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POLICY DEPARTMENT **C** CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



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Country Report on Croatia for the Study on Member States' Policies for Children with Disabilities

Study for the LIBE Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

Country Report on Croatia for the Study on Member States' Policies for Children with Disabilities

STUDY

Abstract

This study looks at the situation of children with disabilities in Croatia to identify the gaps in the legal framework and its implementation, the obstacles faced by children with disabilities and best practices. This country study is part of a larger study which analyses all of the 28 Member States. In the first phase of the study, a comparative analysis has been drawn based on 18 of the country studies. In the second phase of this study, the situation in the remaining ten countries and Scotland has been analysed. The overall report "Member State Policies on Children with Disabilities" provides some recommendations for EU action to enhance the situation of children with disabilities.

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COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

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CONTENTS

LIST OF ABBREVIATIONS	5
EXECUTIVE SUMMARY	6
INTRODUCTION	8
1. OVERVIEW OF THE SITUATION AND CHALLENGES FOR CHILDREN WITH DISABILITIES IN CROATIA	10
1.1. Introduction to the situation of children with disabilities in Cy Croatia	10
1.2. Review of issues and identification of possible regulatory gaps	12
2. OVERVIEW OF THE NATIONAL LEGAL FRAMEWORK	15
2.1. General overview of the national legal and institutional framework	15
2.2. Children with disabilities specific legal and institutional framework	16
2.2.1. Legal framework	16
2.2.2. Institutions and authorities	17
2.2.3. Definitions	19
3. LEGAL FRAMEWORK FOR CHILDREN WITH DISABILITIES IN CROATIA	20
3.1. Implementation of the provisions of the CRPD and CRC	20
3.1.1. Best interests of the child (Art. 3 CRC; Art. 7 CRPD)	20
3.1.2. Non-discrimination (Art. 2 CRC; Arts. 3 and 5 CRPD)	22
3.1.3. Evolving capacities of the child (Art. 5 CRC and Art. 3 CRPD)	23
3.1.4. The right to be heard/to participate (Art. 12 CRC; Arts. 7 and 30 CRPD)	24
3.1.5. Freedom from violence (Art. 19 CRC; Art. 16 CRPD) and its implementation	25
3.1.6. Right to family life (Art. 9 CRC; Art. 23(3) CRPD)	27
3.1.7. Right to assistance (Art. 23 CRC; Arts. 23(5), 26 and 28 CRPD)	28
3.1.8. The right to inclusive education (Art. 28 CRC; Art. 24 CRPD) and its implementation	29
3.2. Specific issues faced by children with disabilities	30
3.2.1. Gender vulnerability	30
3.2.2. Children as vulnerable suspects	31
3.2.3. Other particular issues faced by children with disabilities in Croatia	31

4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES	33
4.1. Enforcement and reporting mechanisms	33
4.2. Gaps, problems and issues in the implementation	35
4.3. Best practices	43
4.4. Data and monitoring mechanisms	44
4.5. Recommendations	45
5. CONCLUSIONS	48
REFERENCES	49
ANNEX 1 – SUMMARY TABLE	52
ANNEX 2 – STATISTICAL INFORMATION	78
ANNEX 3 – STUDY ON MEMBER STATES' POLICIES FOR CHILDREN WITH DISABILITIES - EXECUTIVE SUMMARY	79
ANNEX 4 - OVERVIEW OF RELATED STUDIES	90

LIST OF ABBREVIATIONS

Charter	The Charter of Fundamental Rights of the European Union
CRC	United Nations Convention on the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
CJEU	Court of Justice of the European Union
CoE	Council of Europe
DPOs	Disabled people's organisations
ECHR	Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
EU	The European Union
SAA	Stabilisation and Association Agreement
SCC	Social Care Centre
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations

EXECUTIVE SUMMARY

Croatia ratified both the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Rights of the Child (CRC). It also ratified the Optional Protocol to the CRPD, while the ratification of the Optional Protocol to the CRC on the complaints procedure is pending. Even though the Croatian monistic approach to international law allows for direct implementation of these two instruments, the Croatian authorities are not inclined to directly apply their provisions. The Croatian legislation implementing these Conventions only partially meets the requirements of the CRPD and CRC with regard to children with disabilities.

Children with disabilities enjoy the general protection specified in the Constitution and several legal acts. However, there is no specific legal framework holistically regulating the particular situation of children with disabilities. The existing legislation is fragmented, covering the whole spectrum of issues such as education, family relations, social services and social benefits. However, there are still significant gaps in the legislation. For example, while the Education in Elementary and Secondary School Act (Education Act) recognises the need for inclusive education, there are no rules regulating the work of educational assistants. Furthermore, there are no provisions to ensure mobile expert teams and accessibility.

Some of these gaps are currently being dealt with by several on-going legislative initiatives to guarantee certain rights for children with disabilities, such as the use of sign language or guide dogs. Moreover, the new Family Act introduces a child-focused approach. Even though the Act is not fully in compliance with the recommendations of the Committee on the Rights of the Child (CRC Committee), it introduces many welcome novelties on which implementation should be ensured.

Moreover, implementation of certain guarantees in existing legislation seems to be lacking. Juvenile courts, even though designed to accommodate the particular needs of children, have not yet been resourced with child-friendly courtrooms or non-legal staff support. In addition, Croatia has adopted a comprehensive deinstitutionalisation plan which could be the basis for improving the right to a family life – recognised in the Conventions. However, the plan is still short of proper implementation, with children in institutions still appearing to be subject to prohibited treatment, such as the use of cage beds and restraints. Furthermore, children with disabilities, and their families, lack adequate support and access to early intervention. There is a need for the adoption of necessary measures to regulate the employment and training of educational assistants, while a steady flow of budgeting for these positions needs to be ensured for schools and preschools. There are considerable differences in the level of available services depending on the region, and children with disabilities, from the islands, have the most difficulties in accessing these services¹.

No data collection is organised at a central level on the particular issues concerning children with disabilities – data gathered across different institutions appears to be inconsistent and difficult to interpret. Furthermore, no information is available for children with disabilities to educate them about their rights and mechanisms for their protection.

¹ See e.g. Ombudsperson for Children, Report for 2011, available at: http://www.dijete.hr/hr/izvjemainmenu-93/izvjeeo-radupravobraniteljaza-djecu-mainmenu-94/doc_download/314-izvjeeo-radupravobraniteljice-za-djecu-za-2011-godinu.html.

To conclude, there is recognition by the competent authorities that children with disabilities need to be provided with special protection. However, a broad holistic approach towards enabling them to fully enjoy their rights, as guaranteed by the CRC and the CRPD, currently remains only on isolated issues, such as inclusive education or deinstitutionalisation. These activities should ideally be co-ordinated and centralised within one single institution which would be responsible for manoeuvring policies towards full and comprehensive realisation of the rights of all children with disabilities on an equal basis with others.

INTRODUCTION

In December 2010, the European Union (EU) became a party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). In doing so, the EU recognised the challenges that persons with disabilities face in securing their rights, and highlighted the need for EU actions to be firmly on the agenda of the European Union and its Member States.

Children with disabilities are already vulnerable because they are children. Their disability renders them particularly vulnerable. As such, they deserve specific safeguards and protection from the EU and its Member States.

The key legal framework for EU action in this field is the EU decision to ratifying the CRPD, the requirement under Article 10 TFEU for the EU to combat discrimination based on disability, as well as the EU objective of promoting the rights of the child found under Article 3 TEU. This framework provides the EU with a unique position to push forward for further protection of the rights of children with disabilities, and to develop legislative or policy initiatives. The UN Convention on the Rights of the Child (CRC) provides another basis for action in this area.²

This national report for Croatia is part of a larger study to provide the European Parliament with an overview of the situation of children with disabilities in all EU Member States, evaluating the need for European legislation to enhance the rights of children with disabilities in the European Union. The project reviews existing legal, policy and institutional frameworks in the Member States. Each country report analyses the implementation of international principles and rights stemming from the CRPD and the CRC, to uncover any particular issues that necessitate further policy and legislative actions at national and EU level. In a first phase, 18 selected countries have been analysed, the results of which formed the basis for a comparative analysis in the overall report called "Member States Policies for Children with Disabilities" published in 2013. In a second phase, which took place in 2014, the situation of children with disabilities in the remaining 10 countries, as well as Scotland, have been analysed in separate country reports, including this present report.

The key elements deriving from the CRC and the CRPD, with regard to children with disabilities include:

- The obligation to act in the best interests of the child;
- The right to non-discrimination;
- The consideration of the evolving capacities of the child;
- The right to be heard/to participate;
- The right to be free from violence;
- The right to family life;
- The right to assistance;
- The right to education, including inclusive education.

² All 28 Member States have ratified the CRC and have signed the CRPD (Finland, Ireland and the Netherlands have signed but not yet ratified).

Given their ratification³ of both UN Conventions, Member States are obliged to take necessary measures to ensure the respect of the rights set forth for each child or person with a disability within their jurisdiction. Member States should take appropriate measures to ensure that children are protected against all forms of discrimination or violence, including adopting all appropriate legislative, administrative and other measures for the implementation of those rights. Moreover, the protection of the rights of children with disabilities should be mainstreamed in all policies and programmes, in accordance with Article 4(3) of the CRPD on the involvement of persons with disabilities, in all decision-making processes.

Due to the scale of this subject and the scarcity of materials available, the scope of this study does not cover in detail the wide range of issues arising from and relating to the situation of children with disabilities. It does not aim to provide an in-depth analysis, but rather, an overview of the situation regarding the rights of children with disabilities in Croatia. This study presents a snapshot of some of the major issues and obstacles faced by children with disabilities and their families, a legal analysis of the implementation of the main rights and principles recognised in the CRC and the CRPD – relevant in the context of the situation of children with disabilities, and points to some potential solutions at national and EU level to improve their situation.

Each country report is structured first, with the situation of children with disabilities at the national level, describing the national legal and institutional framework for the protection of children with disabilities, and analysing the national implementation of principles and rights developed in the UN Conventions (CRC and CRPD). Secondly, the reports then consider specific issues relevant to the situation of children with disabilities, including children as suspects, gender issues and education. Finally, the report covers the mechanisms in place to implement the legal framework, highlighting gaps, problems, best practices, and recommendations found by the literature or via interviews with stakeholders.

³ Except for Finland, Ireland and the Netherlands which have signed but not yet ratified the CRPD.

1. OVERVIEW OF THE SITUATION AND CHALLENGES FOR CHILDREN WITH DISABILITIES IN CROATIA

KEY FINDINGS

- Croatia has not adopted a particular national strategy or action plan which would deal with the problems of children with disabilities. There are, however, two separate strategies, i.e. on children's rights and on the rights of people with disabilities.
- There are several gaps in Croatian legislation. Firstly, apart from criminal proceedings, there appears to be a lack of direct recognition of the best interests of a child in the legislative framework. Secondly, the framework regulating access to inclusive education needs to be further developed and the medical model of disability abandoned.

1.1. Introduction to the situation of children with disabilities in Croatia

The recently adopted National Strategy for the Rights of the Child estimates that 797,855 children are living in Croatia in 2014⁴. According to the 2013 Annual Report on People with Disabilities in the Republic of Croatia, out of 42,000 persons with disabilities under the age of 19, 22,053 are children with intellectual disabilities and 1,115 are children with autism. Furthermore, in Croatia, there are between 5,000 to 8,000 registered persons under 18 with disorders from the autistic spectre, as well as around 100,000 persons with an IQ below 70⁵.

The framework for the protection of the rights of children with disabilities in Croatia⁶ is built upon its Constitution, the provisions of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child. Croatian Constitution guarantees the rights of children with disabilities to special care, education and welfare⁷, while imposing a duty upon everyone to protect children and infirm persons⁸.

The Croatian legal system does not have a specific set of policy measures specifically aimed at children with disabilities, but they are derived from the applicable policies on people with disabilities and children. From the governance perspective, there is no centralised governmental body which would make sure that the policies which affect children with disabilities are consistent. On the contrary, the competencies are scattered across many institutions. For example, at the early stage of identifying disabilities and co-ordinating early intervention, two separate committees are in-charge of evaluating the situation of a

⁴ Ombudsperson for Children, Opinion on the Draft National Strategy for the Rights of the Child available at:

http://www.dijete.hr/attachments/1934_Pravobraniteljica%20za%20djecu%20Obrazac%208%205%202014.pdf

⁵ Croatian Fund for Public Health, Report on People with Disabilities in the Republic Croatia for 2013 (Izveš e o osobama s invaliditetom u Republici Hrvatskoj za 2013. godinu), February 2014, available at: http://hzjz.hr/wp-content/uploads/2013/11/Bilten_invalidi_2013.pdf.

⁶ The official term used in Croatian language for children with disabilities, translated into English, would be children with developmental difficulties (djeca sa teško ama u razvoju). Therefore, legislative and other official references use the latter term. However, the study will use the English term children with disabilities throughout, for the clarity and consistency of presentation.

⁷ Article 64(3) of the Constitution of the Republic of Croatia (Ustav Republike Hrvatske), Official Gazette Nos. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14, Article 141.

⁸ Article 65(1) of the Constitution.

child, and it is common that the views of the two often differ – there is no structure to enable their reconciliation.

Since 1994, the leading body for developing policies in the field of rights of people with disabilities had been the Commission for Invalids in the Republic of Croatia (Komisija za invalide u Republici Hrvatskoj), which was replaced by the Committee of the Government of the Republic of Croatia for People with Disabilities (Povjerenstvo Vlade Republike Hrvatske za osobe sa invaliditetom) in 1997⁹. This Committee is composed of the Assistant to the Minister of Social Policy and Youth, representatives of other ministries with competencies touching upon disability issues, and representatives of disability stakeholders¹⁰. Furthermore, the Ministry of Social Policy and Youth has, among other competencies, the duty to promote the rights of people with disabilities, as well as to protect children¹¹. The Ministry of Science, Education and Sport has certain competencies within their portfolio, i.e. the education of children with disabilities¹². The development of policies related to children with disabilities also requires the contribution of the Ombudswoman for People with Disabilities and the Ombudsman for Children ('the Ombudsperson' or 'the Ombudspersons')¹³.

At policy level, there appears to be much duplication and a lack of a focused-approach to the situation of children with disabilities. The National Programme for the Promotion and Protection of Human Rights from 2013 to 2016¹⁴, adopted by the National Office for Human Rights and Rights of National Minorities, deals with both the rights of the child and the rights of people with disabilities. In addition, it also pays particular attention to the rights of people with psychosocial disabilities. Furthermore, the Government set the main priorities for advancement of the rights and overall situation of children with disabilities by adopting, in 2007, the National Strategy for Equal Opportunities for People with Disabilities applicable from 2007 to 2015 (the National Strategy for Equal Opportunities)¹⁵. The Strategy represents the continuation of the Government's commitment, set out in 2003, by the National Strategy for Unique Policies for People with Disabilities from 2003 to 2006¹⁶.

⁹ Decision on Establishing the Commission of the Government of the Republic of Croatia for People with Disabilities (Odluka o osnivanu Povjerenstva Vlade Republike Hrvatske za osobe s invaliditetom), Official Gazette no. 45/97. The rules governing the composition and the work of the Commission have been changed a few times since. The latest Decision on Establishing the Commission, regulating the competences and work of the Commission was adopted on 16 May 2013, Official Gazette 60/13.

¹⁰ Section V of the Decision on Establishing of the Commission.

¹¹ Article 21 of the Organisation and Competencies of Ministries and Other Central Bodies of Public Administration Act (Zakon o ustrojstvu i djelokrugu ministarstva i drugih središnjih tijela državne uprave), Official Gazette nos. 150/11, 39/13, 125/13 and 148/13.

¹² Article 23 of the Organisation and Competencies of Ministries and Other Central Bodies of Public Administration Act.

¹³ In Croatian, the default gender used for nouns (thus, also for names of institutions) is male. However, the language allows for the accommodation of the name of the institution or function to the actual gender of the person performing it. Even though both the ombudsperson for the disabled and for children are women, only the former institution reflects this fact in the name of the institution. However, for the clarity and correctness of the presentation, the term used throughout the study to refer to either of these institutions will be – Ombudsperson.

¹⁴ National Programme for the Protection and Promotion of Human Rights 2013 (Nacionalni program za zaštitu i promicanje ljudskih prava u periodu od 2013. do 2016. godine).

¹⁵ National Strategy for Equal Opportunities for Persons with Disabilities 2007-2015 (Nacionalna strategija izjednačavanja prava za osobe s invaliditetom od 2007. do 2015. godine), Official Gazette no. 63/2007.

¹⁶ National Strategy for Uniform Policies for People with Disabilities 2003-2006 (Nacionalna strategija jedinstvene politike za osobe s invaliditetom od 2003–2006.), Official Gazette no. 13/03.

Moreover, in 2006, the Government adopted the National Action Plan for Rights and Interests of Children from 2006 to 2012¹⁷ – the activities of which have been continued in the recently adopted National Strategy for Children's Rights¹⁸. The Strategy was adopted only after a long public debate on the proposal strategy, from 9 April to 9 May 2014, with active involvement of the Ombudsperson for Children. The National Strategy was designed as an instrument aimed at more effective promotion and protection of the rights of the child in Croatia, by ensuring the implementation of existing international and national standards and by promoting a holistic and integrative approach to the rights of the child¹⁹. It also emphasises that, while conducting an active human rights policy, special attention needs to be given to children with disabilities²⁰.

1.2. Review of issues and identification of possible regulatory gaps

This Section provides an overview of the general issues which prevent children with disabilities from fully enjoying their rights. As further sections of this Report examine, in detail, the protection and implementation of specific rights of children with disabilities (namely gender vulnerability, freedom from violence, children as vulnerable suspects, and inclusive education), as well as any problems regarding their protection or challenges in the implementation of relevant legislative provisions, will be addressed in those sections.

Globally, children represent one of the most vulnerable groups of societies. Children with disabilities are even more vulnerable, given the multiple disadvantages they face – being children, and thus under the responsibility of their parents, and having a disability which is an obstacle to full inclusion into society. These problems become more pressing at the time of the current overwhelming economic crisis which hardly leaves a household unaffected.

In 2013, 4,800 children were identified as in need of early intervention in Croatia. However, only 641 of them actually received the required services. Hence, while there is a system of early intervention in Croatia, its implementation is limited to a low percentage of children. Failure to include children with disabilities in the system of early intervention represents a danger, i.e. developing more serious disabilities, thus higher expense for both the family and society²¹.

On the other hand, the increasing costs derived from the need for these services are more difficult to meet, bearing in mind the on-going economic crisis. According to the Eurostat data, in 2012, a striking 20.5% of children under the age of six lived under the poverty threshold in Croatia, i.e. 52,000 children under the age of six, or 60,000 children

¹⁷ National Action Plan for Rights and Interests of Children 2006-2012 (Nacionalni plan aktivnosti za prava i interese djece od 2006. do 2012. godine), adopted on 22 March 2006, available at: http://www.dijete.hr/dokumenti-mainmenu-83/nacionalni-planovi-i-strategije-mainmenu-75/za-djecu-i-mlade-mainmenu-79/doc_details/76-nacionalni-plan-aktivnosti-za-prava-i-interese-djece-2006-2012.html.

¹⁸ National Strategy for Children's Rights in Croatia (Nacionalna strategija za prava djece u Hrvatskoj), adopted on 25 September 2014, draft available at:

<http://www.mspm.hr/content/download/10316/76798/version/1/file/Nacrt+prijedloga+Nacionalne+strategije+za+prava+djece+u+RH+2014.+2020.doc>.

¹⁹ National Strategy for Children's Rights, p. 7.

²⁰ National Strategy for Children's Rights, Section 1.1.

²¹ Ombudsperson for People with Disabilities, Children and youth with disabilities require particular attention from the system (Djeca s teškoćama u razvoju i mladi s invaliditetom trebaju posebnu pažnju sustava), 2014, available at: http://www.posi.hr/index.php?option=com_content&view=article&id=607:djeca-s-tekoama-u-razvoju-i-mladi-s-invaliditetom-trebaju-posebnu-paznju-sustava&catid=72:novosti.

under the age of seven. The poverty rate for preschool children in 2012 has been estimated to be 20%, which is considerably above the 17% rate in 2008²².

In general, there is broad recognition in Croatian policy and legislation for the need to provide special protection to children on the one hand, and people with disabilities on the other. The adoption of the new National Strategy on Children's Rights is one of the indicators showing that the Government is attentive towards the rights of the child. However, one concern, in this regard, is that there is little being done to ensure implementation of the policies in force – since none of the strategic documents appear to be followed by appropriate legislation or budgetary interventions for their implementation.

