<sup>31</sup>**

**Act to combat nuisance minors:** In 2004, pending adoption of the amended Act to combat nuisance minor's century it apply educational measures (Article 13) in terms of minor perpetrators of antisocial behavior. Educational measures are implemented to prevent delinquency of minors and to ensure normal development and education of offenders.

Minors who are exempted from criminal liability under Art NC 61 in the imposition of educational measures - are considered crimes in the manner provided for in ZBPPMN. Be taken against them following educational measures:

- a) Reprimand;
- b) An obligation to apologize to the victim;
- c) A warning;
- d) Transmission of the parents or the person replacing them with a duty of special care;
- e) (Amended - SG. 110 of 1996) placed under the oversight of the educational workforce;
- f) Placing under educational supervision of a public educator;
- g) A requirement to remove the minor work with your damage, if it is in its possibilities;
- h) Required to undertake a public benefit;
- i) (Amended - SG. 110 of 1996) accommodation in socio-educational boarding school;
- k) (New - SG. 110 of 1996) warning of accommodation in educational boarding school for a trial period of 6 months;
- l) (New - SG. 110 of 1996) accommodation in educational boarding school.

<sup>31</sup> Art. 99. (1) minor witness is interrogated in the presence of a pedagogue or psychologist where necessary and in the presence of a parent or guardian. (2) the minor witness is interrogated in the presence of persons under the preceding paragraph, if the body finds it necessary. (3) With the permission of the authority conducting the interrogation, the persons under para. One may ask questions of the witness. (4) The body conducting the interrogation, explaining the need of the minor witness to give truthful testimony, without warning about responsibility.

On juvenile defendants who are not exempted from criminal liability by educational measures under Art. 61 NC CPP provides special rules for bringing a criminal case - mandatory participation of counsel, a lawyer conducting the preliminary investigation by investigators with appropriate training, the hearing required by the jurors, teachers or educators, to the participation of parents in the criminal case , special security measures - supervision of parents or guardian; oversight of the administration of the educational establishment in which the minor is placed; supervision of the inspector in teaching room or child of a local commission to combat nuisance of minors; detention remand, the measure of remand in custody shall be in exceptional cases. The case against minors is kept behind closed doors. Crimes committed by the person as a juvenile, not taken into account in applying the provisions of NC on a dangerous relapse. Art. 62 NC - A juvenile may be imposed only following penalties: detention, probation for the age of 16, public censure, denial of the right to exercise a profession or work of art. 37, paragraph 7. Prison sentences are served in special correctional institutions.

Once they come of age they moved to a prison or correctional labor dormitory. To complete their education or qualifications on the proposal of the Pedagogical Council authorized the prosecutor they could be left in the correctional institution at the age of twenty years.

**Criminal Procedure Code:** There are no specialized courts. Cases are considered of general, there are some special rules for Criminal Procedure Code examination of a minor and an opportunity to examine the case in closed session when it is necessary to preserve morality, or when necessary to prevent disclosure of the facts of the intimate life of citizens (article 262 Criminal Procedure Code). Minor witness / victim of violence including / interview is at the discretion of the authority of the prior proceedings, in the presence of a pedagogue or psychologist, if necessary - in the presence of a parent or guardian.

The minimum age for sexual consent is valid for 14 years and is the same for girls and boys. The amendments to PPC 2004 it is also uniform in heterosexual and homosexual contacts. According to NC savkupleniya with children not reached age 14 is punishable. It is also punishable if an adult (over 18 years) made sexual contact with a person over 14 years, the property does not understand the importance of intervention.

For violent crimes against children are signals transmitted by the common rules in the Code of Criminal Procedure - art. 186 and Art. PPC 187. General obligation for all citizens and officials to notify a crime - art. CPC 174.

With PPC the minor defendant must be appointed counsel in criminal proceedings attorney-art. 70, para. 1, item 1 CPC, legal aid under Art. 15 of the Law on Child Protection. Art. 76 PPC - special representative is appointed by the bodies of pre-trial proceedings or court of the minor victim, if the interests with those of the parent / guardian are different i.e. where the parent or guardian is charged with a crime of violence against children. Art. 76, para. PPC - (2) (New - SG. 70 of 1999) Where the interests of the minor victim and his parent, guardian or custodian are



contradictory, the relevant authority shall appoint a special representative - a lawyer on his behalf shall exercise the rights under Art . 52 and 60. Participate as a special representative charge in criminal proceedings. By Bill on Domestic Violence - in particular proceedings before the district court to issue an order of protection requiring measures to protect from violence, social protection and rehabilitation.