There is a general concern that, even in respect of those issues where legislation is in place and provides protection to children with disabilities, serious problems are encountered in relation to their implementation. For example, there is a legal requirement for children with disabilities to be given priority in their enrolment to preschool. However, in practice, headmasters of preschools do not really treat this as a priority, or, they try to find excuses not to accept children with disabilities. At the same time, there is no inspection or supervision over the work of headmasters of preschools or schools who refuse to enrol children with disabilities. Therefore, there is no control of those decisions and, thus, there are no sanctions against actions of institutions which are not in-line with their legal obligations. A system of impunity appears to be developing.

There are also some concerns in relation to the social protection provided for children with disabilities, and their parents. Namely, there are practical difficulties in gaining the status of a parent carer which grants the right to social welfare benefits. This is particularly difficult for the parents of deaf-blind children, or children with more serious forms of autistic spectre disorders, who do not appear to qualify for this status – which is reserved for the parents of children who are rendered fully immobile and children with multiple disabilities. In that situation, there are shortcomings in assisting the parents of children with disabilities of preschool age, who do not appear to have structured access to information and largely depend on informal networks, such as NGOs and parents' associations. This is a particular challenge for families at risk of poverty, since almost one third of all children with disabilities from poor families have difficulties in accessing rehabilitation services, while 70% of children with disabilities, who use social welfare, live in long-lasting poverty. Children from those families, unless living in big cities, have a lower prospect of receiving the services needed for their specific situation – due to poverty and inaccessibility of services.

Furthermore, Croatia has several bodies looking into the rights of vulnerable groups in the population, two of which are competent to deal with the rights of children with disabilities – the Ombudsperson for People with Disabilities and the Ombudsperson for Children. However, generally, there is a lack of recognition of the specific issues that children with disabilities and their families face and, therefore, their problems are not properly addressed. Furthermore, there is a lack of co-operation between the institutions dealing with these two sets of issues.

²² As interpreted in UNICEF research: Poverty and the material welfare of preschool children in Croatia (Siromaštvo i materijalna dobrobit djece predškolske dobi u Hrvatskoj) press release, available at: http://www.unicef.hr/upload/file/395/197863/FILENAME/Siromastvo_djece_info_za_medije_rev.pdf.

There are some considerable gaps in the Croatian legislative framework that ensures the access of children with disabilities to inclusive education. There is a complete absence of provisions regulating access to, and the work of, the assistants in education. Generally, the children do not know if they will be provided with an assistant or not until the school year begins – and sometimes not even until late into the school year. Furthermore, the bylaws in place to implement inclusive education are out-of-date and completely inappropriate, including the use of offensive language to determine difficulties of the children, i.e. using terms such as mental retardation, derived from an outdated medical model of disability.

It is encouraging to note that the juvenile courts have jurisdiction over any case involving a child – both in the capacity of a suspect or a victim. However, there is a lack of staff to work with children – in particular, non-legal experts, e.g. pedagogues and psychologists, for which there is a legal requirement that they are employed by the juvenile courts. In addition, the already existing staff also lack training for the specific issues of working with children, in general, and children with disabilities, in particular²³. This is even more applicable to other courts which deal with children and their rights in various other proceedings. More training will be necessary with the entry-into-force of the new Family Act.

The new Family Act adopted in 2014, introduces a number of novelties setting forth a child-focused approach. The Act, in particular, introduces new solutions in relation to ensuring that the voice of a child is heard in proceedings which concern them. Nonetheless, the Act fully entered into force on 1 January 2015, but only after a few years of its implementation will an evaluation of the effects of the novelties be possible.

²³ Ombudsperson for Children, Recommendation for providing assistance and support to children victims and witnesses of crimes, available at: http://www.dijete.hr/hr/preporuke-pravobraniteljice-mainmenu-81/zatita-interesa-djece-razno-mainmenu-82/doc_download/53-preporuka-ministarstvu-pravosua-za-pruanje-pomoi-i-podrke-djeci-rtvama-i-svjedocima-kaznenih.html.

2. OVERVIEW OF THE NATIONAL LEGAL FRAMEWORK

KEY FINDINGS

- Croatia succeeded into the Convention on the Rights of the Child in 1992 and ratified the Convention on the Rights of Persons with Disabilities in 2007.
- Croatia is a country with a strong tradition of continental law, which promulgates the monistic approach to provisions of ratified international treaties.

2.1. General overview of the national legal and institutional framework

Croatia is a Parliamentary Republic with a continental legal system. Carved by turbulent historical events, the Croatian legal system is deeply rooted in the European continental law tradition. Having developed the basis of its modern law during the Austro-Hungarian empire, of which it had been part until 1918, the turbulent history of Croatia drove its legal system to undergo many changes throughout the 20th century²⁴. More recently, Croatia's independence from Yugoslavia in the early 1990's triggered many legislative and policy changes. This was then followed by EU accession requirements which demanded an additional significant set of changes – given that Croatian Membership to the EU was conditioned by numerous legal and political obligations, including those established in the Stabilisation and Association Agreement (SAA)²⁵.

Throughout its legal tradition, Croatia maintained a strong monistic system. Thus, the Constitution guarantees that international treaties concluded and ratified in accordance with the constitutional requirements will become a part of the domestic legal order and shall have supremacy over any provision of the domestic legislation. The Constitution further guarantees that the provisions of the international law can only be amended in accordance with the principles of the international law²⁶.

Following its independence, Croatia succeeded into the CRC on 12 October 1992²⁷, and signed the Optional Protocol to the CRC on a communications' procedure on 27 December 2013²⁸. The CRPD and the Additional Protocol were ratified on 15 August 2008. The monistic approach should mean that any provision of a ratified international convention, e.g. the CRC and the CRPD, should be directly applicable before the Croatian courts. This, however, is not regular practice of the Croatian courts.

²⁴ Barbi J. Utjecaj njema kog prava na stvaranje hrvatskog prava društava, Zbornik radova Pravnog fakulteta u Splitu, god. 44, 3-4/2007, page 339.

²⁵ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, available at:

<http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=140>.

²⁶ Constitution, Article 141.

²⁷ Article 2 of the Vienna Convention on Succession of States in Respect of Treaties (adopted in 1978 and entered into force in 1996) defines "succession of States" as the replacement of one State by another in the responsibility for the international relations of territory and "successor State" means the State which has replaced another State on the occurrence of a succession of State. Former Yugoslavia originally ratified the CRC. Following its independence, Croatia accepted the application of the CRC, by succeeding into the CRC, along with some other international treaties, most notably the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Entry into force of an international agreement by the succession, in respect of a newly independent state is in accordance with Article 17 of the Vienna Convention.

²⁸ The Protocol is still pending ratification.

While the Government has the responsibility to adopt policies and prepare draft legislation related to children and people with disabilities, there is, currently, no particular policy agenda for children with disabilities. The institutions most involved in the development of policies for children and people with disabilities respectively, are: the Committee of the Government of the Republic of Croatia for People with Disabilities (Povjerenstvo Vlade Republike Hrvatske za osobe sa invaliditetom)), the Ministry of Social Policy and Youth, Ministry of Science, Education and Sport and the Ministry of Health.

Furthermore, significant competence in safeguarding the rights of children and people with disabilities lies upon the Ombudsperson for People with Disabilities and the Ombudsperson for Children.

2.2. Children with disabilities specific legal and institutional framework

2.2.1. Legal framework

The Constitution of the Republic of Croatia promulgates the principle of equality and respect for human rights as the highest values of the Croatian constitutional order²⁹. Furthermore, the Constitution guarantees the enjoyment of rights and freedoms to everyone, regardless of any personal characteristics, which should also be interpreted as covering the grounds of disability³⁰. Both of these provisions are applicable to children with disabilities, who are additionally protected by the constitutional guarantee that the State is required to give special protection to people with disabilities for their inclusion into social life³¹, and to children with disabilities in their right to special care, education and welfare³². Moreover, the Constitution imposes a duty to protect children and infirm persons, while young people and people with disabilities enjoy the right to special protection at work³³.

On 1 September 2014, following a lively public debate, the new Family Act³⁴ entered into force. The new legislation aims at placing the child at the heart of the regulation³⁵. The majority of changes are related to the rules on the custody over children after a divorce, or generally, the protection of children at risk in families with high conflict levels³⁶. The Act also introduces a presumption that the rights of a child are considered to be at risk if the child has psychosocial difficulties which are manifested through behavioural, emotional, educational or other problems in the child's development, or if there is a probability that such problems might occur³⁷. Whenever they learn about such risks, the Social Care Centre (Centar za socijalnu skrb, SCC) will initiate ex officio, proceedings to evaluate the level of risk regarding the rights and welfare of the child³⁸. Furthermore, the Family Act guarantees the right of a child to care for their health and life, as well as the right to safety and

²⁹ Constitution, Article 3.

³⁰ Constitution, Article 14.

³¹ Constitution, Article 58(2).

³² Constitution, Article 64(3).

³³ Constitution, Article 65.

³⁴ Family Act (Obiteljski zakon), Official Gazette no.75/14 and 83/14.

³⁵ See statements of the Minister for Social Policy and Youth, Milanka Opa i and the Ombudsperson for Children Ivana Milas Klari, available at: <http://www.dijete.hr/hr/vijesti-o-thermenu-98/1960-savjetovanje-o-obiteljskom-zakonu-na-pravnom-fakultetu-u-osijeku.html>.

³⁶ Ibid.

³⁷ Family act (Obiteljski zakon), Official Gazette nos. 75/14 and 83/14, Article 131.

³⁸ Book of Rules on the measures of protection of personal rights and welfare of the child (Pravilnik o mjerama zaštite osobnih prava i dobrobiti djeteta), Official Gazette no. 106/14, Article 3(1).

upbringing in their family – which is appropriate to the child's physical, intellectual and emotional needs³⁹.

The Anti-Discrimination Act prohibits placing any person into a disadvantaged position based on their disability⁴⁰. Lack of accessibility is also considered as discrimination⁴¹, while a positive action to prevent people with disabilities' discrimination is not⁴².

The Criminal Procedure Code provides a set of rules to ensure the protection of a child victim of a crime, including the: right to be represented in the proceedings⁴³; right to a special guardian, should the child's and the interests of their parents be in conflict⁴⁴; right not to be confronted with the perpetrator⁴⁵. A child can be freed from standing as a witness⁴⁶, and cannot be coerced to testify⁴⁷. However, when giving testimony, the child has to be supported with special child-friendly facilities⁴⁸. Furthermore, the child enjoys special protection in cases of identification of perpetrators⁴⁹, reproduction of video evidence⁵⁰, and contempt of court⁵¹.

The Social Care Act⁵² provides some forms of assistance for children with disabilities and their families. The Act recognises that a child with a disability is a default beneficiary of social care⁵³, with a number of rights deriving therefrom for the child and the child's parents or care-givers. The Compulsory Health Insurance Act⁵⁴ provides an additional set of rights for health insurance for children with disabilities and their care-givers.

The Croatian Register on People with Disabilities Act⁵⁵ regulates the collection of statistical data about people with disabilities and how such data is used and protected.

2.2.2. Institutions and authorities

The Committee of the Government of the Republic of Croatia for People with Disabilities (Povjerenstvo Vlade Republike Hrvatske za osobe sa invaliditetom) is responsible for providing the Government with proposals and opinions in the fields of protection and rehabilitation of people with disabilities and their families. In particular, the Committee oversees the implementation of the CRPD, national strategic instruments, implementation of the existing national legislation, discusses and gives opinions on draft legislation, and collects national and comparative data in the field of rights of people with disabilities.

³⁹ Family Act, Article 84.

⁴⁰ Anti-Discrimination Act (Zakon o suzbijanju diskriminacije), Official Gazette nos. 85/08 and 112/12, Article 2.

⁴¹ Anti-Discrimination Act, Article 4(2).

⁴² Anti-Discrimination Act, Article 9(2).

⁴³ Criminal Procedure Code (Zakon o kaznenom postupku), Official Gazette no 152/08, 76/09, 121/11, 91/12, 143/12, 56/13, 145/13, Article 44(1).

⁴⁴ Criminal Procedure Code, Article 53(1).

⁴⁵ Criminal Procedure Code, Article 278(1).

⁴⁶ Criminal Procedure Code, Article 285(4).

⁴⁷ Criminal Procedure Code, Article 291(4).

⁴⁸ Criminal Procedure Code, Article 291(1) and (2) and Article 423(3).

⁴⁹ Criminal Procedure Code, 302(1).

⁵⁰ Criminal Procedure Code, 330(3).

⁵¹ Criminal Procedure Code, 391(3).

⁵² Social Care Act (Zakon o socijalnoj skrbi), Official Gazette 157/13.

⁵³ Social Care Act, Article 21.

⁵⁴ Compulsory Health Insurance Act (Zakon o obveznom zdravstvenom osiguranju), Official Gazette nos. 80/13 and 137/13.

⁵⁵ Croatian Register on People with Disabilities Act (Zakon o hrvatskom registru o osobama s invaliditetom), Official Gazette no. 64/01.

The Children's Council (Vijeće za djecu) is a governmental body established with the responsibility to oversee the implementation of the CRC and other international instruments aimed at protecting and promoting children's rights. The Council is in-charge of coordinating the implementation of the national strategic instruments with those of other states, overseeing the implementation of existing national legislation, discussing and giving opinions on draft legislation, and proposing the financing of important programmes for children. However, it would appear that the Council fails to perform its functions, even though some of its members would occasionally 'step-up' with individual statements⁵⁶.

The Ministry of Social Policy and Youth (Ministarstvo socijalne politike i mladih) has competence in the promotion of the rights of people with disabilities, raising their quality of life, development of community care rather than institutional support, and the protection of children and people with disabilities. The Ministry is appointed as the central governmental body for the implementation of both the CRC and the CRPD. The mission of the Ministry is to 'protect interests and advance the rights of vulnerable social groups – in particular, families, children, youths, the elderly, and people with disabilities⁵⁷.'

Ensuring inclusive education is one of the priorities set by the Ministry of Science, Education and Sport⁵⁸.

In Croatia, the work of the equality body is divided among the four ombudspersons' institutions: the Public Defender/Ombudsperson (Pučki pravobranitelj), the Gender Equality Ombudsperson (Pravobraniteljica za ravnopravnost spolova), the Ombudsperson for People with Disabilities (Pravobraniteljica za osobe s invaliditetom) and the Ombudsperson for Children (Pravobranitelj za djecu). The Public Defender is the general equality body, while the other three institutions are special equality bodies with specific mandates – with a general obligation for co-operation between them⁵⁹. In principle, there is no obstacle for each of these institutions to deal with the same issues, as long as they are within their respective competences. However, in practice, the Public Defender will forward complaints of discrimination to the competent Ombudspersons, and all complaints regarding children, including complaints regarding children with disabilities, are forwarded to the Ombudsperson for Children⁶⁰.

The Public Defender promotes human rights and observes individual complaints in relation to irregularities in the work of public institutions, regional and local institutions and legal persons performing public authorities. The public defender is also the central body for protection against discrimination and acts like the national prevention mechanism for protection against torture.

The Ombudsperson for People with Disabilities provides advice to people with disabilities, co-operates with disabled people's organisations (DPOs) and initiates or takes part in public activities aimed at promoting the rights of people with disabilities. The

⁵⁶ Ombudsperson for Children, Alternative Report to the Committee on the Rights of the Child (Alternativni izvještaj odboru za prava djeteta), available at: http://www.dijete.hr/hr/izvjemainmenu-93/doc_download/413-alternativni-izvjetaj-odboru-za-prava-djeteta-un-a.html.

⁵⁷ Ministry of Social Policy and Youth, Strategic Plan 2014-2016.

⁵⁸ Ministry of Science, Education and Sport, Strategic Plan 2012-2014.

⁵⁹ Public Defender Act (Zakon o pučkom pravobranitelju), Official Gazette no. 32/12, Article 32.

⁶⁰ Public Defender: Report of the Public Defender for the Year 2013, p. 10. "Seven complaints for discrimination on the grounds of disability were forwarded to the Ombudsperson for People with Disabilities, while complaints we have received on discrimination of children, regardless of the grounds of discrimination, were forwarded to the Ombudsperson for Children".

Ombudsperson can alert, propose, inform and recommend to the competent state, regional or local authorities and private persons, to undertake measures aimed at improving the situation of people with disabilities. It can also request reports on the measures taken.

The Ombudsperson for Children promotes the protection of the rights of children with disabilities, follows-up on the compatibility of domestic legislation with the CRC and other international instruments, and participates in the process of drafting the legislation. The Ombudsperson has the competence to warn, propose and recommend, while the state, regional and local administration have the duty to co-operate and report. It is worth noting, however, that only a quarter of the Ombudsperson's recommendations have, so far, been implemented⁶¹.

2.2.3. Definitions

In 2003, the representatives of the DPOs, members of the Croatian Academy of Science and Arts, as well as representatives of the Government adopted the so-called Sheraton Declaration which determined the Croatian-language-terms to be used to define people with disabilities (*osobe s invaliditetom*) and a child with disabilities (*dijete sa teško ama u razvoju*). In 2009, the Ombudsperson for People with Disabilities validated these terms, which was followed by proposed amendments to the Constitution to consolidate the terms previously used. In 2010, the Constitution was accordingly amended. There are, however, some old instruments whose language has not yet been brought into conformity with the new uniform terminology.

An attempt has also been made to consolidate various legislative texts to reflect a uniform approach to disability and to define it in similar terms. Thus, for example, the Social Care Act defines a person with a disability as 'person who has long-lasting physical, mental, intellectual, or sensory impairments, which, in interaction with different obstacles, may prevent such a person's full and efficient participation in society on an equal basis with persons without disabilities⁶².' The same definition is included in other relevant legal Acts.

A child with a disability is 'a child who, due to physical, sensory, communicational, audio-linguistic or intellectual difficulties, needs additional support to learn and develop in order to achieve the best possible developmental outcome and social inclusion⁶³.'

A child is a person under the age of 18⁶⁴, when he/she gains full legal capacity. Exceptionally, full legal capacity can be obtained by a child who has turned 16, if they were allowed to get married⁶⁵.

⁶¹ Ombudsperson for Children, Opinion on the National Strategy for Children's Rights (*Mišljenje pravobraniteljice o prijedlogu Nacionalne strategije za prava djece*), available at: http://www.dijete.hr/attachments/1934_Pravobraniteljica%20za%20djecu%20Obrazac%208%205%202014.pdf.

⁶² Social Care Act, Article 4(1)9.

⁶³ Social Care Act, Article 4(1)10.

⁶⁴ Criminal Procedure Code, Article 202(37).

⁶⁵ Family Act, Article 117(2) in conjunction with Article 25(2). Normally, a person under the age of 18 cannot enter into marriage (Article 25(1) of the Family Act). Exceptionally, however, a court can authorise a person under the age of 18 and older than 16 to marry, if it is established to be for such person's benefit (i.e. in case of underage pregnancies). With marriage, a person under the age of 18 gains full legal capacity (Article 117(2) of the Family Act).

3. LEGAL FRAMEWORK FOR CHILDREN WITH DISABILITIES IN CROATIA

KEY FINDINGS

- Overall, the legal framework is developed to accommodate the requirements of the CRC, in particular given the adoption of the new Family Act and the National Strategy for Children's Rights. Many important provisions related to the protection of the interests of the child entered into force only on 1 January 2015. However, even after the application of the new law, there are important gaps, in particular in the child's right to express their opinion in the proceedings.
- The implementation of CRPD and CRC rights and principles is still not fully achieved. While a significant legislative and policy effort has been made to conform to the requirements of the international instruments, there is still a lot of room for improvement, in particular to harmonise legislation with the requirements of the new Family Act and to regulate the work of educational assistants. It is regretful that only a quarter of the recommendations of the Ombudsperson for Children, are being implemented.

3.1. Implementation of the provisions of the CRPD and CRC

3.1.1. Best interests of the child (Art. 3 CRC; Art. 7 CRPD)

The principle of the best interests of the child is not recognised as such in Croatian legislation, except for specific recognition under the Enforcement of Criminal Sanctions Pronounced against Minors for Crimes and Misdemeanours Act. The legal framework on the protection of children includes several other provisions requiring the need to protect the child's interests. However, the primacy of child's interests is not recognised.

Article 65 of the Croatian Constitution imposes an obligation on everyone to protect children, while Article 64 recognises that children with disabilities enjoy special protection. Even though this constitutional provision has not been subject to any official interpretation by the Constitutional Court or any other authority, the general principle is reflected throughout Croatian legislation, in particular, in the new Family Act which has been promulgated in 2014, and which has been seen as introducing a child-centred approach to regulating family relations⁶⁶. Furthermore, many other legislative acts make reference to the interests of the child, in particular, the Anti-Discrimination Act, the Criminal Procedure Code, the Enforcement of Criminal Sanctions Pronounced against Minors for Crimes and Misdemeanours Act, the Education in Elementary and Secondary School Act, the Social Care Act, and the Juvenile Courts Act.

Positive action aimed at protecting the interests of the child is not to be considered as discrimination⁶⁷.

There is an obligation to always make sure that the measure introduced to the family life of individuals is the least intrusive one⁶⁸ and the courts have the responsibility to ensure that

⁶⁶ See statements of the Minister for Social Policy and Youth, Milanka Opačić and the Ombudsperson for Children Ivana Milas Klarić.

⁶⁷ Anti-discrimination Act, Article 9(2)10.

⁶⁸ Family Act, Article 7.

the interests of the child, or a person with a disability, is protected throughout the proceedings⁶⁹. This general principle should be applicable throughout the various proceedings in which any interest of the child might be at stake. However, this provision only entered into force on 1 January 2015⁷⁰, and had already been commented by the Constitutional Court as 'demonstrating the attitude of the legislator towards the protected constitutional guarantees' ordering the Parliament to 'immediately bring to conformity [the final and transitional provisions of the Family Act] with the requirements that are derived from the rule of law, in order to ensure the certainty of objective legal order in the area of family relations⁷¹.' Despite the warnings of the Constitutional Court, Parliament has not amended the required provisions of the Act which continued to be applied and entered into force as originally stipulated, leaving simultaneous application of both the old and the new Family Act until January 2015.

Furthermore, there is a legal assumption that the rights of a child are at risk if difficulties in the child's development have been identified, or if it is likely that such difficulties will arise⁷². Even though there is no direct reference to disabilities in this provision, given the nature of consequences for the upbringing of a child with disabilities, it may be understood that this legal assumption applies to children with disabilities. While the interests of the child need to be safeguarded at all times in accordance with the above-mentioned general instruction, and require the competent authorities to always act with the interests of the child always in mind, the child's interests are particularly emphasised in the adoption proceedings where certain actions can be taken only if they are in accordance with the child's interests⁷³.

A child victim enjoys a special set of rights⁷⁴ and is subject to particular protective measures during criminal proceedings. These special procedural rules are supposed to ensure a safe and child-friendly environment for the child victim to give statements in the proceedings. These rules give detailed descriptions of the environment and the manner in which the examination of a child should be conducted⁷⁵. Furthermore, both a child victim and a child offender enjoy the right to have an attorney with special qualifications whenever their interest is at stake in the proceedings before the juvenile courts⁷⁶. However, the interests of the child and the proceedings for the provision of evidence by the child victim need to be balanced⁷⁷.

In the system of juvenile justice, the child's welfare also enjoys special protection during the execution of the sanction⁷⁸. There is an obligation on the authorities and institutions to

⁶⁹ Family Act, Article 348.

⁷⁰ Family Act, Article 563.

⁷¹ Constitutional Court of the Republic of Croatia, Report on final provisions (Articles 562 and 563) of the Family Act (Official Gazette no. 75 if 20 June 2014), no. U-X-3239/2014, of 3 July 2014, paragraphs 15 and 16. The Report postponed application of many provisions until 1 September 2014. The request for examination of the constitutionality of the Family Act was brought before the Constitutional Court by a number of attorneys and an NGO who claimed that leaving in force the old Family Act, and at the same time introduction the new Family Act was going against the principles of legal certainty which the Constitutional Court appears to have accepted.

⁷² Family Act, Article 131(2).

⁷³ Family Act, Articles: 198(3) (family name of the child); 213(1)5. (determination of a new personal number); 215(2) (entering the adoptive parents names in the child's birth certificate); 217(4) (granting access to the adoption file to a minor adoptee).

⁷⁴ Criminal Procedure Code, Article 44.

⁷⁵ Criminal Procedure Code, Article 292.

⁷⁶ Juvenile Courts Act (Zakon on sudovima za mladež), Official Gazette nos. 84/11, 143/12, 148/13, Article 116.

⁷⁷ Criminal Procedure Code, Article 330.

⁷⁸ Enforcement of Criminal Sanctions Pronounced against Minors for Crimes and Misdemeanours Act (Zakon o izvršavanju sankcija izre enih maloljetnicima za kaznena djela i prekršaje), Official Gazette No 133/12, Article 6.

co-operate with the courts in enabling urgent enforcement of criminal sanction, in the best interests of the child⁷⁹, while the parents or the guardians of the child are invited to take part in the process of the child's rehabilitation, whenever that is in the child's interest⁸⁰.

3.1.2. Non-discrimination (Art. 2 CRC; Arts. 3 and 5 CRPD)

Children enjoy the right to non-discrimination under Croatian legislation. While not providing for a particular guarantee against discrimination based on disability, the Constitution leaves the definition of discrimination open-ended, making a reference to 'other characteristics'⁸². This constitutional provision has set the ground for protection on the grounds of disability throughout Croatian material⁸³ and procedural⁸⁴ legislation, as well as the enforcement of criminal sanctions⁸⁵ legislation.

The Anti-Discrimination Act introduces the general prohibition of discrimination based on disability. It considers that the omission to provide people with disabilities with reasonable accommodation is also discrimination, but only regarding access to publicly-available resources, participation in public and social life, access to the workplace and appropriate working conditions. The reasonable accommodation requirement is understood as an adjustment of infrastructure and space, the use of equipment, or other adjustments which do not represent an unreasonable burden⁸⁶. Positive action through the provision of reasonable accommodation is not considered to be discrimination⁸⁷.

While the Anti-Discrimination Act recognises that segregation in all spheres of life is considered to be discrimination⁸⁸, in the education field, children with disabilities are granted preferential treatment in relation to their participation in preschool⁸⁹. Furthermore, there is a special requirement to ensure gender balance in education⁹⁰. However, there is no specific legislation to promote inclusive education as a way to ensure non-discriminatory treatment.

In combatting discrimination against children with disabilities, the applicable legislation has entrusted the Ombudsperson for Children with an important role. The Ombudsperson can receive individual complaints⁹¹, issue recommendations on the issues of such complaints, and can also look into general issues regarding the rights of the child on her own initiative⁹². For the period 2014-2016, the Ombudsperson has set as her goals the strengthening of individual rights and interests of the child and the improvement of the legal and social position of children⁹³. Within her efforts to ensure better protection of the

⁷⁹ Enforcement of Criminal Sanctions against Minors Act, Article 9.

⁸⁰ Enforcement of Criminal Sanctions against Minors Act, Articles 43 and 58.

⁸¹ Family Act, Article 348.

⁸² Constitution, Article 14.

⁸³ Anti-Discrimination Act, Article 1.

⁸⁴ Criminal Procedure Code, Article 6.

⁸⁵ Enforcement of Criminal Sanctions Pronounced against Minors Act, Article 5(3).

⁸⁶ Anti-Discrimination Act, Article 4.

⁸⁷ Anti-Discrimination Act, Article 9(2)3.

⁸⁸ Anti-Discrimination Act, Article 5.

⁸⁹ Preschool Education Act (Zakon o predškolskom odgoju i obrazovanju), Official Gazette nos. 10/97, 107/07 and 94/13, Article 20.

⁹⁰ Gender Equality Act (Zakon o ravnopravnosti spolova), Official Gazette no. 82/08.

⁹¹ Ombudsperson for Children Act (Zakon o pravobranitelju za djecu), Official Gazette no. 96/03, Article 16.

⁹² Ombudsperson for Children Act, Article 9.

⁹³ Ombudsperson for Children, Strategic plan for the Period from 2014 to 2016.

rights of the child, in 2012, the Ombudsperson sent a shadow report to the UN Committee on the Rights of the Child, pointing to some important problems that children with disabilities face, including: the obstacles for adoption, the problems with accessibility to institutions, especially healthcare institutions and the lack of efforts to enable inclusive education⁹⁴.

Even though the specific rights of children with disabilities do not seem to be singled out in the list of strategic priorities for the upcoming period, the Ombudsperson still works on the promotion of the rights of children with disabilities, making numerous recommendations to competent authorities for the improvement of the situation of children with disabilities. Thus, for example, at the beginning of the 2014/2015 school year, the Ombudsperson sent a circular note to the educational institutions warning them, *inter alia*, about the specific issues relating to the inclusive education of children with disabilities and the discrimination which comes from the lack of access to it⁹⁵.

The Ombudsperson for People with Disabilities is also an important institution for the protection of the rights of children with disabilities. The Ombudsperson has the competence to examine individual complaints⁹⁶, make recommendations to the administrative and regional authorities⁹⁷, and generally ensure that the rights of people with disabilities are protected and that any form of discrimination is eradicated⁹⁸. In their annual reports, the Ombudsperson pays due attention to the rights of children with disabilities. They are also competent to receive individual complaints filed on behalf of children with disabilities, upon which they respond and make recommendations to competent institutions when necessary.

3.1.3. Evolving capacities of the child (Art. 5 CRC and Art. 3 CRPD)⁹⁹

There is a legal recognition of the necessity to adapt parenting in accordance with the child's evolving capacities under the new Family Act¹⁰⁰. In addition, a child over the age of 14 has the right to participate in any proceedings in which a competent authority is deciding about their rights or wellbeing – while a younger child may be permitted to participate in such proceedings, depending on his/her age and evolving capacities¹⁰¹. Furthermore, under Article 86 of the Family Act, there is an obligation to have the child's opinion respected according to the child's maturity and age in cases where their rights and interests are being discussed (divorce, adoption or property issues).

In order to facilitate the establishment of the opinion of the child, a Book of Rules on Determining the Opinion of the Child was adopted by the Minister of Social Policy and

⁹⁴ Ombudsperson for Children, Alternative report to the CRC Committee.

⁹⁵ Ombudsperson for Children, Recommendation on the protection of children in educational institutions for 2014/2015 (Preporuka o zaštiti prava djece u odgojno-obrazovnim ustanovama za 2014./2015.), available at: http://www.dijete.hr/hr/preporuke-pravobraniteljice-mainmenu-81/odgoj-i-obrazovanje-mainmenu-88/doc_download/426-preporuka-o-zatiti-prava-djece-u-odgojno-obrazovnim-ustanovama-za-20142015-.html.

⁹⁶ Ombudsperson for People with Disabilities Act (Zakon o pravobranitelju za djecu), Official Gazette no. 107/07, Article 15.

⁹⁷ Ombudsperson for People with Disabilities Act, Article 9(2).

⁹⁸ Ombudsperson for People with Disabilities Act, Article 6.

⁹⁹ The concept of evolving capacities of the child establishes that as children acquire enhanced competencies and experience, there is a reduced need for direction and a greater capacity for the children to take responsibility for decisions affecting their lives. In light of the CRC, the concept of evolving capacities of the child entails that parents (or persons legally responsible) should have the right and the duty to provide, in a manner consistent with the evolving capacities of the child, appropriate guidance in the exercise by the child of his/her rights. See the overview project report for a more detail description of the concept.

¹⁰⁰ Family Act, Articles 84 and 91.

¹⁰¹ Family Act, Article 130.

Youth¹⁰². According to the Book of Rules, when examining the maturity and the capacities of the child to express their opinion, the involvement of experts is required¹⁰³, while the presence of persons who might influence the child is excluded¹⁰⁴.

The opinion of the child is taken into consideration depending on their age and maturity¹⁰⁵. However, when a child with mental disabilities should be subject to an examination or medical procedure, the presumption is that the parents or guardians will give their consent¹⁰⁶.

Furthermore, preschool children enjoy the right, guaranteed by the State, of receiving education in accordance with their evolving capacities. However, the parents of preschool children with disabilities have greater needs for support in order to be able to answer the demands of the evolving capacities of their children. That support is granted through local support channels¹⁰⁷, but with the ageing of the child this support decreases¹⁰⁸. Generally, even at a young preschool age, there is a larger need for support than is made available to them, in particular qualitative support for parents of children with disabilities¹⁰⁹.

The recognition of the evolving capacities of the child is a novelty in Croatian legislation, and time will show how it will be applied across the areas in which the rights of children with disabilities are concerned. The basic concern is that, unlike the recommendation of the Committee on the Rights of the Child¹¹⁰, Croatian legislation¹¹¹ sets an age limit of 14 years for compulsory consideration of the child's opinion in the proceedings. Furthermore, the Ombudsperson for children estimates that support for families to enable them to respect the evolving capacities of their children is inadequate and insufficient¹¹².

3.1.4. The right to be heard/to participate (Art. 12 CRC; Arts. 7 and 30 CRPD)

In Croatia, equality in the proceedings is guaranteed for everyone¹¹³. The new Family Act has furthermore ensured the obligation to have the child's opinion respected, depending on the child's age and maturity, while he/she also has the right to be informed about the circumstances of a case in which his/her rights and/or interests are being discussed, i.e. parents' divorce, adoption or property issues¹¹⁴, and must be given an opportunity to always participate in such proceedings if older than 14 years-of-age and younger – depending on his/her evolving capacities¹¹⁵. Exceptionally, children over the age of 16 can participate in criminal proceedings by making statements and taking procedural steps¹¹⁶.

¹⁰² Book of Rules on Determining the Opinion of the Child (Pravilnik o na inu utvr ivanja mišljenja djeteta), Official Gazette 104/14.

¹⁰³ Book of Rules on Determining the Opinion of the Child, Article 3.

¹⁰⁴ Book of Rules on Determining the Opinion of the Child, Article 4.

¹⁰⁵ Social Care Act, Article 17.

¹⁰⁶ Protection of People with Mental Illnesses Act (Zakon o zaštiti osoba s duševnim smetnjama), Official Gazette no. 11/97, 128/99, 79/02, Article 8(4).

¹⁰⁷ UNICEF, How parents and communities care about the children of the youngest age in Croatia (Kako roditelji i zajednice brinu o djeci najmla e dobi u Hrvatskoj), 2013, p. 143, available at: <http://www.unicef.hr/upload/file/380/190366/FILENAME/Publikacija.pdf>.

¹⁰⁸ UNICEF, *ibid*, p. 139.

¹⁰⁹ UNICEF, *ibid*, pp. 142-143.

¹¹⁰ CRC Committee, General Comment No. 12 on the right of the child to be heard, available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>, p. 9.

¹¹¹ Family Act, Article 130.

¹¹² Ombudsperson for Children, Alternative Report to the CRC Committee.

¹¹³ Constitution, Article 26.

¹¹⁴ Family Act, Article 86.

¹¹⁵ Family Act, Article 130.

¹¹⁶ Criminal Procedure Code, Article 53(3).

Further to these general guarantees, a child witness¹¹⁷, or victim of a crime¹¹⁸, should enjoy special safeguards when making statements. Moreover, juvenile courts, as well as public prosecutor's offices, must have pedagogues, social workers and psychologists on staff¹¹⁹.

Importantly, children over the age of 14 have the right to initiate proceedings for the protection of their rights and interests independently. Amongst many measures guaranteed by the Family Act, a child over the age of 14 can request, for example, to be: removed from the family¹²⁰ and to be subsequently returned to it¹²¹; protected by a restraining order¹²²; or placed under guardianship of foster parents¹²³.

The main problem faced in this matter is the fact that the implementation of the key provision in the new Family Act which ensures the right of the child to have their opinion heard in the proceedings, has been postponed until 1 January 2015, and commented upon by the Constitutional Court¹²⁴. In that interim period, while these provisions were not in force, there was confusion about what provisions were applicable, which might have affected the right of children to express their opinion in the proceedings. This was important since provisions in the old Family Act were much less favourable, i.e. only presenting the expression of the opinion of the child as a possibility rather than an obligation.

In September 2014, the Croatian Government adopted the National Strategy for the Rights of the Child which sets to ensure a justice system adjusted to children as one of its goals, taking into consideration, the Ombudsperson's Alternative Report. This report stressed that the principle of the participation of the child was only of a declaratory nature, without any practical consequences¹²⁵. The Strategy recognises that, while the legislative framework for the child's participation is satisfactory, there are shortcomings in its implementation¹²⁶. The Strategy suggests that there is a need for defining strictly the procedural provisions which enable the child to express their opinion in civil and family matters which deal with the child's rights. Irrespective of whether or not the child will participate in the proceedings, the child needs to have the opportunity to express his/her opinions¹²⁷.

3.1.5. Freedom from violence (Art. 19 CRC; Art. 16 CRPD) and its implementation

Freedom from any form of abuse is guaranteed by the Croatian Constitution¹²⁸. However, the Constitutional provision forbidding any crime of torture, inhuman and degrading treatment or punishment is limited to actions committed by a state agent, or by a third party if assisted and abetted by a state agent¹²⁹. This goes against the standards developed by the case-law of the European Court of Human Rights, according to which the prohibition

¹¹⁷ Criminal Procedure Code, Article 292.

¹¹⁸ Criminal Procedure Code, Article 44.

¹¹⁹ Juvenile Courts Act, Article 43.

¹²⁰ Family Act, Article 151(1).

¹²¹ Family Act, Article 152(5).

¹²² Family Act, Article 154(2).

¹²³ Family Act, Article 160(2).

¹²⁴ Constitutional Court of the Republic of Croatia, Report on final provisions of the Family Act.

¹²⁵ Ombudsperson for Children, Alternative report to the CRC Committee.

¹²⁶ National Strategy for Children's Rights, p. 14.

¹²⁷ National Strategy for Children's Rights, p. 17.

¹²⁸ Constitution, Article 23.

¹²⁹ Criminal Code (Kazneni zakon), Official Gazette 125/11, 144/12, Article 104.

of torture would also be considered violated in cases where it had been committed by a private person¹³⁰.

There is a general prohibition of children's corporal punishment¹³¹. Everyone has the duty to report to the SCC any violation of the child's personal rights and specifically the violation of the prohibition of corporal punishment¹³². This obligation is particularly emphasised for medical professionals¹³³, teachers, or other staff in educational institutions¹³⁴, as well as for institutions entrusted with protecting children's rights¹³⁵. Once such a report is filed, the centre has the duty to examine the report and determine measures such as: urgent removal and placement of the child outside the family; warning about the prohibited actions and the omissions in providing care to the child; nominating experts to help and support in caring for the child; providing more intensive support and supervision over the provision of child care through experts¹³⁶.

Furthermore, child victims and witnesses of crimes¹³⁷, as well as child victims of family violence¹³⁸, enjoy special protection.

The National Strategy for the Protection against Family Violence from 2011 to 2016 sets, as one of the goals, the prevention of family violence against children, providing special treatment to child victims or witnesses of family violence. At the same time, it sets indicators for monitoring implementation¹³⁹. The second strategic goal of the National Strategy for Children's Rights is the elimination of all forms of violence against children, in particular: corporal punishment and witnessing family violence; sexual violence and abuse; violence at schools; media and electronic violence; trafficking of children¹⁴⁰. The National Strategy also foresees ensuring prevention of structural violence and other forms of discrimination of children with disabilities¹⁴¹.

However, in reality, the implementation of legislative and strategic frameworks has been inefficient due to the lack of professional competence of persons working with children and their families, the lack of trained staff in general, and inappropriate regional representation of trained staff¹⁴². In addition, there is a lack of services for child victims of violence, coupled with ineffective proceedings which lead to institutional violence and victimisation. It is particularly worrying that child victims of sexual violence do not receive timely and quality support and their treatment in the proceedings is unsatisfactory. Furthermore, perpetrators of sexual violence against children may still work with children, even after they were found guilty¹⁴³.

¹³⁰ See e.g. European Court of Human Rights, *E.M. v. Romania*, judgment of 30 October 2012, case no. 43994/05.

¹³¹ Family Act, Article 94.

¹³² Family Act, Article 132.

¹³³ Medical Profession Act (Zakon o lije ništvu), Official Gazette no. 121/03, 117/08.

¹³⁴ Education in Elementary and High School Act (Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi), Official Gazette nos. 87/08, 86/09, 105/10, 908/11, 5/12, 16/12, 86/12, 126/12 and 94/13, Article 70.

¹³⁵ Ombudsperson for Children Act, Article 14.

¹³⁶ Family Act, Article 134.

¹³⁷ Criminal Procedure Code, Articles 44, 292 and 330.

¹³⁸ Protection against Family Violence Act (Zakon o zaštiti od nasilja u obitelji), Official Gazette 137/09, 14/10, 60/10, Article 20(4) and (6).

¹³⁹ National Strategy for the Protection of Family Violence for the Period from 2011 to 2016 (Nacionalna strategija zaštite od nasilja u obitelji, za razdoblje od 2011. do 2016. godine), Official Gazette 20/11.

¹⁴⁰ National Strategy for Children's Rights.

¹⁴¹ National Strategy for Children's Rights, p. 37.

¹⁴² National Strategy for Children's Rights, p. 48.

¹⁴³ Ombudsperson for Children, Alternative report to the CRC Committee, p. 15.

3.1.6. Right to family life (Art. 9 CRC; Art. 23(3) CRPD)

The Croatian Constitution guarantees the right to family life¹⁴⁴, and the family enjoys special protection from the State¹⁴⁵. There is particular emphasis on the rights of parents to be primary caregivers for their children¹⁴⁶, while any intervention in family life can be imposed only if a less intrusive measure cannot ensure their protection¹⁴⁷.