The interrogation of minors is governed by the CPC - art. 99. Witness protection - art. 97a PPC. Art. 76 CPC - special representative is appointed by the bodies of pre-trial proceedings or court of the minor victim, if the interests with those of the parent / guardian are different i.e. where the parent or guardian is charged with a crime of violence against children. Art. 76, para. (2) Where the interests of the minor victim and his parent, guardian or custodian are contradictory, the relevant authority shall appoint a special representative - a lawyer on his behalf shall exercise the rights under Art. 52 and 60. Participate as a special representative charge in criminal proceedings. Art. 47, para. CPC 5 - The prosecutor may bring a civil action in favor of persons who, because minority cannot defend their rights and legitimate interests

***Law on Protection against Domestic Violence:*** This law regulates the rights of victims of domestic violence, protective measures and procedures to enforce them. (2) (Supplemented - SG. 102, 2009, effective on 22/12/2009) Liability under this Act does not preclude civil, administrative-and criminal liability of the offender.

Art. 2. (Amended - SG. 102, 2009, in force from 22.12.2009) (1) Domestic violence is any act of physical, sexual, psychological, emotional or economic violence, and the experience of such violence involuntary restriction of privacy, personal freedom and individual rights committed against persons who are in a relationship who are or were a family relationship or de facto marital union. (2) Mental and emotional abuse on a child is considered and any domestic violence committed in his damage.

***Law on protection from discrimination***<sup>32</sup>

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<sup>32</sup> Art. 1. This Act regulates protection against all forms of discrimination and contribute to its prevention. Art. 2. The purpose of the Act is to provide every person the right to: 1. equality before the law; 2. equal treatment and opportunities for participation in public life; 3. effective protection against discrimination.

Art. 4. (1) (Supplemented - SG. 70 of 2004, in force from 01.01.2005) is forbidden any direct or indirect discrimination based on sex, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status or any other signs established in law or international treaty to which Bulgaria is a part.

Art. 5. Harassment on the basis of the signs of art. 4 para. 1, sexual harassment, incitement to discrimination, harassment and racial segregation, and the construction and maintenance of the architectural environment, which hampers the access of persons with disabilities to public places, shall be deemed to be discrimination.

### DEFINITIONS OF THE TERMS USED

#### **Children at Risk" is a child (Law on Child Protection):.**

- I. whose parents are deceased, unknown, deprived of parental rights or whose parental rights are limited or child is left without their care;
- II. who is a victim of abuse, violence, exploitation or other inhuman or degrading treatment or punishment within or outside the family;
- III. for which there is a risk of harm to the child's physical, mental, moral, intellectual and social development;
- IV. who suffers from disabilities and diseases of *trudnolechimi* found by a specialist;
- V. e) which are at risk of dropping out of school or having dropped out of school.

**Abandonment-term** has two applications - legal and non legal. According to legal definitions of "abandonment" is a recall or withdrawal of interest by terminating the relationship, which is available at no intention of reopening it.

Given the lack of internationally accepted definition of "abandonment" in general, in our work we deal with it as follows: when the identity of the parents is not known or not known where they are, the child was left in a situation that causes him or a fear of serious injury and where the parent has failed to maintain contact or provide adequate child support for a certain period of time.

When speaking of abandoned young people should keep in mind: orphans, young people who are separated from their families because they do not care about them or deprive them of education, young people who are rejected by their families. There are two age groups: 0 to 14 years for children from 14 to 18 years for boys.