Children are guaranteed the right to live with their parents, and shared custody is a legal presumption. Shared custody is performed by means of a parental care plan, which is normally agreed between the parents¹⁴⁸ and may be submitted to the court for its verification and enforceability¹⁴⁹. One parent may obtain full custody, in general, or regarding certain issues, only with simultaneous limitations of the custody of the other parent – but this is solely based on a decision of a court¹⁵⁰. The parents have the duty to provide parental care, and they do not have the right to abandon their parental rights¹⁵¹.

When it comes to children with disabilities, there is an acceptance that families need special support to enable full development of the child in the family setting, which is often provided through informal channels, e.g. other families, NGOs or informal support groups¹⁵². Furthermore, problems have been noted regarding the maintenance of the relationship between the child with disabilities and their family in cases of removal from the family environment¹⁵³.

The problem with the right to family life is two-fold. On the one hand, the intervention where there are indications of neglect or abuse in the biological family often comes with significant delays contrary to the requirements of the best interests of the child, thus causing additional damage to the child concerned¹⁵⁴. On the other hand, people with disabilities who are placed under guardianship cannot exercise their parental rights during the deprivation of legal capacity in part in which such a parent is not able to perform his/her parental duties¹⁵⁵. This is a novelty introduced by the 2014 Family Act as, previously, parental rights were being lost with the loss of legal capacity¹⁵⁶ and a child could have been given for adoption without such person's consent¹⁵⁷. It remains to be seen how the new provisions regarding legal capacity will be applied in practice.

In October 2014, the Ministry of Social Policy and Youth adopted the Operational plan of deinstitutionalisation from 2014 to 2016¹⁵⁸, which is to facilitate the application of the Plan

¹⁴⁴ Constitution, Article 35.

¹⁴⁵ Constitution, Article 62.

¹⁴⁶ Family Act, Article 6.

¹⁴⁷ Family Act, Article 7.

¹⁴⁸ Family Act, Article 106.

¹⁴⁹ Family Act, Article 107.

¹⁵⁰ Family Act, Article 105(2).

¹⁵¹ Family Act, Article 91.

¹⁵² UNICEF, *How Parents and Communities Care about Children of the Youngest Age in Croatia, (Kako roditelji i zajednice brinu o djeci najmla e dobi u Hrvatskoj)*, 2013, p. 139-143, available at: <http://www.unicef.hr/upload/file/380/190366/FILENAME/Publikacija.pdf>.

¹⁵³ Ombudsperson for Children, *Alternative report to the CRC Committee*.

¹⁵⁴ Ombudsperson for Children, *Alternative report to the CRC Committee*.

¹⁵⁵ Family Act, Article 114.

¹⁵⁶ Family Act, Article 99(2).

¹⁵⁷ Old Family Act no longer in force, Article 130(1)2.

¹⁵⁸ *Operational plan for deinstitutionalisation and transformation of social care homes and other legal persons providing social services in the Republic of Croatia 2014-2016 (Operativni plan deinstitutionalizacije i transformacije domova socijalne skrbi i drugih pravnih osoba koje obavljaju djelatnost socijalne skrbi u Republici Hrvatskoj 2014. – 2016.)*, available at:

for deinstitutionalisation from 2011 to 2016¹⁵⁹ and which, so far, has not been effectively implemented – the number of children in institutions remaining unchanged. The institutions are not properly equipped and foster care is not taking root, especially in cities. Furthermore, the SCCs are not doing enough to prepare the biological family for the child's return to the family setting. In institutions for children with behavioural problems, there is a lack of expertise and training of staff, and there is no adequate placement for children with psychological difficulties¹⁶⁰. Nonetheless, even with the operational plan, the Ministry expressed their concern that the implementation of the plan will largely depend on the availability of resources, which will be sought to be obtained through EU Structural Funds.

3.1.7. Right to assistance (Art. 23 CRC; Arts. 23(5), 26 and 28 CRPD)

Croatian legislation provides a broad range of measures implementing the right to assistance. Free health insurance is guaranteed to every child under the age of 18. Children with disabilities and their parents have access to social care services – although these services are quite limited. The right to be granted the status of 'parent-carer' is very limited – it is only granted to parents of children with no mobility whatsoever, and children with multiple serious disabilities (physical, mental, intellectual or sensory)¹⁶¹. Granting of the parent-carer status means that the parent who is the primary carer of the child will have the right to social welfare benefits. Such parents receive monthly payment in the amount of approximately EUR 325 and enjoy other benefits equivalent to those of an employed person¹⁶². Once granted the status of carer, the parent concerned is not allowed to have any other employment, apart from caring for the disabled child.

Children with disabilities also have their own limited rights to the social care support system, e.g. the right to free transport – which is only granted if they go to special schools¹⁶³. A right to disability allowance is not granted to children under the age of one, and when it is granted, it is done so under limited conditions, such as multiple disabilities or limiting the allowance to a maximum amount of EUR 265¹⁶⁴. In practice, even when seemingly meeting the requirements for the disability allowance, for example deaf and blind persons, the authorities are inclined to interpret the legislation narrowly and treat such disabilities as a single disability¹⁶⁵.

Other forms of assistance are limited, and as noted above, these are normally through informal channels, e.g. families, NGOs or informal support groups. Cultural activities for children are not normally free-of charge, and even if they are, they are scarce – especially in smaller places and on islands. There is a problem of accessibility to many institutions for people with disabilities, in general, and children, in particular. Furthermore, the system of support is particularly lacking for deaf, blind, and deaf-blind children¹⁶⁶.

<http://www.mspm.hr/content/download/11665/91110/version/1/file/Operativni+plan+1.+10..doc>

¹⁵⁹ Plan for deinstitutionalisation and transformation of social care homes and other legal persons providing social services in the Republic of Croatia 2011 to 2016 (Plan deinstitucionalizacije i transformacije domova socijalne skrbi i drugih pravnih osoba koje obavljaju djelatnost socijalne skrbi u Republici Hrvatskoj 2011. -2016.), Official Gazette no. 36/11.

¹⁶⁰ Ombudsperson for Children, Alternative report to the CRC Committee.

¹⁶¹ Social Care Act, Article 63.

¹⁶² According Social Care Act, Article 66 in conjunction with Article 27(2) and the Decision of the Government on the base for calculation of rights from social care, Official Gazette 114/14, the parent carer has the right to five bases of 500 kn each, which is a total of 2,500 kn, or 325 euros.

¹⁶³ Social Care Act, Article 53.

¹⁶⁴ 250% of the base pay determined by the Government. The base pay for 2014 is 800 kn, which is around 105 euros.

¹⁶⁵ Interview with the Office of the Ombudsperson for Children.

¹⁶⁶ Ombudsperson for Children, Alternative report to the CRC Committee.

Children have the right to be accompanied by parents during hospitalisation – however, this is not being ensured by the hospitals, due to their limited capacities. Children's wards in hospitals are usually not large enough and cannot ensure the child's dignity and protection of privacy. There is, in addition, a lack of personnel, i.e. doctors, psychologists, social workers and nurses. The opinion of the child is not respected in making medical decisions.

Furthermore, as already noted above, preschool children enjoy the right guaranteed by the State of receiving education in accordance with their evolving capacities. However, the parents of preschool children with disabilities have larger needs for support in order to be able to answer the demands of their children.

3.1.8. The right to inclusive education (Art. 28 CRC; Art. 24 CRPD) and its implementation

The guarantee to inclusive education for children with disabilities exists only for preschool education, where children with disabilities are, moreover, given priority in enrolment. There is no guarantee of inclusive education for all children in elementary and secondary schools. Even in preschool education, however, accessibility to education is questionable, given the fact that preschool education is not compulsory and is not free-of-charge in Croatia.

In principle, compulsory education in Croatia applies to children from the age of 6. Children under the age of 6 can attend preschool, depending on the availability of places in the preschool institutions. Preschool education is organised and run by the local authorities, and children with disabilities are guaranteed priority in enrolment¹⁶⁷. However, out of the 40% of all children in Croatia who attend a preschool, only 4% are children with disabilities¹⁶⁸.

It is worth noting that 5.56% of all pupils in elementary schools are children with disabilities. From this number, 4.79% are included in mainstream schools, with the remaining 0.77% (or 2.778) of pupils falling outside of the inclusive system¹⁶⁹. In addition, there is a certain unidentified number of children with disabilities who receive no education whatsoever¹⁷⁰. In contrast, in 2014, only 905 students with disabilities, i.e. 1.75% of all students enrolled in high schools¹⁷¹ were foreseen to be enrolled in high schools across Croatia.

The 2014-2016 Strategic Plan of the Ministry of Science, Education and Sport sets, as one of its priorities, equal conditions in education for all pupils, i.e. aiming to give special support to pupils with disabilities by ensuring standards to enable their successful education and maximum inclusion into the mainstream educational system.

The National Strategy for Children's Rights sets, as one of its goals, equal opportunities for children with disabilities to access education, i.e. providing additional training for school staff, employing personal assistants, setting-up mobile teams to assist in the education of children with disabilities, and introducing a 'key expert' to co-ordinate co-operation

¹⁶⁷ Preschool Education Act, Article 20(1).

¹⁶⁸ Interview with the NGO IDEM - Centre for Inclusive Support, 26 November 2014.

¹⁶⁹ Interview with Ministry of Social Policy and Youth, 1 December 2014.

¹⁷⁰ Interview with the NGO.

¹⁷¹ Ministry of Science, Education and Sport, Decision on enrolment of pupils in the first year of high school in 2014/15 (Odluka o upisu u enika u I. razred srednje škole u školskoj godini 2014./2015.).

between the parents and everyone else involved in providing care and services to the child with disabilities¹⁷².

Nonetheless, the concept of personal assistants in inclusive education is not properly regulated. Moreover, there appears to be confusion and unresponsiveness when it comes to the allocation of assistants. Other problems jeopardising inclusive education relate to the lack of proper references to children with disabilities in the Bylaws of educational institutions and in the Book of Rules regulating inclusive education. Furthermore, there is lack of tools to ensure the recognition of the different needs of children with learning difficulties and a lack of properly-trained staff. All these issues are further discussed in section 4.2.

3.2. Specific issues faced by children with disabilities

3.2.1. Gender vulnerability

When it comes to children with disabilities, there appears to be more boys than girls with disabilities in Croatia – a total of 26,000 boys and 16,000 girls¹⁷³. There is a special requirement in the Gender Equality Act for gender balance in education. However, gender does not appear to be an issue which is specific to children with disabilities, and there is no discussion about intersectionality between gender and disability for children with disabilities in Croatia.

There is no issue with forced sterilisation of children with disabilities – boys or girls. However, there is general lack of programmes for children in Croatia specifically educating about reproduction¹⁷⁴, i.e. systematic education about healthy life and responsible sexual behaviour. In fact, there is an on-going public debate about the introduction of health and sex education in Croatia, which is, according to a 2013 survey, supported by 55% of the sample, while 58.3% of participants in the survey consider that it should be based on science and not on values¹⁷⁵. Namely, the debate was started when, in 2013, the Ministry of Education, Science and Sport adopted a Curriculum of health education in elementary and secondary schools. Shortly afterwards the Constitutional Court found the curriculum unconstitutional, following the request of a number of individuals, a right wing party and a citizens' association¹⁷⁶. The issue of sexual education at schools remains controversial, and certainly affects all children, and particularly children with disabilities.

In an attempt to provide better protection for child victims of crime, the Juvenile Courts Act introduced compulsory jurisdiction of juvenile courts when the victim of the crime is a child. However, there is a general lack of staff and their training to deal with child victims of violence. There is no particular concern raised in relation to girls with disabilities in this regard.

While the Criminal Code provides harsher penalties for a number of crimes committed against a child or a person with a severe disability (without providing a definition of a

¹⁷² National Strategy for Children's Rights, p. 37.

¹⁷³ Report on People with Disabilities for 2013 gives the number of 25,986 boys and 16,002 girls under the age 19.

¹⁷⁴ Ombudsperson for Children, Alternative report to the CRC Committee.

¹⁷⁵ Jutarnji list: Exclusively, the truth about the programme which split Croatia; Most parents in favour of health education at school (Ekskluzivno, istina o programu koji je podijelio Hrvatsku; Ve ina roditelja za zdravstveni odgoj u školi) at: <http://www.jutarnji.hr/ekskluzivno--istina-o-programu-koji-je-podijelio-hrvatsku-vecina-roditelja-za-zdravstveni-odgoj-u-skoli/1083412/> .

¹⁷⁶ Constitutional Court of the Republic of Croatia, Decision no. U-II-1118/2013, of 22 May 2013, Official Gazette no. 63/2013.

severe disability) and for an entire set of sexual crimes against children, there are no special protection measures for children, specifically girls with disabilities.

3.2.2. Children as vulnerable suspects

Children under the age of 14 are not held criminally responsible. In case such a child commits a crime or any other illegal act, the parents or legal guardians may be held responsible for compensation of damages, or can be held criminally liable if they have aided, abetted or incited the child to commit the crime. In the case of criminal responsibility, the person who incited the commission of the crime will be punished as if he/she committed the crime him/herself. The SCC is required to examine the situation in the family and impose appropriate measures – from supervision of parental performance, to isolation of the child from the family environment.

Children aged between 14 and 16 cannot be sentenced to jail, unlike children aged between 16 and 18.

There are special procedural rules in place – applicable to child perpetrators of crimes, including the introduction of juvenile courts and juvenile prosecutors who are expected to have special knowledge of psychology and social work, in addition to the general requirements of becoming a judge. The Juvenile Courts Act, however, does not provide special rules applicable for children with disabilities. However, juvenile courts have jurisdiction to try cases against adults if the victim is a child¹⁷⁷.

The National Strategy for Children's Rights recognised the shortcomings in the implementation of existing legislation applicable to children as suspects. To that end, the Strategy suggests that the efficiency and effectiveness of the proceedings against child perpetrators should be ensured¹⁷⁸.

3.2.3. Other particular issues faced by children with disabilities in Croatia

Furthermore, as in many other Central and Eastern European states, there is particular concern for the treatment of Roma children with disabilities, who are victims of intersectional discrimination. Roma children with disabilities have much less chance of being placed in foster care than non-Roma children with disabilities¹⁷⁹.

Moreover, due to particular circumstances and the high social exclusion that Roma children are exposed to, they are often classified as children with disabilities, even if there is no such disability¹⁸⁰.

Apart from Roma children, children from poor families are also at particular risk. According to recent UNICEF research¹⁸¹, 70% of children with disabilities from poor families in Croatia live in long-lasting poverty, with almost half of them not even having their own bed, and more than one-third having difficulties in accessing rehabilitation services.

¹⁷⁷ Juvenile Courts Act, Article 113(3).

¹⁷⁸ National Strategy for Children's Rights, p. 15-17.

¹⁷⁹ In portal: Developing foster care for children from Roma minority (Razvoj udomiteljstva za djecu romske nacionalnosti), available at: <http://www.in-portal.hr/in-portal-news/vijesti/5670/razvoj-udomiteljstva-za-djecu-romske-nacionalne-manjine>.

¹⁸⁰ See e.g. Roma Children, Protection, available at: http://www.romachildren.com/?page_id=9.

¹⁸¹ UNICEF Croatia, The most vulnerable children, available at: http://www.unicef.hr/upload/file/395/197861/FILENAME/infografika_romska_djeca_FIN.pdf.

Poverty is one of the main reasons for institutionalisation in EU countries¹⁸², and children with disabilities are seen as having a high risk of poverty¹⁸³. In Croatia, in 2013, more than 15,000 preschool children were social welfare recipients¹⁸⁴.

There are also reports of the lack of acceptance of the sexuality of people with disabilities, in particular, of children and young adults. Initiatives for sexual education and discussions on the sexuality of young persons with disabilities are scarce. Reportedly, parents of children with disabilities consider their children's sexuality as just an additional problem that has to be dealt with, and discourage their children from entering into relationships¹⁸⁵.

Furthermore, the majority of young LGBTI people surveyed in a number of European states, including Croatia, are reported to be subject to social isolation. More than 90% of them feel isolated at some point¹⁸⁶. While there is no similar research or data, in general, to reflect on the experiences of LGBTI children and youths with disabilities, it may only be assumed that with the multiplication of issues, the situation of LGBTI children with disabilities can be more difficult.

¹⁸² Browne, K. (2009) *The Risk of Harm to Young Children in Institutional Care*, London: Save the Children, p.2.; as per Common European Guidelines on the Transition from Institutional to Community Based Care at: www.deinstitutionalisationguide.eu.

¹⁸³ Šušur, Z., *Risks of Child Poverty in Croatia – Priorities for appropriate measures (Rizici djece siromaštva u Hrvatskoj – Prioriteti za poduzimanje odgovarajućih mjera)*, presented at the Conference "Children at Risk from Poverty and Social Exclusion: Challenges and Opportunities", as per National Strategy for Children's Rights, p. 71.

¹⁸⁴ UNICEF Research: *Poverty and Material Welfare of Children of Preschool Age in Croatia (Siromaštvo i materijalna dobrobit djece predškolske dobi u Hrvatskoj)*, press release, September 2014, available at: http://www.unicef.hr/upload/file/395/197863/FILENAME/Siromastvo_djece_info_za_medije_rev.pdf.

¹⁸⁵ *Sexual life of people with disabilities – Sexual assistants, yes or no? (Seksualni život osoba s invaliditetom: Seksualni asistenti, da ili ne?)*, available at: <http://dubrovackidnevnik.hr/vijesti/hrvatska/seksualni-zivot-osoba-s-invaliditetom-seksualni-astistenti-da-ili-ne>.

¹⁸⁶ IGLYO, *The impact of homophobic and transphobic bullying on education and employment*, 2013, available at: http://issuu.com/iglyo/docs/bullying_report_-_web/13?e=1124093/6519072.

4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES

KEY FINDINGS

- There are great concerns about the lack of proper enforcement mechanisms for the guarantees incorporated in the legislation, in particular, the absence of sanctions or penalties for authorities that fail to provide children with disabilities with access to rights or services.
- The main gaps regarding implementation relate to the difficulties with which children with disabilities are faced in accessing inclusive education, support to access services, as well as the concern that certain children, who are not diagnosed with a disability, simply fall through the system of protection.
- There are some best practices – including: the activities of civil society providing services to children in inclusive education and rehabilitation; introduction of multidisciplinary mobile teams in certain geographic areas; practices of certain schools and institutions providing broader services to children with disabilities.
- There is a central Registry of People with Disabilities which is kept by the Croatian Public Health Institute. The Registry, however, does not disaggregate data to make it possible to have a comprehensive picture of children with disabilities. Apart from the Registry, other data on children with disabilities are not comprehensively kept – particularly given that only children who are officially diagnosed with disabilities are registered.
- Further recommendations are suggested towards full realisation of the rights of children with disabilities.

4.1. Enforcement and reporting mechanisms

There are several possible avenues where the rights of children with disabilities may be discussed: civil proceedings – mostly regarding statutory issues such as child custody, maintenance and criminal proceedings, i.e. children as victims and suspects of witnesses; minor offence proceedings, i.e. anti-discrimination protection; administrative proceedings, i.e. access to inclusive education and services; complaints to either the Ombudsperson for People with Disabilities or the Ombudsperson for Children. Depending on the avenue, the enforcement and reporting mechanisms will vary.

Civil proceedings are available for statutory issues regarding children with disabilities, as provided for by the Family Act, which has introduced many novelties in the sphere of protection of children's rights. As stipulated by this new legislation, children now have the possibility to initiate proceedings themselves, even though, in the majority of cases, their parents will be their default representatives.

Furthermore, the Anti-Discrimination Act recognises that disability is one of the grounds for discrimination. The act also provides that any person, who finds their right to equal treatment violated, can file a civil suit against the violator¹⁸⁷. In addition, there is the possibility for a collective suit (*actio popularis*) on behalf of larger groups of people¹⁸⁸. Individual and the collective suits can be filed both *post factum* or *pre-emptively*, if proved

¹⁸⁷ Anti-Discrimination Act, Article 17.

¹⁸⁸ Anti-Discrimination Act, Article 24.

that an act or an omission has brought unequal treatment¹⁸⁹ – damage does not have to occur, but, needs to be proved as forthcoming, unless discriminatory treatment is not remedied. When regulating the civil liability of discriminators, the Act provides for the shift of the burden of proof. The amount of civil damages is not limited, but is left to the courts to determine.

In criminal proceedings, special protection is given to all children, regardless of their role in the proceedings. No special protection is granted to children with disabilities. Members of the Judicial Police continually receive training on how to proceed with people with disabilities. Nevertheless, no particular training is provided to the Judicial Police in relation to children with disabilities. The judges and prosecutors receive occasional training on the rights of people with disabilities. However, there is no indication as to whether or not judges and prosecutors of the juvenile courts are provided with such training¹⁹⁰. Furthermore, some non-governmental structures provide judiciary with some training in handling cases involving child victims of crimes¹⁹¹. Nonetheless, no particular education is provided on children with disabilities.

All cases involving children are dealt with by the juvenile courts, although, the courts are still not equipped with child-friendly settings to provide the best environment for children in criminal proceedings, even though significant recent effort, with the aid of UNICEF, has aimed to improve the situation. It is planned for 70% of Croatian cases involving children to be heard in child-friendly environments¹⁹².

Certain aspects of anti-discrimination protection are being implemented in the minor offence proceedings. Namely, apart from the civil responsibility for discriminatory treatment, persons responsible for discrimination, as well as legal persons and state bodies committing prohibited actions (including victimisation), are liable to pay a fine amounting to a maximum of 350,000 HRK (around 45,000 euros). Apart from the victims, or their legal representatives, the Public Defender and the Ombudspersons may initiate minor offence proceedings with the competent courts. Furthermore, protection against family violence is provided by means of minor offence proceedings. Hence, restraining orders are obtained through those proceedings, in which the perpetrator of family violence may also be bound to pay a fine of 3,000-1,000,000 HRK and up to 90 days in prison.

Administrative proceedings have two stages – proceedings before the administrative authorities and administrative disputes before the administrative courts. Normally, it is necessary to exhaust two instances of administrative proceedings (exceptionally, only one instance), before gaining access to the administrative courts. These proceedings are used in, for example, access to inclusive education or access to services.

As mentioned in section 1.2.2 above, the equality body competence is divided between several institutions in Croatia. Given their respective mandates, the Ombudsperson for Children and the Ombudsperson for People with Disabilities share competence to deal with the issues of discrimination against children with disabilities. There does not appear to be

¹⁸⁹ Anti-Discrimination Act, Articles 17 and 24 in conjunction with Civil Procedure Code, Article 502.a.

¹⁹⁰ Interview with the Ministry of Social Policy and Youth.

¹⁹¹ UNICEF Croatia, Education of experts from the judiciary on the protection of children victims and witnesses, available at: <http://www.poliklinika-djeca.hr/aktualno/novosti/unicef-hrvatska-edukacija-strucnjaka-iz-pravosudnog-sustava-o-zastiti-djece-zrtava-i-svjedoka/> .

¹⁹² UNICEF press release, New technologies and improved skills deliver the promise of child-friendly justice in Croatia, available at: http://www.unicef.org/ceecis/media_26849.html.

many complaints to these bodies, e.g. in 2013, the Ombudsperson for People with Disabilities received a total of 48 complaints, of which only seven complaints established discrimination¹⁹³. In the same period, the Ombudsperson for children received 78 complaints of which only two were submitted by children themselves¹⁹⁴.

When it comes to complaints submitted to the two Ombudspersons, there is no distinction between the competencies of the two institutions regarding the protection of rights of children with disabilities – they can both receive individual complaints and act upon them. Hence, complaints about alleged violation of rights of children with disabilities can be directed to both bodies. It has been stated that there is a lack of structured co-operation between both institutions. In addition, there is a general lack of recognition of specific issues that children with disabilities and their families face, and these problems are not properly addressed.

Even though the Ombudsperson for People with Disabilities and the Ombudsperson for Children may look into a complaint and issue recommendations, there is a sentiment that their powers are very limited and, thus, they are reluctant to address them – even though, in many cases, they managed to intervene with success. This may be due to the fact that, even though they have successfully intervened in some individual cases, general recommendations of the Ombudsperson for Children are, for example, accepted only in 26% of cases¹⁹⁵.

The new Family Act empowers children to undertake many steps in the proceedings in order to have them heard and their rights protected. There is no special provision which would deal with children with disabilities, and there is no guarantee for reasonable accommodation, apart from the recognition of discrimination by failure to provide reasonable accommodation – which stems from the Anti-Discrimination Act.

Furthermore, in practice, hardly any information is provided to children regarding their rights and the possibility to address complaints to the Ombudsperson. Information accessible to children with disabilities is non-existent. Thus, even though, in theory, children with disabilities would have the right to complain, in practice, this hardly ever happens unless parents complain on their behalf.

Parents have a primary duty to protect their children's interests¹⁹⁶. However, in the protection of the interests of a child, the SCCs act as the primary protectors before the courts or other competent authorities – either as the party to the proceedings or as an intervener¹⁹⁷.

4.2. Gaps, problems and issues in the implementation

'Medical' vs 'social' model

There are several gaps in Croatian legislation, which impede the full enjoyment of rights by children with disabilities – the most important being the lack of rules regulating access to mainstream education. While the definitions of a person with disabilities and a child with disabilities have been updated in 2009, these amendments have not been

¹⁹³ Ombudsperson for People with Disabilities, Annual Report 2013, p. 292.

¹⁹⁴ Ombudsperson for Children, Annual Report 2013, p. 22.

¹⁹⁵ Ombudsperson for Children, Alternative report to the CRC Committee.

¹⁹⁶ Family Act, Article 92(3).

¹⁹⁷ Social Care Act, Article 127(1).

incorporated in the legislation regulating the right to education.

The National Strategy for the Rights of the Child sets out the following key issues that stand in the way of full enjoyment of rights by the child:

- lack of a system to follow the allocation of funds and expenditure towards children's rights and needs;
- inefficient 'vertical and horizontal' co-ordination between implementation of the legislation and national strategic documents;
- uneven availability of services to children in different parts of the country;
- underdeveloped indicators of children's welfare;
- unknown or uneven implementation of prevention programmes;
- inadequate approach to lifelong learning for experts who work with children¹⁹⁸.

Further to these shortcomings, which are general to all children, there are other issues specific to children with disabilities, such as the lack of rules for access to support assistance in schools. Thus, there is no regulation for access to teaching assistants by children with disabilities, which, together with the failure in providing steady funding for their work, causes problems in the functioning of educational processes at the beginning of each school year.

As noted in section 3.1.8 above, the 2014-2016 Strategic Plan of the Ministry of Science, Education and Sport sets, as one of its priorities, ensuring equal conditions for the education of all pupils. However, the Plan is lacking a genuine effort to increase inclusion of children with disabilities into mainstream education. Hence, while it explicitly foresees to increase the availability of education for children of all ages, it establishes the increase of the number of children with disabilities in preschool education from the initial 5,882 children (supposedly in 2013) to 5,920 in 2014 (a total of 28 extra children, or an increase of 0.47%), and 5,930 in 2015, which should stagnate in 2016 with a total increase of 0.65% from the original number. In the same period, the plan is to maintain the number of children with disabilities in elementary schools who receive support for provision with transport, meals and didactical support at the initial 2,631 in 2014 and 2015, and increase it to 2,650 in 2016 – a total of 17 children or 0.64%.

The only genuine increase appears to be in the field of improving educational standards for children with disabilities in inclusive education in high schools, where an increase of 250% was foreseen – from the initial 120 children in high school who enjoy those improvements, to a targeted 180, 200 and 300 students in 2014, 2015 and 2016, respectively. However, given that more than 900 pupils with disabilities were enrolled in 2014, the plan ensures the improvement of educational standards for only a small proportion of the total number of students whilst, at the same time, not ensuring inclusive education for all students with disabilities.

Moreover, there are major structural problems in the employment of educational assistants. Namely, bylaws of educational institutions do not comply with the obligation to ensure inclusion of children with disabilities into mainstream education, and new regulations have not been adopted, even after repeated requests from the Ombudsperson for Children. The existing Book of Rules regulating inclusive education still uses, for example, the vocabulary of, e.g. 'mental retardation' and 'defectology', and only provides inclusive education for children with the mildest learning difficulties. While there is the right

to appeal a decision rejecting a child from mainstream education, the prospect of success for the majority of such appeals is low given the legislative framework.

A draft Book of Rules has been on the agenda of the Ministry of Science, Education and Sport for a number of years, but it has not yet happened¹⁹⁹, and Amendments to the Education Act, is also in the drafting stage. However, both should be on the agenda soon.

Furthermore, there is a lack of tools to ensure the recognition of the different needs of children with learning difficulties, and where there is lack of reaction and response by parents, schools fail to involve SCCs. In addition, teaching staff are not trained to respond to the different needs of children with disabilities²⁰⁰.

Moreover, many practical problems occur in the process of employing educational assistants. For example, in 2014, even though the school year started on 1 September, only on 23 September, the Ministry of Education authorised the employment of assistants, but still failed to employ them all due to problems in financing²⁰¹. Because of this delay, a number of children with disabilities had to stop going to school mid-term, or could not start school for more than two months after the school year started. According to the latest information regarding the situation in Zagreb, as of November 2014, almost 40 children have not been allocated an assistant²⁰². Furthermore, while the system functions in schools – even with difficulties, when it comes to providing assistants for children in preschool, the situation is generally worse since no systematic support is provided²⁰³.

Another problem is the qualification of the assistants. Previously, assistants have been employed through various unofficial channels, most often by NGOs, with the funds coming from the Government, but also from other sources²⁰⁴. In 2014, the Ministry of Social Policy and Youth ensured funds for financing the involvement of educational assistants for children with disabilities in mainstreaming schools, with most of the funds being provided through the European Social Fund and income from the lottery and other games of chance²⁰⁵. Due to this, in 2014, most educational assistants were employed through the

¹⁹⁹ In December 2014 the Ministry opened a public debate on a draft book of rules, inviting all the interested parties to contribute to the discussion, and, promising to either accept or reason the refusal of any incoming suggestions. See Ministry of Science, Education and Sport, Public Debate on the Draft Proposal Bok of Rules on Elementary and Secondary School Education of Children with Disabilities (Otvorena javna rasprava o Nacrtu prijedloga Pravilnika o osnovnoškolskom i srednjoškolskom odgoju i obrazovanju u enika s teško ama u razvoju), 17 December 2014, available at: <http://public.mzos.hr/Default.aspx?art=13529>.

²⁰⁰ Ombudsperson for Children, Recommendation on the protection of children in educational institutions in 2014/2015, 2014, available at: http://www.dijete.hr/hr/preporuke-pravobraniteljice-mainmenu-81/odgoj-i-obrazovanje-mainmenu-88/doc_download/426-preporuka-o-zatiti-prava-djece-u-odgojno-obrazovnim-ustanovama-za-20142015-.html.

²⁰¹ Children with disabilities again without educational assistants (Djeca s posebnim poterbama ponovo bez asistenata u nastavi), 3 November 2014, available at: <http://vijesti.hrt.hr/djeca-ponovno-bez-asistenata-u-nastavi>.

²⁰² Good news: Minister Mrsi found a solution for educational assistants for children with disabilities (Dobra vijest: Ministar Mrsi pronašao rješenje za asistente u nastavi za djecu s teško ama), 11 November 2014, available at: <http://www.in-portal.hr/in-portal-news/in-mreza/6528/dobra-vijest-ministar-mrsic-pronasao-rjesenje-za-asistente-u-nastavi-za-djecu-s-teskocama>.

²⁰³ Interview with the Office of the Ombudsperson for Children. See also In Zadar, assistants' problem solved through the social fund (U Zadru problem asistenata riješen putem socijalnog fonda), 10 November 2014, available at: <http://vijesti.hrt.hr/do-asistenata-u-nastavi-kroz-mjeru-javnih-radova>.

²⁰⁴ Interview with the Office of the Ombudsperson for Children.

²⁰⁵ Interview with the Ministry of Social Policy and Youth. Gaming, which in the Croatian context comprises of lottery, sports and other bets, casinos and slot machines is subject to special tax. Games of Chance Act, Official Gazette nos 87/09, 35/13, 158/13 and 41/14, Articles 5 and 18.

public works programme "Youth for Youth"²⁰⁶, managed by the Croatian Employment Agency. The employment offered is limited to a total of 18 months within a five year period, and out of the 18 months available, not more than ten can be consecutive. This contract is available to low-skilled young persons, who are paid a gross amount of around 460 euros a month²⁰⁷. There is an expectation, however, for local authorities to contribute 50% to the salaries of assistants which, in practice, is problematic and salaries are, thus, paid late²⁰⁸. Some assistants receive training through civil society organisations, but it is not clear if all of the assistants are required to go through training before undertaking their jobs.

This approach to employing educational assistants raises concerns about how competent people may be without formal education for such an important task, i.e. when they are provided with training that is seen to be inefficient, inapplicable and impractical and which is organised on weekends²⁰⁹. Furthermore, with the limitations of the public works scheme, under which assistants are employed, a child with disabilities cannot keep the same assistant for the full two years at school. These circumstances bring into question the capacity of the existing approach, to the appointment of assistants, to genuinely contribute to the inclusion of children with disabilities into education and society in general.

Moreover, there is a need to regulate the work of mobile support teams which are tasked to intervene on an 'as needed basis', in assisting children with disabilities, their families, teachers and educational assistants, in the process of inclusion.

There appears to be a lack of co-ordination and synchronisation of activities of different institutions which play different roles in the protection of children with disabilities. The two Ombudspersons institutions have overlapping mandates, and there appears to be lack of co-ordination of the approach between the two. There are two different commissions which evaluate the educational needs of a child with disabilities, again, with little co-ordination between the two. Various ministries deal with the rights of children with disabilities from the aspects of their respective competencies.

Furthermore, the criteria for the status of parent-carer, as set in the legislation, appears to be limited and does not provide all children with disabilities with proper care – beyond those strictly defined by law, i.e. children who are completely immobile or children multiple disabilities. In fact, compliance of the provision defining the status of parent-carer is currently being questioned by the Constitutional Court following a motion by the Ombudsperson for People with Disabilities²¹⁰.

Parents of children with disabilities have certain rights to social care which are, however, difficult to obtain. As mentioned previously, the legal requirements for a parent to be declared the carer of the child, and thus given rights from the social welfare, are strict and are not available to, for example, parents of children with autism or blind-deaf children.

²⁰⁶ Public work is a time limited work, which provides for subventions for the employment of the unemployed belonging to target groups. Public work programme needs to be based on publicly utile work, initiated by local communities, civil society or other subjects. It needs to be non-profit and non-competitive. Persons who had worked in public works in the period longer than 18 months in the previous 5 years cannot be included in the public work. See official information from the Employment Agency at: <http://www.hzz.hr/default.aspx?id=11861>.

²⁰⁷ Vacancy advertisement available at: <http://www.hzz.hr/default.aspx?id=11763> (last accessed 2 December 2014).

²⁰⁸ Allegedly, salaries for October were not paid by late November 2014. Source: Interview with the NGO.

²⁰⁹ Interview with NGO.

²¹⁰ Interview with the Office of the Ombudsperson for People with Disabilities.

The proceedings for the evaluation of this provision by the Constitutional Court are pending²¹¹.

In addition, parents of children with disabilities, recognised as in need of larger and broader support, are often not provided with any, or very little, advice or guidance. Thus, it often happens that children with disabilities start receiving support services only once they enter the educational system²¹². Furthermore, there appears to be no comprehensive guidance regarding the rights of families of children with disabilities left between the two systems of health protection and social welfare, and who are left to find out this information by themselves.

Furthermore, it would appear that children with disabilities enjoy fewer rights than Croatian war veterans, given that, for the latter, the requirement to be given a paid carer is functional, rather than strictly formal. In other words, for a veteran to be allocated the assistance of a paid carer, they must be fully in need of other person's assistance²¹³ – without limitations, e.g. the full absence of mobility of multiple disabilities, yet, children with disabilities are, however, limited by such requirements, in order to be provided with a carer. Furthermore, the carers of war veterans get paid significantly more than parent-carers²¹⁴, and veterans also have an unconditional right to transport costs²¹⁵, whereas children with disabilities have the right to the costs of transport only under limited circumstances²¹⁶.

Working parents of children with disabilities have the right to use parental leave for up to eight years. However, this right is accessible only in cases where both parents are employed²¹⁷. If one parent loses employment, then both lose the right to parental leave. This may be particularly difficult in the case of separated or divorced parents, when the parent who does not live with the child loses employment, thus, leading to the other parent losing the right to parental leave as well – unless the social work centre confirms that the other parent has made a grave violation of their parental duties by abandoning the child²¹⁸.

Moreover, there appears to be certain problems in identifying children with disabilities and entering them into the system of support. In order for a child's rehabilitation plan to be put in place, there are two limbs of regulations which need to be complied with, i.e. medical and social limbs. The problem is that there is no co-ordination between the two – which leads to confusion and possible failure to receive support. Currently, new legislation is being drafted to introduce novelties and co-ordination between different aspects of care for children with disabilities²¹⁹.

²¹¹ Interview with the Office of the Ombudsperson for People with Disabilities.

²¹² Interview with the NGO.

²¹³ Croatian Independence War Veterans' and Their Family Members' Rights Act (Zakon o pravima hrvatskih branitelja iz Domovinskog rata i članova njihovih obitelji), Official Gazette nos. 174/04, 92/05, 107/07, 65/09, 137/09, 146/10, 140/12, 19/13, 33/13, 148/13, 92/14, Article 85 in conjunction with Article 65.

²¹⁴ Croatian Independence War Veterans' and Their Family Members' Rights Act, Article 68 stipulates that the reimbursement for a carer of a 1st category disabled war veteran amounts to the 115% of the budgetary base amount. The base amount for 2014 was 3824.90 kn, i.e. the total amount of benefit was 4,398.65 kn, which is more than 75% higher than the 2500 kn allocated to parent-carer.

²¹⁵ Croatian Independence War Veterans' and Their Family Members' Rights Act, Article 5.

²¹⁶ Social Care Act, Article 53.

²¹⁷ Maternal and Parental Support Act, Official Gazette nos. 85/08, 110/08, 34/11, 54/13, Article 13.

²¹⁸ Maternal and Parental Support Act, Article 18 provides for conditions of transfer of the right to parental leave from one parent to another provides for this possibility in certain cases, including when a parent has been deprived of the right to live with the child. It is disputable whether with the divorce parent loses this right, or is this right only limited as regulated by the visitation schedule.

²¹⁹ Interview with the Office of the Ombudsperson for People with Disabilities.

There is general concern that, even in respect of those issues where legislation is in place and provides protection for children with disabilities, serious problems are encountered in relation to their implementation. Thus, even though there is a legal requirement for children with disabilities to be given an advantage in enrolment to preschools, in practice, this is not fully implemented. At the same time, there is no inspection or supervision of headmasters of preschools and schools which refuse to enrol children with disabilities.

In addition, there are few regular inspections of schools and other institutions which are responsible for the implementation of the rights of children with disabilities, thus, making it almost impossible for issues to be identified unless a complaint by a child, or a child's family, is submitted. Even when irregularities are identified and confirmed, there are no sanctions against the persons responsible for the violation, thus developing a climate of impunity²²⁰.

National strategic documents, even in compliance with requirements of the international human rights instruments, are seen only as an official 'wish list' – given that these documents are not accompanied with any budgetary intervention and no funds are allocated for the purpose of the implementation of national strategies. Thus, these strategic documents do not appear to be taken seriously by the stakeholders in the field²²¹.

As mentioned in section 3, reasonable accommodation is considered discrimination only in regard to accessing publicly-available resources, participating in public and social life, accessing the workplace and appropriate working conditions. In addition, there is reluctance to provide children with disabilities with reasonable accommodation to ensure the right to education. Thus, for example, a case was reported where a request, on behalf of a child with motor difficulties, to have his class moved from the upper floor to a ground floor of a school building, in the absence of an elevator, was met only after a long and heated debate which eventually led to a boycott of the school by the parents of other children from his class²²². Such incidents not only affect the education of children with disabilities, but also their overall social inclusion. Such circumstances can create further antagonism and a deepening stigma towards children with disabilities.

Furthermore, children's playgrounds are unregulated and there is no systematic follow-up on the health of children practicing sports – who often have to practice at night, i.e. when the work of coaches and sports workers is usually not licenced²²³.

Moreover, accessibility remains to be an issue for people with disabilities in general, and for children with disabilities in particular. Only 7% of all elementary schools have been fully adapted to provide accessibility – with an additional 23% that have been partly adapted²²⁴. Many areas of accessibility are yet to be regulated, e.g. the use of sign language and guide dogs²²⁵ and, in particular, children with disabilities have no access to culture or sports, apart from sporadic instances where this is provided on a 'good-will' basis²²⁶.

In relation to freedom from violence, it is a particular concern that there have been

²²⁰ Interview with the NGO.

²²¹ Interview with the NGO.

²²² Interview with the NGO.

²²³ Ombudsperson for Children, Alternative Report to the CRC Committee.

²²⁴ Interview with the Ministry of Social Policy and Youth.

²²⁵ Per Interview with the Ministry of Social Policy and Youth draft legislation for the regulation of use of sign language is in the adoption process while a draft law on the use of guide dogs is currently being prepared.