**Rights and duties of guardian (by Family Code)** Art. 164. (1) The activities of the guardian is honorary. (2) The guardian of the child has rights and obligations under Art. 125 and 129, when a child is placed with a foster family - those of art. 129. (3) The guardian of the interdicted person is obliged to care for him to manage his property and to represent it before third parties. Management and disposition of property of the person under guardianship Art. 165.(1) The guardian shall manage the property of the person under guardianship to wisely and in its interest. (2) guardian within one month is required to inform the guardianship and custody of acquired after the formation of a stewardship property of substantial value to be entered into the inventory of art. 159, para. 1. (3) The guardian must submit funds to the person under guardianship on behalf of the bank within 7 days of receipt. In due time he paid amounts due to the interest rate. (4) The disposition of property of the person under

guardianship shall apply accordingly Art. 130, para. 3 and para. 4, first sentence. The request for authorization guardian applies opinion of legal guardianship council.

**Child welfare** is a set of interrelated elements - physical security, physical, mental and emotional health, level of education, ethics, culture and moral sotsiabna adherence, which predetermine the degree of development of family socio-economic environment.

**The role of juridical figure** (as judges, public prosecutor) in the minors' protection system: justice service versus civil service.

One of the major problem is that still the juridical system does entail specific provisions for dealing with minors. There are few projects attempting to establish a model for child hearing, protected environment for children victim of violence; however these attempts still need to be reflected in the normative basis.

Another important feature of the system is that there are special structures dealing with so-called anti-social behavior of minors, which are old-fashioned and remains from the socialist era. This system allows for not making any differences between minors victim of violence and perpetrators. Often the measures include separation from the native family – in special residential facilities; the later have been criticized for years by NGOs and human rights organizations.

**The decentralization of minors' protection system:** from the central government to regional/local government.

The system is more or less mixed – the mayor/municipality structures are entitled with child protection functions on the local level; however the funding of their activities comes from the central power in Sofia.

The local Child Protection Departments are subordinated to the (local) Departments for Social Assistance, which are structures of the central Agency for Social Assistance.

Residential institutions for children are de-centralized (managed by local municipal administration). There is an exception – the homes for children aged 0-3, which have a statute of hospitals and are directly subordinated to the central power (the Ministry of Health).

## *SPECIAL PROTECTION MEASURES IN BULGARIA*

### **CHILD NEGLECT AND ABUSE**

Prevention of child abuse understood as availability of mechanisms for identification, informing about and registering abuse cases, like having legal proceedings that observe the best interest of the child, like developing a network of services for support and recovery of victims of abuse, is still rather a desire than a practice. The problem with informing about and registering the cases of child abuse in our country continue to be very serious in two main

fields – education and healthcare, where there are no clear rules for informing about and registering abuse cases, neither introduced policies for secure and safe environment for children. This finding can be illustrated unfortunately very vividly by the increasing number of cases of violence among children in schools. The activities performed are in the field of restrictions and repression, and not in the field of care and support.

The practice of hearing of children victims or witnesses of crime in Bulgaria also continues to be far from the UN standards and from the leading practices in other countries. Children continue to be interviewed repeatedly (over 6-7 times) by people who are not specially trained for that. None of the specialists who perform the pre-trial and trial proceedings is prepared to work with children in general and in particular to work with children victims or witnesses of crimes. The consequences are considerable and negative both for the justice system and for meeting the best interest of the child.

There are considerable difficulties in achieving real clarity with the problems of child abuse. There is no data about the number of cases which involve children. The existing statistical data does not allow understanding how many and what type are the perpetrators of crimes against children, what is the share of sex crimes, what is the age of children victims or witnesses. There is no official data about the people convicted for crimes against children.

The analysis of strategic and programme documents related to counteracting the traffic and exploitation of children shows lack of clear indicators for monitoring the results, funding for the envisaged activities is not guaranteed, funding by external donors is very much relied upon, there is no responsibility to publish an official report on the implementation of these plans and programmes, what are the periods for analysing what has been achieved and announcing it. This makes them to a great extent just an intent without the necessary functionality, efficiency and reporting.

Data from the surveys of child trafficking in the country show that the main reasons for involving children in trafficking and different forms of exploitation are poverty of their families, as well as specific cultural practices in part of the minority communities. Still there are no community-based services to support the social integration of children victims of trafficking. At this stage there are mainly crisis centres of closed type which are intended for only temporary placement up to 6 months or as an exception up to one year. In the long-term victims go back to their community and there are no opportunities created to support their social integration.