²²⁶ Thus, for example, some sports clubs are willing to accept children with disabilities. Interview with the NGO.

reports of the use of cage-beds and restraints, and general neglect of children with disabilities in institutions²²⁷. In that regard, the UN Committee of Human Rights requested an immediate ban on the use of such methods²²⁸. However, regardless of this recommendation, cage-beds and restraints continue to be regularly used by staff of institutions for children with disabilities, under the explanation that there is a shortage of staff and that it is for 'the children's own sake'²²⁹. An additional issue of concern is the problem of peer violence in educational institutions. Worryingly, in institutions for children with behavioural disorders, peer violence is often considered a normal way of interaction²³⁰. Furthermore, there is a tendency to blame children with disabilities, e.g. children with behavioural disorders such as ADHD, for instigating peer violence – which demonstrates a deep failure to understand the nature of certain disabilities and how to handle them²³¹.

There is also a lack of recognition by the health service providers, of the child victims of violence – which leads to underreporting. Violence against children in sports clubs - including sexual abuse, is of particular concern since these clubs are not subject to inspections and controls²³².

Family violence – including corporal punishment, regularly occurs against a large number of children. Statistics point out that almost two thirds of children are subject to some form of violence every year²³³ and more than a third of children under the age of three are subject to some form of physical violence in the family, e.g. spanking and hair pulling²³⁴. Taking into account the concerns that violence against children often goes unnoticed and unreported, or its importance is diminished²³⁵, it can only be concluded that the dimensions of the problem are much larger than any evidence may show.

There is still a general misunderstanding of disability in the broader public sense, where people with disabilities and, in particular, children with disabilities, are stigmatised not only at school, but in society in general, where they are either not accepted or ridiculed. Some children experience difficulties even in meeting their basic needs, such as dental care²³⁶. Access to dental care for children with disabilities may sometimes be very difficult when they need to be anaesthetised for the procedure. Reports have shown that certain health

²²⁷ Mental Disability Advocacy Centre (MDAC), Shadow report on the implementation of the International Covenant on Civil and Political Rights by Croatia, 2009, p. 11, available at: http://mdac.info/sites/mdac.info/files/MDAC_Croatia_shadow_report.doc. The consultations with the Office of the Ombudsperson for Children confirmed that the practice still exists in an institution for children with disabilities, and that the reason given for such a treatment is lack of personnel and the fact that one carer is in charge of many children. The excuse for restraining children, in such circumstances, is to "protect them from doing harm to themselves or others".

²²⁸ Human Rights Committee, Concluding Observations on Croatia, CCPR/C/HRV/CO/2, 2009, p. 5.

²²⁹ Interview with the Office of the Ombudsman for Children.

²³⁰ Ombudsperson for Children, Alternative Report to CRC, p. 12.

²³¹ Interview with the NGO.

²³² UNICEF, Analysis of the Situation of Rights of Children and Women, 2011, p. 97.

²³³ National Conference on Occurrence of Violence against Children in Family and amongst Peers, Presentation of the Conference, 2012, available at: <http://hrcak.srce.hr/file/123508>.

²³⁴ UNICEF, How Parents and Communities Care about Children of the Youngest Age in Croatia (Kako roditelji i zajednice brinu o djeci najmlađe dobi u Hrvatskoj), 2013, available at: www.unicef.hr/upload/file/380/190366/FILENAME/Publikacija.pdf p. 19.

²³⁵ UNICEF press release: Violence against children is tolerated in Croatia (U Hrvatskoj se tolerira nasilje nad djecom) at: <http://www.glas-slavonije.hr/206083/1/UNICEF-U-Hrvatskoj-se-tolerira-nasilje-nad-djecom>.

²³⁶ See e.g. Ombudsperson for People with Disabilities, Special Report with the Aim of Raising Awareness on the application of the CRPD, 2012, p. 5, available at: http://www.posi.hr/index.php?option=com_joomdoc&task=doc_download&gid=220&Itemid=98.

care providers refused to provide dental care to children with disabilities, claiming not to have anaesthetics for them²³⁷.

Civic education is not provided for all children, and little information is provided to them regarding human rights, in general, and children's rights, in particular. Children receive hardly any information about the possibilities to complain to the Ombudsperson, and no information is provided to them regarding accessibility for children with disabilities. There is a lack of systematic children's education on a healthy life and responsible sexual behaviour and, despite legal prohibitions and enforcement measures, children can still buy tobacco and alcohol²³⁸.

The new Family Act, adopted in 2014, introduces a number of welcome novelties setting forth a child-focused approach. The Act, in particular, introduces new solutions in relation to ensuring that the voice of a child is heard in the proceedings which concern them. Besides the provisions guaranteeing the rights of the child to be heard in the proceedings, there appears to be practical issues in their implementation. In 2008, the Ombudsperson for Children recommended that the Ministry of Justice introduced, with each court department dealing with family issues, a group of experts to help the judges and children in proceedings. The Ombudsperson also suggested that, at least one room at the court is adapted for children, i.e. 'at least to an extent that releases the unpleasantness, stress and fear experienced by children during their stay at the court'²³⁹. Moreover, the Ombudsperson called on the Ministry of Justice and the Justice Academy to provide training for judges with the aim of sensitisation to the specific problems of children facing divorce of their parents²⁴⁰. In 2009, a recommendation was made to the Ministry of Justice in relation to the help and support for children witnesses and victims of crimes, emphasising that even the legal requirement for employing support staff, i.e. social workers, pedagogues and psychologists, has not been met by most courts²⁴¹. However, a great number of courts in Croatia still do not have child-friendly courtrooms. This also includes the juvenile courts²⁴².

Sometimes, proceedings may be inappropriate to address the issues in a suitable manner. For example, if a school refuses to enrol a child with a disability, this decision may be contested in administrative proceedings, to the Ministry of Science, Education and Sport. However, the Ministry has up to 60 days to decide on the appeal, and if it decides to uphold the refusal, there is the avenue of the administrative dispute, which may take some additional months, even years. During that time, the child with disabilities is not provided with inclusive education, which may be detrimental for his/her development. This, in

²³⁷ Interview with the NGO.

²³⁸ Ombudsperson for Children, Alternative Report to the CRC Committee.

²³⁹ Ombudsperson for Children, Recommendation for establishing experts service in court departments for legal protection of children, 2008, available at: http://dijete.hr/hr/preporuke-pravobraniteljice-mainmenu-81/zatita-interesa-djece-razno-mainmenu-82/doc_download/52-preporuka-za-osnivanje-strune-slube-u-sudskim-odjelima-za-obiteljskopravnu-zatitu-djece.html.

²⁴⁰ Ombudsperson for Children, Recommendation for the education of judges, 2008, available at: http://www.dijete.hr/hr/preporuke-pravobraniteljice-mainmenu-81/zatita-interesa-djece-razno-mainmenu-82/doc_download/51-preporuka-o-educaciji-sudaca.html.

²⁴¹ Ombudsperson for Children, Recommendation for providing help and support to children victims and witnesses of crimes, 2009, available at: http://www.dijete.hr/hr/preporuke-pravobraniteljice-mainmenu-81/zatita-interesa-djece-razno-mainmenu-82/doc_download/53-preporuka-ministarstvu-pravosua-za-pruanje-pomoi-i-podrke-djeci-rtvama-i-svjedocima-kaznenih.html.

²⁴² It is important to note here that all the courts in Croatia – civil, criminal, or juvenile courts, even though regulated by different procedural or organisational legislation, normally share the same building and other facilities. It is within this context that the lack of child-friendly courtrooms should be seen, as this means that the majority of juvenile courts do not have child-friendly courtrooms.

practice, discourages children or their parents from initiating proceedings, and reports of court cases are rare²⁴³.

There is also lack of reasonable accommodation for children in proceedings, and it may often happen that, for example, deaf children will not be provided with sign language translators²⁴⁴. There are still a number of children with disabilities who are being institutionalised and who don't receive any education. In addition, there is disproportion in the provision of services to children with disabilities in different administrative regions²⁴⁵.

As noted above, Croatia adopted a plan for deinstitutionalisation – however, it has not been effectively implemented and the number of children in institutions remains unchanged. This is even more upsetting, since institutions still use prohibited practices, such as cage-beds and restraints on children. Coupled with the absence of a functioning alternative to institutions, i.e. foster care or adoption, for children with disabilities, their situation in institutions is of particular concern.

Namely, in 2013, 5,663 persons were placed in institutions in Croatia, out of which 2,781 were children and adults with disabilities. Data on the number of children in institutions is controversial since the Ministry for Social Policy and Youth in the Operational plan states that 438 of all people placed in institutions in Croatia in 2013, were children with disabilities²⁴⁶. However, the 2013 Annual Statistics indicate that out of 1,030 children with behavioural disorders using institutional services, at least 379 children have been using institutionalised on a long-term or short-term basis in social care homes²⁴⁷. Moreover, according to the statistics from the Ministry of Science, Education and Sport, in 2014, a total number of 337 pupils receive education in institutions²⁴⁸. While there appears to be planning towards considerable deinstitutionalisation in the next two years, with at least 40% of children with disabilities planned to be placed in a community-setting, there is great concern that the plan will not be brought into practice because funding for deinstitutionalisation has not been secured.

4.3. Best practices

The role of the non-governmental sector is crucial for improving the situation of children with disabilities in Croatia. Thus, for example, the employment and adequate training of teaching assistants for children with disabilities has been the task of various civil society organisations for years. Those organisations have been supported financially from various sources, to provide children with disabilities with competent assistants, where the legislative framework has not provided for their employment. Furthermore, in the absence of easily accessible services for the rehabilitation for children with disabilities, with the funding obtained from the Government, an NGO has managed to purchase equipment and

²⁴³ Interviews with the Office of the Ombudsperson for Children and the NGO. There was one isolated case of administrative dispute against the decision not to include a child into mainstream education. After the court claim has been filed the administrative authorities altered their decision and decided to enable the child to attend the school. The authorities tried then to persuade the parents to withdraw the claim in the circumstances, but they persisted and finally had a judgment into their favour, confirming that the original decisions of the enrolment committee and the Ministry were irregular.

²⁴⁴ Interview with the Office of the Ombudsperson for Children.

²⁴⁵ Interview with the Ministry of Social Policy and Youth. Interview with the Office of the Ombudsperson for People with Disabilities.

²⁴⁶ Operational plan, p. 27-28.

²⁴⁷ Ministry of Social Policy and Youth, Annual Statistical Report on social care homes and their users in 2013 (Godišnje statisti ko izvješ e o domovima i korsnicima socijalne skrbi u 2013), available at:

<http://www.mspm.hr/content/download/11452/90083/file/Godi%C5%A1nje%20statisti%C4%8Dko%20izvje%C5%A1%C4%87e%20o%20domovima%20i%20korsnicima%20sociojalne%20skrbi%20u%20202013.xls>.

²⁴⁸ Interview with the Office of the Ombudsperson for People with Disabilities.

set up a rehabilitation centre in Karlovac, which is sparing children with disabilities from having to travel to more distant centres in the region and having to wait on long waiting lists²⁴⁹.

Certain schools have been more willing to accommodate children with disabilities, and have, to that effect, gathered a team of experts which is competent and able to deal with the problems children with disabilities face in their inclusion, enabling the child concerned, his/her family, as well as classmates, to handle the difficulties which arise on a daily basis²⁵⁰.

There is some institutionally-provided support – the models of which might be followed and made broadly accessible. For example, in Zagreb, there is a rehabilitation centre for children with vision impairment and multiple disabilities, which provides day care and rehabilitation for children and young people – up to 21 years-of-age, with disabilities. Furthermore, the Rehabilitation Centre 'Ozalj', an institution for children, has assigned four of their expert rehabilitators to work with children to inform the community who do not use residential services at the Centre to facilitate their inclusion in society and provide them with psycho-social support²⁵¹.

Moreover, in some cities, e.g. in Rijeka, mobile teams have been established – formed with the involvement of the Agency for Education and assigned to act when the school and parents agree on the need for intervention. These are teams of experts comprising of psychologists, pedagogues and rehabilitators of various profiles and are called to intervene when the teachers or parents estimate that the intervention of an expert would facilitate their child's inclusion in the educational and social processes²⁵². These teams play an important role in supporting and educating assistants and have been positively evaluated by the Ombudsperson, parents and teachers alike.

The new Family Act can also be viewed as good practice, as it introduces a child-focused approach to family and status matters. It will be of great importance to implement the new legislation duly and with a full understanding of the international obligations of Croatia, which stem from the CRC and the CRPD, as well as other international and EU fundamental rights standards.

4.4. Data and monitoring mechanisms

The Registry for Persons with Disabilities, maintained by the Croatian Public Health Fund (Zavod za javno zdravstvo), appears to keep separate data on children with disabilities. However, this data is mostly focused on the medical aspect of disabilities, e.g. recording the type of disabilities the children have. Regretfully, this public registry continues using unacceptable language, i.e. terms such as mental retardation, in reference to people with disabilities. Moreover, as noted previously, the data is disaggregated for age groups – up to 19 years-of-age, which may not fit the definition of a child from the point of view of Croatian legislation and may distort the picture²⁵³.

²⁴⁹ Interview with NGO. See also e.g. Zvon i i ring for the community (Zvon i i zvone za zajednicu), available at: <http://www.karlovacki-tjednik.hr/?p=10297>.

²⁵⁰ Interview with NGO.

²⁵¹ Interview with the NGO.

²⁵² Interview with the Office of the Ombudsperson for People with Disabilities.

²⁵³ Thus, for example, the 2013 Registry of People with disabilities indicates that there are 41,998 children with disabilities up to the age of 19. However, data obtained from the interview with the Ministry of Social Policy and Youth indicates that according to the Registry there have been 34,298 children with disabilities registered in

The Ombudsperson's institutions do not disaggregate data in a manner which would make it possible to comprehensively extract data on children with disabilities. Namely, the Ombudsperson for People with Disabilities does not disaggregate data according to age, which could make it possible to identify specific issues of children from their reports. The Ombudsperson for Children only disaggregates data in relation to access to inclusive education for children with disabilities – thus, making it impossible to identify any other data referring specifically to children with disabilities.

There is no specific monitoring mechanism aimed at protecting children with disabilities. The Ombudsperson for People with Disabilities is assigned as the monitoring mechanism, according to Article 33 of the CRPD, while the Ombudsperson for Children also monitors institutions where children are placed.

4.5. Recommendations

There is a need to introduce a co-ordinated approach towards creating and implementing policies with the aim of enabling all children with disabilities to fully enjoy their rights from the CRC and the CRPD, including those from other international instruments for the protection of human rights. To that end, a single institution should be made responsible to initiate and co-ordinate the creation of policies specific for children with disabilities and to make sure that they are implemented in a uniform and comprehensive manner.

There are important gaps dealing with children with disabilities in the Croatian legislative framework, such as the lack of recognition of the best interests of the child as the guiding principle in dealing with any right of a child with disabilities or their families. In this field, better co-ordination of the institutions would be welcome – in particular, careful co-ordination of activities of the two specialised Ombudspersons, and co-ordination of the activities of various commissions which are assigned with evaluating the situation of each child with a disability.

Furthermore, legal prohibition of the failure to provide reasonable accommodations is worryingly narrow, given that it only refers to access to: publicly-available resources; participation in public and social life; appropriate working conditions. While these categories may be broadly interpreted, more legislative initiative would be needed to ensure that, in particular, children with disabilities are provided with reasonable accommodations to enable them to have better access to early intervention, health and rehabilitation services.

In addition, it is a particular concern that there is no obligation to provide reasonable accommodation for children with disabilities in judicial proceedings, regardless of the role they may have and regardless of the type of proceedings to which they are exposed. Due to the shortcomings in providing child-friendly environments in all courts, and the lack of systematic training of judges and support staff in issues specific for children with disabilities, it is of particular concern whether or not children with disabilities may fully enjoy their right to have their voice heard in proceedings.

In addition, enforcement mechanisms are very weak and sanctions should be introduced, or where they exist, implemented, against the persons responsible for providing enjoyment of rights to a child with disabilities, but who fail to uphold their obligation. Otherwise, an

Croatia in 2013. This difference may be justified with the difference in the age groups considered for these statistics, but this has not been confirmed.

atmosphere of impunity may be created, which does not encourage others to make sure that children with disabilities fully enjoy their rights.

National strategic documents need to be accompanied with budgets for their implementation, since the absence of a budget renders any strategic document less likely to be fully implemented.

There is an urgent need to properly regulate access to inclusive education, including guaranteeing the right of every child to have access to inclusive education. Furthermore, access to educational assistants needs to be properly regulated and financed, and assistants in preschool should also be systematically provided. Educational assistants need to be properly trained for sensitive assignment to this need, and a steady stream of funding is needed to ensure and enable permanence in providing assistance in education to children with disabilities.

The use of mobile teams may provide invaluable support to both families and schools in accommodating the educational needs of children with disabilities in rural areas, and islands where there are fewer services available.

Furthermore, access to assistance is limited, particularly regarding access to the status of the parent-carer. This status, even where it is granted, appears to provide only modest benefits, given that the amount allocated appears to be insufficient to ease the financial constraints of a poor family. In addition, it would appear that parents, especially those with a lower level of education, and from poorer families, have no systematic way to be educated about their rights to social care. Hence, systematic support needs to be established for families of children with disabilities, in particular, in relation to early intervention and advice regarding their rights

Freedom from violence of children with disabilities needs to be carefully monitored and implemented – the ongoing practice of the use of cage-beds and restraints on children with disabilities in institutions does not have any justification in any circumstances and needs to be eradicated immediately. Such treatment was criticised by the European Committee for the Prevention of Torture, the UN Committee against Torture, and the UN Human Rights Committee, as it represents a violation of the prohibition of torture, inhuman and degrading treatment.

Furthermore, even though there is a national registry on persons with disabilities, where some data regarding children with disabilities is disaggregated, the registry is run by the healthcare provider and their criteria looks only at the recorded medical side of disability. It would be necessary to establish a database within a central administrative authority, which would develop indicators compliant with the CRC, to ensure the comprehensive collection of data. Such a database would enable the policy-makers to have full insight into the situation of the implementation of rights of children with disabilities, and would make problems easier to identify and respond to with timely-adapting policies.

Importantly, there is an urgent need for all institutions, official instruments and documents to abandon the use of unacceptable and offensive language when making a reference to people with disabilities in general, and children with disabilities in particular, as this surely does not facilitate their inclusion into society.

It is encouraging that deinstitutionalisation appears to rank highly on the list of priorities of the Ministry of Social Policy and Youth, which adopted the Operative plan for

deinstitutionalisation, and that the plan is to reduce, by 40%, the number of children with disabilities in institutions by 2016. Nevertheless, funding has not been secured, even though there is the intention to resort to the EU structural funds. However, as serious concerns have been expressed, in relation to the use of structural funds for deinstitutionalisation in other Member States²⁵⁴, the process should be closely observed for full compliance with CRPD and the CRC.

An action towards creating nation-wide campaigns, aimed at informing the public about the rights of people with disabilities and breaking through the prejudice and stigma, is highly called for. Another important action would be the creation of information aimed at children, in general, and children with disabilities, in particular. Any material in this regard needs to be made accessible to children with disabilities, and such material should also inform children with disabilities about their rights and the accessible avenues towards their protection.

Moreover, broader accessibility of institutions – in particular schools, as well as services, e.g. basic health services, dental care, cultural or sport activities and events, needs to be ensured, as much as possible, for all children with disabilities.

²⁵⁴ See e.g. Flynn E., EU Structural Funds Used to Maintain Institutions in Central and Eastern Europe, Human Rights in Ireland, 28 January 2011, available at: <http://humanrights.ie/mental-health-law-and-disability-law/eu-structural-funds-used-to-maintain-institutions-in-central-and-eastern-europe/>. In Hungary, for example, structural funds were used for construction of new institutions, only with smaller capacity in comparison with the old ones (up to 50 beds), which has been broadly criticised by disability academics and disability rights advocates alike. See e.g. Bugarszki Zs., Eszik O. And Kondor Zs., Deinstitutionalisation in Hungary 2012-2013, available at: http://tatk.elte.hu/component/docman/doc_download/2497-2013-report-en, or MDAC: My home, my choice in Hungary; the right to community living for people with mental disabilities in 2014, Introduction, available at: <http://www.mdac.org/en/books/introduction>.

5. CONCLUSIONS

While the particular rights of children with disabilities are not specifically addressed throughout Croatian legislation, apart from certain individual provisions, many principles from the CRC and the CRPD are still guaranteed by means of protection provided to children or people with disabilities.

Nevertheless, there are certain principles which still have not been protected in the legislative framework, while some others have been recently protected. It remains to be seen how they will be implemented. For example, the best interests of the child – apart from incidental mention in certain provisions - does not figure as an explicit guarantee, which should, in fact, be leading the authorities to make decisions which affect children with disabilities. Furthermore, special schools still exist, thus, inclusive education is not guaranteed. In addition, access to assistants in inclusive education is completely unregulated and there is lack of expert personnel in the juvenile courts.

Support for children with disabilities and their families does not seem to be structured and the parents of children with disabilities need to rely on informal and non-governmental support networks in order to be informed about their rights. Moreover, adapted and accessible information provided to children with disabilities, about their rights and how to protect them, is non-existent.

Prejudice and perception of children with disabilities as 'less worthy' members of society prevents children with disabilities from fully participating in society. There are no such general sporting or cultural activities – apart from isolated examples where sports or cultural activities are made available and accessible. Children with disabilities, who are from rural areas, or from certain regions, have fewer services available to them and are in a disadvantaged position in comparison with other children with disabilities in big cities. However, in this regard, setting up mobile teams may be of great help and is seen as an appropriate way to accommodate children with disabilities in such areas.

Several measures have been recommended by the study towards the improvement of the situation of children with disabilities in Croatia, including: ensuring that the creation and implementation of policies with respect to children with disabilities is co-ordinated; regulating work of assistants in the inclusive education of children with disabilities; ensuring budgets for the implementation of national strategies and sanctions against violators of rights; abandoning the use of cage-beds in institutions for children with disabilities; creating and conducting society-wide awareness-raising campaigns to promote inclusion of children with disabilities into all spheres of social life; introducing a database which would develop CRC-compliant indicators to supervise the implementation of the rights of children with disabilities; abandoning the use of offensive language.

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 - United Nations Convention against Torture
 - Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
 - Vienna Convention on Succession of States in Respect of Treaties
 - Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part
- b. International Monitoring mechanisms
 - CRC Committee General Comment No. 12 on the right of the child to be heard
 - Human Rights Committee, Concluding Observations on Croatia
- c. National Law
 - Constitution of the Republic of Croatia Organisation and Competencies of Ministries and other Central Bodies of Public Administration Act
 - Family act
 - Book of rules on the measures of protection of personal rights and welfare of the child Anti-Discrimination Act
 - Criminal Procedure Code
 - Social Care Act
 - Compulsory Health Insurance Act
 - Croatian Register on People with Disabilities Act
 - Public Defender Act
 - Juvenile Courts Act
 - Enforcement of Criminal Sanctions Pronounced against Minors for Crimes and Misdemeanours Act
 - Preschool Education Act
 - Gender Equality Act
 - Ombudsperson for Children Act
 - Ombudsperson for People with Disabilities Act
 - Book of rules on determining the opinion of the child
 - Protection of People with Mental Disabilities Act
 - Criminal Code
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 - Protection against Family Violence Act
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ANNEX 1 – SUMMARY TABLE

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
Best interests of the child	
<p><u>Constitution of the Republic of Croatia</u>²⁵⁵ Article 64 Parents shall bear responsibility for the upbringing, welfare and education of their children, and they shall have the right and freedom to make independent decisions concerning the upbringing of their children. Parents shall be responsible for ensuring the right of their children to the full and harmonious development of their personalities. Physically and mentally disabled and socially neglected children shall be entitled to special care, education and welfare. [...] Article 65 Everyone shall have the duty to protect children and infirm persons. [...] <u>Old Family Act</u>²⁵⁶ Article 2 Regulation of family relationships is based on [...] protection of welfare and rights of the child, and the responsibility of both parents for upbringing and raising the child.</p>	<p>No recognition of best interests of the child except within the framework of the enforcement of criminal sanctions legislation.</p> <p>Effective implementation of the protection of the child interest.</p> <p>Effective implementation with the new Family Act which entered into force on 1 September 2014, with some important provisions entering into force only on 1 January 2015. It remains to be seen how the guarantees from the Family Act are going to be implemented in practice, especially given the fact that so far the guarantees which existed were not</p>

²⁵⁵ Constitution of the Republic of Croatia, Official Gazette [56/90](#), [135/97](#), [8/98](#), [113/00](#), 28/01, 41/01, 55/01, 76/10, 85/10, 05/14, unofficial translation of the consolidated text (2010) prepared by the OSCE Legislationline.

²⁵⁶ Family Act (Obiteljski zakon), Official Gazette nos. 116/03, 17/04, 136/04, 107/07, 57/11, 61/11, 25/13.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p><u>Family Act</u>²⁵⁷ Article 7²⁵⁸</p> <p>Measures interfering with family life are acceptable only if protection cannot be ensured by undertaking less intrusive measures or providing preventive assistance and support to the family.</p> <p>Article 92</p> <p>(3) The duty to represent child's interest regarding the child's personal and property rights falls within the content of the parental care.</p> <p>Article 101</p> <p>(4) In order to enter into contract [for disposal with child's future property interests in relation to his/her sports, artistic or similar activities] prior authorisation from the court is necessary for the special protection of the child's property rights and interests.</p> <p>Article 131</p> <p>(1) Measures for the protection of rights and welfare of the child are determined based on expert evaluation, if it is established that child's rights or welfare have been violated, or that the rights and welfare of the child are jeopardised.</p> <p>(2) The rights of the child are considered to be jeopardised if the care of the child is inappropriate or if the child has psychosocial difficulties which are manifested through behaviour, emotional, educational and other problems in the child's growing up, or if there is a probability that it might occur.</p> <p>Article 348²⁵⁹</p> <p>(1) The court has the duty throughout the proceedings to ensure the protection of the rights and interests of children, persons with disabilities, or persons who are not able for other reasons to take care of themselves and their rights and interests.</p>	<p>fully implemented, or were implemented only on the surface.</p>

²⁵⁷ The Family Act, Official Gazette 75/14, 83/14.

²⁵⁸ Provision entering into force on 1 January 2015.

²⁵⁹ This provision enters into force on 1 January 2015.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p><u>Anti-Discrimination Act</u> Article 9 (1) Discrimination is forbidden in all its forms. (2) Exceptionally from paragraph 1 of this Article, putting into a less favourable position will not be considered discrimination in the following cases:</p> <p style="padding-left: 40px;">10. putting into a less favourable position when determining rights and obligations from a family relationship when it is determined by the law, in particular with the aim of protecting the rights and interests of children, which has to be justified by a legitimate aim, protection of public morals, as well as acting in favour of the marriage, in accordance with the provisions of the Family Act.</p> <p><u>Criminal Procedure Code</u>²⁶⁰ Article 44 (1) Child victim of a criminal act has [...] the right to:</p> <ol style="list-style-type: none"> 1) A representative, at the expense of the budget, 2) Escort of a trusted person during their participation in the proceedings, 3) Confidentiality of personal data, 4) Exclusion of public. <p>(2) The court, public attorney, investigator and the police must treat the child victim of a crime with a particular care, taking into consideration age, personality and other circumstances, so as to avoid harmful consequences for upbringing and the development of the child. When treating the child victim, the competent authorities must primarily be led by the best interest of the child.</p> <p>Article 53</p>	

²⁶⁰ Criminal Procedure Code, Official Gazette [152/08, 76/09](#), 121/11, 91/12, 143/12, 56/13, 145/13, unofficial translation of the consolidated text (2009) prepared by the OSCE Legislationline. Provisions absent from the OSCE translation are translated by the author.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(1) Where the injured person is a minor or a person declared incapable of performing legal acts, his/her legal guardian shall be authorised to give all statements and perform all actions to which, according to this Act, the injured person is entitled.</p> <p>(2) [...]</p> <p>(3) Exceptionally from the provisions of paragraph 2 of this article, an injured person of sixteen years of age or more may himself/herself give statements and undertake procedural actions.</p> <p>Article 292</p> <p>Unless otherwise prescribed by special law, the examination of a child as a witness shall be carried out by the investigating judge. The examination shall be carried out in the absence of the judge and parties in the room where the child is situated through audio and video devices which are operated by an expert assistant. The examination is carried out with the assistance of a psychologist, educator or other expert person and unless this is contrary to the interests of proceedings or the child, parents or a guardian may be present during the examination. The parties may ask the child- witness questions authorised by the investigating judge through an expert. The examination shall be video-taped and audio-taped and the recording shall be sealed immediately and enclosed with the record. The child may be examined again only in exceptional cases and in the same manner.</p> <p>Article 330</p> <p>(1) A recording used for establishing facts shall be obtained by applying the provisions of this Chapter.</p> <p>(2) With regard to a recording it shall be proceeded as with other objects that are to be used as evidence (Article 267 and 269), paying attention not to damage or destroy the recording and to keep its content in an unchanged format. If necessary, appropriate measures shall be taken to keep the recording in an unchanged format or its copy be made.</p> <p>(3) Unless otherwise provided for by this Act, the content of the recording is being established by its reproduction. If there is a child in the recording, the recording will be reproduced by altering the face and the voice of the child, if that is needed for the protection of the child's interests, ensuring at the same time the interests of the proceedings as a whole.</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p><u>Enforcement of Criminal Sanctions Pronounced against Minors for Crimes and Misdemeanours Act</u>²⁶¹</p> <p>Article 6 (1) During the enforcement of a sanction the competent social care centre will undertake measures for the protection of welfare of personal and property rights of the minor.</p> <p>Article 9 (1) At the request of the juvenile court, or the misdemeanour court, the competent authorities and institutions will immediately, in the interests of the minor, submit information, reports or opinions for the purpose of urgent commencement of the enforcement of the sanction.</p> <p>Article 43 (1) During the enforcement of the educational measure, whenever it is in the interest of the minor, the parent or the guardian will be included in the family therapy.</p> <p>Article 58 (1) During the enforcement of the security measure of the compulsory psychiatric treatment, compulsory addiction treatment as well as compulsory psycho-social treatment, whenever it is in the interests of the minor, parents of guardian will be included in the family therapy.</p> <p><u>Protection against Family Violence Act</u>²⁶²</p> <p>Article 6 (4) Interests of the child exposed to family violence are a priority in any proceedings.</p> <p><u>Education in Elementary and Secondary School Act</u>²⁶³</p>	

²⁶¹ Enforcement of Criminal Sanctions Pronounced against Minors for Crimes and Misdemeanours Act (Zakon o izvršavanju sankcija izre enih maloljetnicima za kaznena djela i prekršaje), Official Gazette 133/12

²⁶² Protection against Family Violence Act (Zakon o zaštiti od nasilja u obitelji), Official Gazette 137/09, 14/10, 60/10.

²⁶³ Education in Elementary and Secondary School Act (Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi), Official Gazette 87/08, 86/09, 92/10, 90/11, 5/12, 16/12, 86/12, 126/12, 94/13.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 61 (1) The rights of pupils are:</p> <ul style="list-style-type: none"> - Right to be informed about all the issues which refer to him/her. - Right to advice and assistance in problem solving, in accordance with his/her best interest. <p>Article 125 (1) The headmaster is the business and expert manager of an educational institution (2) (...) (3) Apart from the duties determined in the Institutions Act, the headmaster has the following duties</p> <ul style="list-style-type: none"> - Ensures the safety as well as rights and interest of pupils and school employees. <p><u>Social Care Act</u>²⁶⁴ Article 127 (1) Social care centre, based on public authority:</p> <ul style="list-style-type: none"> - [...] - Participates as a party or intervener in front of the court or other public body when the subject matter is the protection of personal interests of the children or other members of the family who cannot take care of themselves or of their rights and interests. <p><u>Juvenile Courts Act</u>²⁶⁵ Article 116 (1) Where a juvenile judge or the chairperson of the chamber, establishes that for the protection of rights and interest of the child victim or the child offender it is necessary to have an attorney</p>	

²⁶⁴ Social Care Act (Zakon o socijalnoj skrbi), Official Gazette 157/13.

²⁶⁵ Juvenile Courts Act (Zakon o sudovima za mladež), Official Gazette 84/11, 143/12, 148/13.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>appointed to them, they will file a motion to the president of the court, who will appoint the attorney from the licenced attorneys who have to have a distinguished inclination for education, needs and advancements of the youth, and will have the expertise in the fields of criminology, social pedagogy, youth psychology and social work for youth. The appointed attorney cannot be replaced by a legal intern.</p>	
Non-discrimination	
<p><u>Constitution</u> Article 14 All people in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other conviction, national or social origin, property, birth, education, social status or other characteristics. All persons shall be equal before the law.</p> <p><u>Elimination of Discrimination Act</u>²⁶⁶ Article 1 (1) The present Act ensures protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia; creates conditions for the achievement of equal opportunities and regulates the protection from discrimination on the bases of race or ethnicity or the colour of skin, sex, language, religion, political or other belief, national or social origin, property status, trade union membership, education, social position, marital or family status, age health, disability, genetic heritage, gender identity, expression or sexual orientation. Article 4 (2) Within the meaning of this Act, the omission to provide to people with disabilities, in accordance with their specific needs: the use of publicly available resources, participation in public and social life; access to workplace and appropriate working conditions; accommodation of</p>	<p>While there is a good legal framework for the recognition of this right to non-discrimination on the grounds of disability or age, including the recognition of positive actions to prevent discrimination, the assessment concludes that there is ineffective implementation.</p> <p>There is still a lack of implementation of reasonable accommodation measures and equality in education sector, for example, where children with disabilities are still largely kept in segregated settings.</p>

²⁶⁶ Anti-Discrimination Act (Zakon o suzbijanju diskriminacije), Official Gazette 85/08 and 112/12.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>infrastructure and space, using equipment and in other manner which does not represent unreasonable burden for those who are obliged to provide it, shall be considered as discrimination.</p> <p>Article 5</p> <p>(2) Segregation, within the meaning of this Act, is considered to be forced and systematic separation of persons, based on some of the grounds from Article 1(1) of the Act.</p> <p>Article 9</p> <p>(1) Discrimination is forbidden in all its forms.</p> <p>(2) Exceptionally from paragraph 1 of this Article, putting into a less favourable position will not be considered discrimination in the following cases:</p> <p>...</p> <p>3. Accommodations in favour of pregnant women, children, youth, elderly people, persons with legal obligation of support, who fulfil their obligation to support regularly and people with disabilities, with the aim of their protection, when such treatment is based on law, by-law, programme or measure.</p> <p>Article 17</p> <p>(1) Person claiming to be victim of discrimination in accordance with this Act, is entitled to file a lawsuit and claim:</p> <ol style="list-style-type: none"> 1. that the defendant violated the claimant's right to equal treatment, or that the act that he/she has undertaken or omitted can bring to immediate violation of the right to equal treatment (lawsuit for the determination of discrimination), 2. to prohibit undertaking the acts which violate or may violate the claimant's right to equal treatment, or to perform acts which eliminate discrimination or its consequences (lawsuit for prohibition or elimination of discrimination), 3. to reimburse pecuniary and non-pecuniary damages caused by the violation of rights protected by this Act (lawsuit for the compensation of damages), 4. that the judgment establishing the violation of the right to equal treatment be published in the media, at the expense of the defendant. <p>Article 24</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(1) Associations, bodies, institutions or other organisations founded in accordance with the law, which have legitimate interest for the protection of collective interests of a certain group or which within their activities deal with the protection of right to equal treatment, may file a lawsuit against the person who violated right to equal treatment, if they make it probable that the actions of the defendant violate the right to equal treatment of a larger number of persons who prevalingly belong to the group the rights of which are being protected.</p> <p><u>Civil Procedure Code</u>²⁶⁷ Article 502.a Associations, bodies, institutions or other organisations founded in accordance with the law, which within their registered or legally defined activity deal with protection of legally protected collective interests and citizens' rights, may, when such authorisation is provided for by a specialised legislation, in accordance with the conditions provided for in such legislation, file a lawsuit (lawsuit for the protection of collective interests and rights) against physical or legal person who, by performing certain activity or generally by their work, act, including omission, gravely or seriously endanger such rights and interests. Interests from paragraph 1 of this Article may be interests concerning environment, moral ethical, consumers, antidiscrimination or other interests, which are guaranteed by the law and which have to be gravely violated or seriously endangered by the activity, or generally, by the actions of the person against whom the lawsuit is being filed.</p> <p><u>Education in Elementary and Secondary School Act</u> Article 4 (2)2. The upbringing and education in elementary and secondary school is based on equality of educational opportunities for all pupils in accordance with their abilities.</p>	

²⁶⁷ Civil Procedure Code (Zakon o parni nom postupku), Official Gazette 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p><u>Criminal Procedure Code</u>²⁶⁸ Article 6 (1) In the proceedings regulated by this Act, discrimination based on race, ethnic belonging, colour of skin, gender, language, religion, political or other opinion, national or social origin, income, trade union membership, education, social position, marital or family status, age, health, disability, genetic heritage, gender identity, expression or sexual orientation shall be forbidden.</p> <p><u>Enforcement of Criminal Sanctions Pronounced against Minors for Crimes and Misdemeanours Act</u>²⁶⁹ Article 5 (3) In the course of the enforcement of a sanction discrimination of minors on the grounds of race, ethnicity, skin colour, sex, religion, political or other belief, national or social origin, property status, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity, expression or sexual orientation.</p> <p><u>Gender Equality Act</u>²⁷⁰ Article 14 (4) At all levels of upbringing and educations due care will be given to balanced representation of sexes in pupils' and students' populations [...].</p>	

²⁶⁸ Criminal Procedure Code (Zakon o kaznenom postupku), Official Gazette [152/08, 76/09](#), 121/11, 91/12, 143/12, 56/13, 145/13.

²⁶⁹ Enforcement of Sanctions Pronounced for Minors for Crimes and Offences Act (Zakon o izvršavanju sankcija izre enih maloljetnicima za kaznena djela i prekršaje), Official Gazette 133/12.

²⁷⁰ Gender Equality Act (Zakon o ravnopravnosti spolova), Official Gazette no. 82/08

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
Evolving capacities of the child	
<p><u>Family Act</u> Article 84 (1) A child has the right to receive care for his/her life and health. (2) A child has the right to safety and upbringing in the family, in accordance with his/her physical, psychological and other evolving capacities. Article 91 (1) Parental care represents responsibilities, duties and rights of parents, with the aim of protection and promotion of child's personal and property rights and wellbeing. The parents need to exercise the parental care in accordance with the child's evolving capacities. Article 130 (2) Bodies pronouncing measures for the protection of rights and welfare of the child are obliged to provide participation in the proceedings to a child who has turned 14 of age or is older. Participation of the child younger than 14 years of age is estimated and exercised in accordance with the child's age and evolving capacities.</p> <p><u>Preschool Education Act²⁷¹</u> Article 3. (2) Preschool education is achieved in accordance with the evolving capacities and needs of the child, as well as social, cultural, religious and other needs of the family.</p>	<p>Incomplete implementation.</p> <p>While there is certain recognition of the evolving capacities of the child, contrary to the CRC requirements, the age-limit of 14 years is set as a benchmark towards greater recognition of child's personality in the proceedings.</p>
Right of the child to express their views/right to participate	
<p><u>Constitution</u> Article 26</p>	<p>Incomplete implementation</p>

²⁷¹ Preschool Education Act(Zakon o predškolskom odgoju i obrazovanju), Official Gazette no. 94/13

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>All citizens of the Republic Croatia and foreigners are equal before courts and other state and other bodies which have public authority.</p> <p><u>Old Family Act</u> Article 89 (5) In the proceedings in which some right or interest of the child is to be decided upon, the child shall have the right to learn, in an appropriate manner, about the important circumstances of the case, receive advice and express her/his opinion, and be informed about possible consequences of such opinion. The opinion is being taken into consideration depending on the child's age and maturity.</p> <p>Article 157 Minor [under the guardianship of a non-parent] shall have the right to learn about the important circumstances of the case, receive advice and express his/her opinion and be informed about the possible consequences of accepting such opinion, when a right or interest of the child is being decided upon. The opinion is being taken into consideration depending on the child's age and maturity.</p> <p>Article 174 (5) Social care centre will ask the ward who is able to understand what the proceedings are about, or from their close relatives the opinion about the person they intend to appoint as guardian.</p> <p>Article 179 (2) Before taking more important measures for protecting the person of the ward or their property interest, the guardian needs to consider the opinion, wishes and feelings of the ward.</p> <p>Article 192 (2) The social work centre will seek the opinion of the ward about dismissal of the guardian, if the ward is able to understand what the fact of the matter is about.</p> <p><u>Family Act</u> Article 86</p>	<p>The provisions of the new Family Act regarding recognition of the child's views enter into force only on 1 January 2015. Until that time, the provisions of the old legislation apply, which has already been noted by the Constitutional Court as going against the requirements of legal certainty.</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(1) Parents and other persons who provide care to a child have the duty to respect the child's opinion, in accordance with their age and maturity.</p> <p>(2) In all proceedings in which a child's right or interest is being decided about, the child has the right to be informed, in an appropriate manner, about the important circumstances of the case, be given advice and express their opinion, and be informed about possible consequences of taking their opinion into consideration.</p> <p>(3) A child who has turned 14 years of age has the right to personally and independently initiate proceedings before competent authorities, regarding the enjoying their rights and interests, in accordance with Article 359 of the Act.</p> <p>Article 130</p> <p>(1) A child has the right to participate in any proceedings regarding evaluation or decision about measures in which her/his rights and wellbeing are protected.</p> <p>(2) Bodies which pronounce measures for the protection of rights and welfare of the child must enable a child who has turned 14 years of age to participate in the proceedings, while the participation of a child younger than 14 is estimated and exercised in accordance with the child's age and evolving capacities.</p> <p>(3) In the proceedings in which measures for the protection of the rights and welfare of the child are decided upon, the bodies which pronounce such measures will issue a decision allowing the child who has turned 14 years of age to present facts, propose evidence, file legal remedies and undertake other steps in the proceedings, if the child is capable of understanding the meaning and legal consequences of those steps.</p> <p>(4) Other persons of significance in the child's life can be included in the proceedings on the measures for the protection of the child, at the request of the child, the parent or other person representing the child.</p> <p>Article 360²⁷²</p>	