#### CHILD AND JUVENILE JUSTICE

In Bulgaria there are two acts that are in force in parallel – Child Protection Act (CPA) and the **Combating the Antisocial Behaviour of Minor** and Under Aged Persons **Act** (CABMUPA) without clarity which one has a priority in the cases where there is a child in conflict with the law, however not a subject of criminal proceedings. Main problem is the lack of an institution

to be entirely responsible for the case, to follow its development and the need for change, i.e. to “manage the case”, if we use the social work vocabulary.

There is a serious breaching of the rights of minors involved in perpetrating a crime by adults. These children are not recognized as victims, and fall under the CABMUPA correctional measures with launching educational cases by the Local Commissions. Children under 14 are subject to the correctional measures under the CABMUPA, and not to protection measures under the CPA, which is obvious breach of their rights.

The system is formed of different institutions under different ministries, including different state and municipal structures, without guaranteed clear procedures for the interaction between them. Each institution operates under its own statutory framework without taking into consideration the other statutory acts, which leads to lack of guarantees for the best interest of the children in conflict with the law.

The current system for combating the antisocial behaviour is inefficient and is characterised by the lack of specialised training of almost all professionals involved in it. It very existence hinders the building of a modern, professional, child-centred system of prevention and intervention in the child criminal behaviour and limits the opportunities for interaction between the criminal proceedings and the child protection system.

#### STREET CHILDREN

The development of a child protection system in the country allowed to a great part of these children to be provided efficient protection. Unfortunately in many cases this meant placing in specialised institutions or residential type establishments. There is no data that these children were retained in family environment or have been proposed placing in alternative family care. Data for 2008 shows that there are five operational around the clock shelters in the country, with 137 children using their services (reduced by 45 children compared to 2007). The eight Street Children Centres provided services to 145 children in total (361 in 2007).

In the recent years the number of children living on the street with no contact with their families is reducing. They can be seen only in Sofia and another 2-3 big cities in the country. The bigger part of the street children are children working on the street, who beg, collect various scrap materials, are involved in some petty theft and other means to make their living. Most of these children do not go to school, continue to be in high risk of abuse, trafficking, sexual and other forms of exploitation.

## ANNEX 5- LEGISLATION AND CHILD PROTECTION SYSTEM IN ROMANIA

The legal framework in Romania is developed at national level and has local strategies and plans regarding child protection adopted at the level of different counties. In Romania, there are 42 counties, each one of them having a council which decides the local strategies and financial allocation. In the field of child protection, based on the national strategy and plan and according to the local need, each council establishes priorities at the county level to be funded from the state, local budget and European Union funds. Eventually, the strategy and plan is approved by the county council through a decision, which can be changed by a new council decision, when needed.

The main laws targeted to minor victims of violence are:

### ***Law no. 18/1990 ratifying the Convention concerning Child rights***

This Law ratifies the Convention concerning Child rights. The law has only one article on transposing the Convention into the Romanian legislation. All the regulations included in the Convention are part of the Law, which makes it applicable in the legal system in Romania.

### ***Law no. 272/2004 on the protection and promotion of children rights.***

This law, regulates the legal frame concerning the promotion, monitoring and application of the children rights” (art. 1 of the Law), as well as any breakages of the law regulations.

The Law establishes the institutional framework for the child protection system emphasizes and describes the rights of the children (according to the provisions in the UN Convention on Children Rights and the Romanian Constitution) and regulates the measures to protect the rights of the children.

According to the Law, where the children are not protected and taken care in their families is the responsibility of the local administration institutions to evaluate the situation of the child and establish the best way to protect the rights of children, usually by offering the child a normal life in a temporary family, under the care and support of a tutor or by being offered care and support in a placement center.

New regulations included in the Law, Chap. VI - Child protection against exploitation (art. 85-112) – observe not only the provisions of the UN Convention on child rights, the Optional Protocol to the Convention of the Rights of the Child, child trafficking, child prostitution and infantile pornography, the provisions of ILO Convention no. 182/1999, as well as other international documents ratified by Romania.

The new regulations concern the child abuse and neglect, and emphasize on measures to protect the child from any forms of violence, abuse, ill treatment or neglect. It also provides for the obligation of all employees from private or public institutions who, come in contact with children who suffered from any form of violence, abuse, ill treatment and neglect to announce the General Directorates for Social Assistance and Child Protection Directorates (DGASPC) in order to take the necessary measures (art. 85, art. 89, L.272/2004) and to act in the sense of banning the physical punishment of the children, under any form and in any environment as well as to ban depriving children of their rights, since this implies endangering the child's life, physical integrity, physical or psychological health and their development (art. 90, L.272/2004).

These areas of intervention – included in the integrating concept of violence against children – are approached by the law in an explicit and detailed manner, from a multisectoral and an ample internal and international cooperation perspective.

Article 89 of Law 272/2004 defines the acts of abuse and neglect, since these activities were not regulated before this law was issued.

Article 90 acknowledges and admits the existence of cases of violence against children, not only at the family level, but also at the institutional level and underlines the emergency of taking measures of preventing and controlling violence against children.

The Law explicitly bans the application of any physical punishments and the deprivation of the child's rights which can endanger his/her life and development, in any place and context in which the child is placed. The article establishes the child's right to have his/her personal dignity and integrity respected, to be protected against any form of physical abuse or against any acts that can endanger him/her not only within the (natural or foster) family, but also in the institutions in which the child is placed (day care, kindergarten, placement centre etc.).

Article 91 regulates the responsibility of each person (medical personnel, educational staff, care taker, family worker etc.), who because of the responsibilities incurred by his/ her job, can easily observe the child for a sufficient time period, and notify the responsible authorities of possible acts of abuse or neglect in order to assess and intervene to secure the environment for children or find a solution for protection, including removing the source of abuse. According to this article, it is not necessary for the person who files the complaint to have material evidence, the existence of elements that generate suspicion concerning a potential abuse being explanatory enough.

In order to facilitate the submission of complaints concerning these aspects and in order to establish an operative intervention, law 272/2004 regulates the general social assistance directorates' obligation to create the children's hotline and to promote this telephone number.

*Governmental Decision no. 860 from 13/08/2008 regarding the approval of the National Strategy and in the field of child protection and promotion of children rights for the years 2008-2013, and the Operational Plan for implementing the Strategy in the years 2008-2013.*

The Governmental Decision approves the Strategy in the field of child protection for the years from 2008 to 2013 and the Plan of actions to be taken in order to promote and protect children's rights in Romania. The Strategy emphasizes on children rights protection, also on increasing chances to access their rights for vulnerable groups of children, such as: children at risk of / being separated by their parents, children abandoned in the maternities, children abused, neglected and exploited, HIV infected and disabled children, children who commit criminal acts/ felonies and cannot be imprisoned.

The Strategy emphasizes also on the responsibilities of the personnel employed in the child protection institutions/ networks.

The Strategy is coordinated the National Authority on Child Protection, currently a directorate under the Ministry of Labor, Family and Social Protection, with the involvement and support from other national and local institutions responsible for child protection, NGOs and research institutes.

The Strategy is to be continuous monitored, and annually evaluated, including at the end of it.

The Operational Plan establishes actions and indicators to be achieved in implementing the strategy on child protection. Regarding the rights of children, it emphasizes on increasing the number of children with identity papers, promoting among children the right of expressing their opinion, including complaining about any act that may break their rights, monitoring the application of children rights. The plan also develops on actions to be implemented in order to increase the access of vulnerable children to education, health services, and leisure activities, a.s.o.

The chapter no. 7 is dedicated to respecting the right of children to protection against abuse, neglect, exploitation and any act of violence, through multidisciplinary and multi-institutions interventions. The proposed actions develop on increasing the number and quality of interventions to reintegrate those children who are victims of the violence and abuse, increasing the level of information and knowledge of the population and experts regarding the abuse and violence against children, improving the legislation and institutional framework in order to prevent and fight against abuse and violence.

The expected results are developing a comprehensive system of prevention and intervention against any act of abuse, violence, neglect, exploitation of children.

The Operational Plan provides also for training of professionals and increasing their knowledge and abilities for child protection interventions, improving the social services for children and families, supporting social integration of children under special protection who reach the adult age.



*Governmental Decision no. 1385 from 18/11/2009, regarding setting up, organizing and running of the National Authority for Protection of Family and Children' Rights – repealed. The Authority is currently under evaluation and it will develop the activities as a Directorate under the coordination of the Ministry of Labor, Family and Social protection.*

This Decision is currently repealed by the Governmental Ordinance no. 68 from 30/06/2010 regarding measures to re-organise the activity of the Ministry of Labour, Family and Social Protection and the activity of the institutions under the coordination of the ministry; however responsibilities established by the Decision are still governing the activity of the actual Directorate. As a result of the newly issued Ordinance, some responsibilities of the Directorate might change.

By this Decision, there was established that main objectives of the Authority are (according to art. no. 3:- promoting and respecting the rights and freedom of children; monitoring the way the rights of children apply at the national level;

- ✓ establishing and implementing the policies regarding child and family protection at the national level
- ✓ protection of vulnerable children and youngsters that requires special interventions.
- ✓ prevention and fighting violence in the family.

The content of Decision is divided into 4 chapters. The first one includes general provisions regarding the Authority as well as objectives above mentioned. The second chapter establishes the responsibilities and duties of the Authority, since the third Chapter concerns the national programs to be established in the field of child and family protection. The fourth and final chapter provides for funding of the child and family protection programs.

*Governmental Decision no. 1434 from 02/09/2004 regarding responsibilities and the organization of the General Directorates of Social Assistance and Child Protection.*

This Decision regulates organizing and functioning of the General Directorates of Social Assistance and Child Protection, as well as, social assistance interventions in the field of child protection, family, persons who live alone and have difficulties, elderly, disabled persons and for other people in need.

*Order no. 177/2003 of the State Secretary of the National Authority for Child Protection and Adoption regarding the approval of the minimum required standards of the hotline for children and counseling centre for the abused, neglected and exploited child, as well as the minimum required standards for the community resources centre to support prevention of abuse, neglect and exploitation of children.*

This Decision establishes the service that aims at monitoring and ensuring interventions to prevent child abuse, neglect or exploitation. Document is structured in three parts, each one corresponding to standards regarding: children hotline, counseling centre and community resource centre. In general, standards regarding the three types of services addressing children needs envisage: organizing the services, requirements and responsibilities of the personnel,

running the services, participating/ organizing the information, education and communication campaigns and ensuring interventions to the beneficiaries of the services. In what concerns the children hotline and the counseling centre, there are established protocols of interventions, including referring the child to specific services if this was abused, neglected or exploited.

### ***Penal Code***

The Penal Code (Law, Act) represents the foundation of the Penal system. It establishes a series of regulations that are enforced by the State and impose penalties for their violation, as opposed to the Civil Code. It defines and differentiates among crimes and conditions which apply in judging them.

According to the Penal Code, the abuse against a child by his/her relatives represents one of the crimes emphasized by art. 180 align. (2) and art. 181 align. (2) of the Penal Code. The two articles concern acts that produce any physical harm done by a member of a family against other member, including a child. These regulations establish penalties for the mentioned acts of violence, which qualifies as crimes; body injury represents harming a person's physical integrity or their health, resulting in need for medical care. Acts such as these performed against a family member represent serious violations.

Chapter 3 of the Code states penalties for the violation of sexual life, including sexual abuse, perversity, sexual corruption and harassment. Any of these acts produced against a minor result in increasing the penalty and number of years of imprisonment, where the case.

Also, in cases where the child's physical, moral and psychological development are seriously endangered by any measures or treatments, if the child is abused by his/her parents or by a person for his/ her care and education he/she, it can be considered that the respective person has performed the crime of „ill treatment against the minor“ which is included in the art. 306 of the Penal Code.

### ***Law no. 217/2003 on prevention and control of violence in the family***

This Law defines violence in the family as any verbal or physical act done by a member of a family against other(s) member(s) with the intention of producing harm, including physical, sexual, psychological, and/ or a material damage.

The law establishes that public institutions with responsibilities in preventing and fighting the violence will take actions to prevent this act happening, also by specializing personnel through training. The Law provides for victims of the domestic violence with measures to protect them, as well as setting up shelters, and giving responsibilities to different categories of personnel from the public institutions acting at the local level.

Thus, it must be specified that art. 26 paragraph no. (1) of the Law no. establishes that if there is evidence that a family member has caused physical and psychological harm to another

member, the legal court can rule that the abuser be banned from the family's residence, on the victim's request or if the legal court agrees to it. This Law complements regulations in the Penal Code regarding any forms of aggression or violence; therefore in the chapter no. 8, there are established fines for specific situations related to domestic violence, including the intention of the person who committed any form of violence to approach the victim, if restrictions are imposed.

***Law no. 300/2006 for the ratification of the European Council Convention concerning the fight against human trafficking<sup>33</sup>***

***Law no. 678/2001 concerning the prevention and control of human beings trafficking***

The Law provides for prevention and fighting against human trafficking, as well as protecting and assisting victims of human trafficking. In order to take effective actions, the Law emphasizes on cooperation among different institutions at the national and international levels. It also defines the crimes and penalties in relation to human trafficking. The Law also provides specific information on protection and assistance of victims of human trafficking detailing on services to be provided to the target group.

The art. no 13 specifically provides for recruitment, transporting, transfer, hosting of minors with the purpose of exploiting them, which are to be considered as crimes of child trafficking, and punished with imprisonment from 5 to 15 years and banning of some civil rights.

***Governmental Decision no. 1504/2004 that approved the national action plan for preventing and controlling sexual child abuse and sexual exploitation of children for commercial purposes***

The Decision approves in one article the action plan for preventing the sexual abuse and exploitation of children. The Plan emphasizes on cooperation among different public institutions in order to make more effective all the preventive interventions. It also provides for development of strategies and policies in order to develop the framework to support actions aiming at prevention of sexual abuse against children. The Plan develops some of the actions on creating of the programs and projects to prevent sexual abuse, involvement of children in prostitution, pornography, selling and trafficking for sexual exploitation, for the commercial purposes. It also emphasizes on developing centers for social reintegration of sexual abused and exploited children. The plan proposes actions on involving children in projects to express their opinion and receive information about their rights.

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<sup>33</sup> Romania has signed the European Council Convention on the fight against human trafficking, and ratified it through the Law no. 300/2006.

*Law no. 203/2000 which ratifies International Labour Organization Convention (ILO) no. 189/1999 concerning the banning of the most serious forms of child labour<sup>34</sup>*

*Law no. 470/2001 ratifying the Optional Protocol to the Convention on child rights, on selling of children, child prostitution and underage pornography, signed in New York on September 6th 2000<sup>35</sup>*

*Order no. 89/ 2004 of the Minister of Labour and the National authority's president on child protection regarding minimum standards of the emergency centres for the abused, exploited and neglected children.*

The Order establishes and approves the minimum standards for the emergency centres providing services to the abused, neglected and exploited children. This is a service for child protection established with the purpose of providing care to children in need for a well defined period of time, when life of a child is endangered by his/ her own family , extended family or by the substituting family. The Order defines the location of the emergency centers and special services to be provided to the children at the center: food and clothe, access to education, health services, social integration, interventions for the child and the family.

#### **DEFINITIONS OF THE TERMS USED**

*Risk and abandonment* are not specifically defined in the actual legislation, however child protection legislation and the Penal Code provides for children at risk and abandonment. Thus, according to the articles 1 and 2, the Law no. 272/2004 provides for the legal framework on respecting, promoting and guaranteeing children' rights.

In addition, public and private agencies, individuals and companies should respect children rights as they are stated in the Constitution and in the Law no. 18/1990 ratifying the International Convention concerning Child rights, and for that all their actions will consider the principle of the "superior interest of the child". Chapter 2, in the art 28, provides for the rights

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<sup>34</sup> The Law ratifies the Convention in one article. By the Convention, the International Labour Organization urges every state that signed the document to take imediate and effective actions to ban and eliminate the most serious forms of child labour.

<sup>35</sup> The Law ratifies the Convention in one article. By the Optional Protocol, signatory members ban selling of children, child prostitution and pornography.

of any child to be respected and, under no circumstances, his/ her physical, psychological and emotional state to be endangered<sup>36</sup>.

The guardian will be, at first one of the relatives of the child, and if no one proves to be able to raise the child, than specialized public agencies evaluate other persons that are more suitable to take the responsibilities. In the situation, the guardianship and the adoption are not the best options for the child, the public agency will recommend for the child one of the specialized measures of protection:

- a. Placement, which is a temporary solution, where child is: under care of a person or a family, in foster care or placed in residential care. **Abused children and those abandoned by their mother in the medical units** are two categories of children that benefit of this protection measure.
- b. Emergency placement, which is a temporary solution for the following category of children: **victims of abuse, lost children, abandoned in the medical units.**
- c. Specialized supervision, for children who committed a crime or a felony, but they do not have the age to be imprisoned.

According to the articles 107 to 112 from the Law, in order to prevent separation of children of their parents, as well as for insuring child protection of the child/ children separated by its/ their parents (for a certain period of time or permanently) there will be organised *special protection of children through the following type of services*:

1. **day services**
2. **family –like services/ foster care**
3. **Residential services:** placement centres, emergency placement centres and maternal centres. Funding of the residential services organised under the coordination of the local public agencies is provided, by 50%, from the local budget.

Penal Code at the art. 305 provides for family abandonment of one of the parents. The acts of neglecting the family duties in relation to ensuring financial means to support and/ exposing family members to physical and emotional suffering are judged in court. Punishment as result of the court decision for these acts is imprisonment.

<sup>36</sup> In the section no. 2 “Family environment and the alternative care”, the Law emphasizes that in the situation when a child is **at risk** in his/ her family, the specialized public agencies will take all the necessary measures to separate the child of his/ her family, as well as preventing any abuse of the parents or violence against the child in the family, based on the individual plan of intervention and. When the child needs to be separated by his/ her family, and judges decide they do not have the rights to raise the child, (s)he will be provided with alternative care, which are **guardianship and adoption**.

- **The role of juridical figure (as judges, public prosecutor) in the minors' protection system: justice service versus civil service.**

The justice system is involved in child protection in 2 situations:

- when public agencies specialized in child protection require the court (judges) a decision, based on which a child at risk, abused, neglected, abandoned, victim of violence in the family, a.s.o. needs to be placed under special protection / alternative care *or* in the situation when parents cannot perform the responsibilities in relation to their child/ children, therefore the court decides they cannot enjoy their parents' rights, and child/ children will be under alternative care.

The court is also involved in judging situations which involves children (e.g. children who commit felonies, children who are victims of a crime), when the acts fall under the Civil and Penal Code or any legislation that requires a court decision.

In Romania, the legal system (judges and prosecutors) operates for hearings in relation to children and adults. There is only one Children's' Court in Brasov county which hears applications relating to the protection and care of children and young people at risk, intervention orders and matters relating to criminal offending by children and young persons.

- **The decentralization of minors' protection system: from the central government to regional/ local government.**

Law no. 272/2004 on the protection and promotion of child rights, and secondary legislation related to this, provides for organising the specialised services of child protection at the local level. Therefore, under the coordination of the local council (city, or commune council), there are: general directorate of social assistance and child protection (GDSACP), and the public service of social assistance (PSSA). The responsibilities of the GDSACPs are proposed by the Ministry of Labour, Family and Social Protection and approved through a Governmental Decision. Those responsibilities envisage all the actions towards children's right protection, including actions in court to decide special protection or alternative care for children in difficult situations. The PSSAs have responsibilities in monitoring the children's rights and supporting action developed by the GDSACP. In general, the activities developed by PSSAs envisage social assistance activities for population in need, including at-risk children, adults, and aged people's a.s.o. The individual plan of services for child protection is elaborated and put into actions by the PSSAs at the city and commune level, except for Bucharest (the capital city), where the GDSACPs of each district are responsible for this. The plan of services should be endorsed by the mayor.

The child protection system is funded from different sources:

- the local budget of the cities and communes;
- the budget of counties and the Bucharest districts;
- the state budget;
- The state budget, through the National Authority for Children's Right Protection for national programs regarding child protection and promotion of children rights.
- Donations, sponsoring, private funds.

In the situation of foster care, the financial responsibility is shared between state, which covers the costs for the placement installments and the local council that covers cost of salaries for foster parents. In the case of guardianship, the costs for the placement installments are covered from the state budget.

At the national level, the Authority for Children's Rights Protection has the responsibility of monitoring of the children rights, as they are stated in the current legislation and the Convention concerning children rights, and coordinating and controlling the protection and promotion of children's rights.

Protection of children's rights in relation to activities developed by the public authorities is under the responsibility of the Ombudsman agency.