²⁷² This provision of new Family Act enters into force on 1 January 2015.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(1) In the proceedings in which personal rights and interests of a child, which are a matter of dispute between the parties, the court will enable the child who has turned 14 years of age, to express their opinion, unless the child objects. The opinion of the child is being established also in the proceedings in which property interests of the child are being decided upon. The court shall enable the child to express their opinion at an appropriate location under the supervision of an expert, if the court evaluates that this is necessary, considering the circumstances of the case.</p> <p>(2) If the child is younger than 14, the court shall enable the child to express her/his opinion if for making a decision it is necessary to establish the attachment of the child to a parent or other person, the circumstances in which the child lives, or for other particularly important reasons. . The court shall enable the child to express his/her opinion, aided by a special guardian or other expert.</p> <p>(3) The court conducting the proceedings will not be obliged to establish the opinion of the child when there are particular reasons justifying such an omission, but those reasons must be justified in the decision.</p> <p>(4) The child from paragraphs 1 and 2 of this Article needs to be informed about the case, the course and possible outcome of the proceedings, in a manner appropriate for the child's age, and if this does not pose danger for the child's development, upbringing or health.</p> <p>(5) The obligation to inform the child from paragraph 4 of this Article is on the special guardian of the child, the court of the expert from the social work centre, depending on the circumstances of the case, about which the court must take note.</p> <p>Article 361²⁷³</p> <p>(1) The decision of the court deciding on personal rights and interests of a child is delivered to special guardian.</p> <p>(2) Special guardian will inform the child about the content of the decision and the right to appeal, personally or assisted by an expert.</p>	

²⁷³ This provision enters into force on 1 January 2015.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(3) The child will not be informed about the reasons for decision if that might have consequences for his/her health and development.</p> <p><u>Book of rules on Determining the Opinion of the Child</u>²⁷⁴</p> <p>Article 3</p> <p>(1) Expression of the opinion of the child younger than 14 years of age will be made possible by a court, with the assistance of special guardian or an expert, if that is of particular importance for bringing the decision.</p> <p>(2) When determining the opinion of a child under the age of 14, the court shall first make known to the special guardian or expert on which issues the opinion of the child needs to be determined.</p> <p>(3) Special guardian shall use assistance of an expert, when determining the opinion of the child, unless he/she has him/herself expert's knowledge and skills necessary for communication with the child and determining her/his opinion.</p> <p>Article 4</p> <p>The child is always expressing her/his opinion in the absence of the parent or guardian, or other person who is caring about the child.</p> <p><u>Social Care Act</u></p> <p>Article 17</p> <p>(3) In the proceedings in which decisions on the rights and interest of the child are being made, the child has the right to find about important circumstances of the case, get an advice and express their opinion, as well as be informed about all the possible consequences of taking their opinion into consideration. The opinion of the child is taken into consideration depending on their age and maturity.</p>	

²⁷⁴ Book of Rules on Determining the Opinion of the Child (Pravilnik o nacinu utvrdjivanja misljenja djeteta), Official Gazette no. 106/14. Even though the Book of Rules entered into force on 9 September 2014, it will only become effective and applicable as of 1 January 2015, as it is defining the implementation of Article 360 of the Family Act, which enters into force on 1 January 2015.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p><u>Protection of People with Mental Illnesses Act</u>²⁷⁵ Article 8 (4) When a child or a minor with mental disability is not capable to give her/his consent for examination or other medical procedure, he/she can only be subject to such procedure with the consent of her/his legal guardian. The opinion of the child should be taken into consideration in accordance with the child's age and maturity.</p>	
Right to be free from violence	
<p><u>Constitution</u> Article 23 No one can be subject to any form of abuse or, without their consent, to medical or scientific experiments.</p> <p><u>Family Act</u> Article 94 (3) Parents must not subject the child to corporal punishment, degrading treatment or apply psychological force, and are obliged to protect the child from such behaviour of other persons.</p> <p>Article 132 (1) Everyone has the duty to report to the social care centre violation of a child's personal or property rights. Violation of personal rights means in particular: physical or psychological violence, sexual abuse, neglect or careless treatment, abuse or exploitation of the child. (2) Immediately upon receiving the report from paragraph 1 of this Article, the social care centre has the duty to examine the case and take measures for the protection of the rights of the child, informing the person who submitted the report.</p>	<p>Incomplete implementation</p> <p>The legislation in place appears to provide for proper protection. However, limitations on torture, to actions by state agents, and problems of violence in family, have been raised.</p> <p>As noted by the Ombudsperson for Children, in practice, children are often faced with victimisation, the proceedings of which can be lengthy and there is a lack of facilities and professionals at courts who would be able to deal with child victims of violence.</p>

²⁷⁵ Protection of People with Mental Illnesses Act (Zakon o zaštiti osoba s duševnim smetnjama), Official Gazette Nos 11/97, 128/99 and 79/02.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p><u>Criminal Code</u> Article 104 The official or person who acts on the instigation or with the direct or indirect approval of the official or other person who acts in the capacity of the official causes severe bodily or mental pain or suffering to gain from them or other person information or confession, or to punish them for the act they had committed or is suspected to have committed themselves or had been committed by someone else, or in order to intimidate them or other person, or to pressure them or other person, or for any other reason based on any form of discrimination will be punished with imprisonment in the duration from one to ten years.</p> <p><u>Protection against Family Violence Act</u>²⁷⁶ Article 4 Family violence is any act of physical, psychological, sexual or economic violence, in particular: - corporal punishment and other forms of degrading treatment of children for the pedagogic purposes.</p> <p><u>Ombudsperson for Children Act</u>²⁷⁷ Article 14 If in the course of the duty the ombudsperson for children finds out that a child is subject to physical or psychological violence, sexual abuse, ill-treatment or exploitation, neglect or negligent treatment, he/she has a duty to immediately file a report to the competent public attorney, and warn the competent social work centre and suggest measures for the protection of the rights and interests of the child.</p>	

²⁷⁶ Protection against Family Violence Act (Zakon o zaštiti od nasilja u obitelji), Official Gazette nos. 137/09, 14/10, 60/10.

²⁷⁷ Ombudsperson for Children Act (Zakon o pravobranitelju za djecu), Official Gazette no. 96/03.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p><u>Medical Profession Act</u>²⁷⁸ Article 22 [...] A doctor has an obligation to report (to the police or public attorney) when in doubt that a minor's or an infirm person's health condition is seriously in danger due to neglect or abuse.</p> <p><u>Education in Elementary and Secondary School Act</u> Article 70 (1) Teachers, professors, teaching assistants and other staff in educational institutions are obliged to take measures for protecting the rights of pupils and immediately inform the headmaster of the educational institution, who has the duty to report to the social care centre, or other competent authority on any case of a violation, in particular in the cases of severe forms of physical or psychological violence, sexual abuse, neglect and negligent treatment, abuse and exploitation of pupils.</p>	
Right to family life	
<p><u>Constitution</u> Article 35 Everyone is guaranteed the respect and legal protection of their personal and family life, dignity, reputation and honour. Article 62 Family is under special protection by the State.</p>	<p>While there is recognition of the right to family life in Croatian legislation, the assessment is incomplete implementation</p> <p>Even though legislation prohibits institutionalisation of children, this is</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p><u>Family Act</u> Article 6²⁷⁹ Parents, before others, have the right, duty and responsibility to live with their child and care of her/him, and help is being provided and interventions made only when needed.</p> <p>Article 7²⁸⁰ Measures intervening with the family life are acceptable only if the protection cannot be ensured by undertaking less intrusive measures, or through preventive help and support to the family.</p> <p>Article 84 (2) A child has the right to security and upbringing in the family in accordance with her/his physical, psychological and other developmental needs. (3) A child has the right to live with her/his parents, and if the parents live separately, the child has the right to parental care of both parents. (4) A child has the right to maintain personal relationship with parents and other close persons with whom they don't live, as well as the right to information about important circumstances about their parents and other close persons, in accordance with the provisions of this Act.</p> <p>Article 91 (1) Parental care consists of responsibilities, duties and rights of parents, with the aim of protection and promotion of the child's personal and property rights and welfare. Parents are obliged to perform parental care in accordance with the child's evolving capacities and abilities. (2) Parent cannot give away the right to parental care. (3) Parents have the duty to discuss and agree with the child on the particular content of the parental care, in accordance with the child's age and maturity.</p> <p><u>Social Care Act</u></p>	<p>still not fully applied. Furthermore, children who should be taken from their family environment often remain in inadequate family environments for longer than necessary.</p>

²⁷⁹ This provision enters into force on 1 January 2015.

²⁸⁰ This provision enters into force on 1 January 2015.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 91</p> <p>(1) A child, and in particular child under the age of seven can be temporarily placed into a social care home, community living centre or with other service provider [...] only if at the moment the need occurs he/she cannot be provided with placement in a foster home or in family, and as long as the need prevails, but not longer than six months.</p> <p>(2) When there is a need for treatment of health services which are not available to a foster parent, temporary placement of a child to a social care centre [...] can last longer than (six months) but not more than a year.</p>	
Right to assistance	
<p><u>Family Act</u></p> <p>Article 161</p> <p>(3) Considering the circumstances of a case, assistance and support²⁸¹ may be planned to be more directed towards child's independence than strengthening parental capacities to take care of the child, if that is proportionate to the child's age, developmental level, needs and capacities.</p> <p><u>Social Care Act</u></p> <p>Article 21.</p> <p>Social care beneficiaries are: [...] a child with disabilities.</p> <p>Article 25.</p> <p>Rights from the social care system based on this act are: guaranteed minimal allowance, housing allowance, heating allowance transport allowance, allowance for personal needs of placement users, one-off allowances, education allowances, personal disability benefits, help and care allowance, status of parent carer and status of carer, unemployment benefits and social services.</p> <p>Article 26</p>	<p>Incomplete implementation</p> <p>The rights to assistance exist, but are limited in scope and are granted only to families in particular need. There is no support provided to families which are seen as 'able to afford to pay' a service. Furthermore, there is lack of accessibility to services for children with disabilities.</p>

²⁸¹ N.B. In case of providing foster care to the child.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Guaranteed minimal allowance is right to a monetary allowance which ensures satisfying basic needs of a single person or household who don't have enough means for satisfying basic needs of livelihood.</p> <p>Article 41 (2) Right to housing allowance is recognised to user of the guaranteed minimum allowance.</p> <p>Article 43 (1) A single person or a household, user of the guaranteed minimal allowance [...] is recognised the right to heating allowance [...].</p> <p>Article 45 (1) Right to personal needs allowance is recognised to the user of placement or organised housing in accordance with the provisions of this Act [...].</p> <p>Article 46 (1) One-off allowance is recognised to a single person or a household which who, due to temporary material difficulties is not able to meet the necessary needs incurred due to a birth of a child, education of a child, sickness or death of a family member, natural disaster or similar.</p> <p>Article 53 (1) Right to compensation of transport costs can be recognised if transport is not ensured by other means: to a child with disabilities who attends school for the purpose of obtaining secondary school education according to special programme outside of residence, or for training for independent living, and it is not necessary to provide them with the right to placement or supported living,</p> <p>Article 54 (1) Right to personal disability allowance is recognised to a person with severe disability or other severe permanent changes in health, with the purpose of satisfying their life needs for the inclusion into the life of the community. (2) The right to personal disability allowance will not be recognised to: [...] a child under the age of one. (3) The right to personal disability allowance will not be recognised to a person enjoying the right</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>to help and care allowance based on this Act or other legislation.</p> <p>Article 57.</p> <p>(1) Help and care allowance is recognised to a person who cannot her or himself satisfy the basic personal needs, which causes her/him to necessitate help and care of other person in the organising food, preparation and taking meals, supplying with food, cleaning and maintenance of the flat, dressing and undressing, maintenance of personal hygiene, and performance of other daily tasks.</p> <p>(2) Right to help and care allowance will not be recognised to a person:</p> <ul style="list-style-type: none"> - who owns a flat or a house, apart from the flat or the house which he/she uses for housing, and which can be sold or rented and thus ensure means for help and aid. - whose average income [...] of the household exceeds 200% of (amount set by the Government) in the preceding three months); - who has been recognised the right to personal disability allowance; <p>Article 63</p> <p>(1) Right to the status of parent carer is recognised to one of the parents of a child with disability or person with disability, who meets one of the following criteria:</p> <ul style="list-style-type: none"> - is fully dependant on help and care of other person because he/she necessitates, for life support, to receive specific care by performing medical-technical procedures for which, by medical advice, the parent has been trained; - is fully immobile, even with the aid of orthopaedic devices; - has multiple severe disabilities (physical, mental, intellectual or sensory), which makes her/him completely dependent on help and care of other person at satisfying basic needs. <p>(2) If there is two or more children or people with disabilities from paragraph (1) of this Article, in the same family, parent carer status may be granted to both parents.</p> <p>Article 67</p> <p>(1) Parent carer or carer have the right to compensation in the amount of five times the amount [set by the Government], rights from pension insurance, health insurance and unemployment benefits, like being employed according to special regulations.</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 68 (1) Parent carer, or carer, has the right to compensation for temporary inability to provide care due to illness, as well as during holidays, when they don't perform care duties, and the child is ensured placement, during holidays of the parent carer [...].</p> <p><u>Compulsory Health Insurance Act</u>²⁸² Article 4 (2) Insured persons who are provided with rights and obligations from the compulsory health insurance from this Act are considered to be [...] children under the age of 18 [...].</p>	
Right to education (including inclusive education)	
<p><u>Constitution</u> Article 66 In the Republic of Croatia, everyone shall have access to education under equal conditions and in accordance with his/her aptitudes. Compulsory education shall be free, in accordance with the law.</p> <p><u>Family Act</u> Article 94 (3) Parents have the duty to ensure comprehensive, regular, and according to their abilities also, further education of their child and stimulate the child's artistic, technical, sports or other interests. (4) Parents have the duty to respond to meetings or invitations of the educational institution about the upbringing and education of the child. (5) Parents shall not force the child to education which is not in accordance with her/his abilities</p>	<p>There is a lack of recognition of the right to inclusive education beyond preschool. In addition, implementation is considered incomplete.</p> <p>There is no guarantee for inclusive education for all children. Even for those children who are able to participate in mainstream education, there are many obstacles. The allocation of assistants is slow and unorganised and applicable regulations use outdated and offensive language.</p>

²⁸² Compulsory Health Insurance Act (Zakon o obveznom zdravstvenom osiguranju), Official Gazette nos. 80/13 and 137/13.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>and affinities. (6) In the case of dispute between the child and a parent in relation to education of the child, the court shall decide in non-contentious proceedings</p> <p><u>Preschool Education Act</u>²⁸³ Article 17 (1) Programmes for children with disabilities of early and preschool age are organised in kindergartens in accordance with special conditions prescribed by the minister in charge of education.</p> <p>Article 20 (1) [...] children with disabilities [...] will have priority at the enrolment in kindergartens owned by local or regional authorities, or by the State.</p> <p><u>Education in Elementary and Secondary School Act</u> Article 12 Elementary education starts with the enrolment at the first grade of elementary school and is compulsory for all the children, in principle from the ages of six to 15, and for children with disabilities not after the age of 21.</p> <p>Article 21 (1) Public administration office, or City office [...] issues a decision on: [...] appropriate programme of elementary or secondary education for children with disabilities. (2) Parents have the right to appeal decision from paragraph 1 of this Article to the Ministry.</p> <p><u>Social Care Act</u></p>	

²⁸³ Preschool Education Act (Zakon o predškolskom odgoju i obrazovanju), Official Gazette nos. 10/97, 107/07 and 94/13.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 85 (1) Assistance with inclusion of a child with disabilities or young adult with disabilities in programmes of regular preschool or school institutions (integration) is a social service which is provided to educators, teachers and professors in kindergartens and schools. (2) Social care centre provides the service from paragraph 1 of this Article after obtaining opinion from the kindergarten or school and service provider about the duration and frequency of assistance provision, and can be determined in the duration of up to five hours a week.</p> <p><u>Book of Rules on Elementary Education of Children with Disabilities</u>²⁸⁴</p> <p>Article 4 Full educational integration is achieved through inclusion of a pupil with mild disabilities in an elementary school class, in principle from first to fourth grade. [...] Pupil with disabilities from paragraph 1 of this Article achieves regular or adjusted curricula through individualised procedures and special additional assistance of a defectologist of the appropriate specialisation.</p> <p>Article 7 For pupils of mild mental retardation partial integration is organised in special educational groups. In special educational groups pupils from paragraph 1 of this Article work on parts of curricula, while the rest of curriculum is attended in the main class.</p> <p>Article 12 For pupils with more serious disabilities, elementary education is provided in special educational organisations, and can be provided in other organisations (health, social care or justice). Pupils with more serious disabilities are:</p>	

²⁸⁴ Book of Rules on Education of Children with Disabilities (Pravilnik o osnovnoškolskom odgoju i obrazovanju u enika sa teško ama u razvoju), Official Gazette no 23/91 and 74/99.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<ul style="list-style-type: none"> - Pupils with mild mental retardation with particular developmental difficulties - Pupils with medium or severe mental retardation - Pupils with visual impairment and particular developmental difficulties - Pupils with auditory impairment and particular developmental difficulties - Pupils with physical disability and particular developmental difficulties - Pupils with organically conditioned behavioural disorders and particular developmental difficulties - Autistic pupils with particular developmental difficulties. <p>Particular developmental difficulties from paragraph 2 of this Article are such difficulties which importantly influence the ability of the child to achieve the curriculum of regular elementary school.</p> <p>Children with more serious disabilities from paragraph 2 of this Article are included in special educational organisations.</p>	

ANNEX 2 – STATISTICAL INFORMATION

Number of violation ²⁸⁵ Year	Violence	Gender discrimination	Other discrimination	Criminal suspects
2009			No data available	
2010			52	
2011			54	
2012			62	
2013			89	

²⁸⁵ Cases reported to any relevant body; depending on the availability of data.

ANNEX 3 – STUDY ON MEMBER STATES’ POLICIES FOR CHILDREN WITH DISABILITIES - EXECUTIVE SUMMARY

There are about 100 million children in the European Union and about 80 million European persons with disabilities. While the number of children and the number of persons with disabilities is well documented, the same cannot be said of children with disabilities. Children with disabilities combine different factors of vulnerability. As children the protection of their rights requires the adoption of special measures that are recognised by the UN Convention on the Rights of the Child (CRC). As individuals with disabilities, they are particularly vulnerable EU citizens who deserve specific safeguards and protection as acknowledged by the UN Convention on the Rights of Persons with Disabilities (CRPD).

Children with disabilities and their families face on a daily basis specific problems such as the lack of assistance and support for their inclusion in schools, experiences of violence and the lack of proper tools for reporting them, difficulties in accessing buildings or services or troubles in being heard and participating in decisions affecting their lives.

The Conventions include provisions addressing these concerns and providing protection to the right to enjoy all human rights and freedoms with no discrimination ensuring

- equality of opportunities and accessibility,
- the best interests of the child as a consideration in all actions concerning them,
- the evolving capacities of children with disabilities as a consideration in decisions affecting them,
- the right to be heard in proceedings and decision-making processes affecting the child and the right to a full and effective participation,
- the right to family life,
- the right to effective access to education and inclusive education,
- the right to health care,
- the right to assistance, and
- freedom from violence.

This study is structured to mirror the requirements of both conventions reflecting the main rights of children with disabilities to be implemented generally in the EU due to the high rate of ratification by EU Member States. Moreover, in December 2010, the European Union became a party to the CRPD. In doing so, the EU recognised the challenges persons with disabilities face in securing the fulfilment of their rights and assumed the responsibility for its implementation alongside Member States. The EU’s responsibility towards the implementation of the CRC is of a different scale. Despite the lack of ratification by the EU, the CRC rights and principles guide the EU policies and action since the Treaty recognises the rights of the child as an EU objective.

This study assesses the current situation with respect to the rights of children with disabilities in the EU and the need for EU legislation or for other measures. The options to act at EU level are framed within the extent of the competences conferred by the Treaties, which can be exclusive, shared or supporting competences (Article 2 TFEU).

The current EU legislative and policy framework give recognition to the Conventions’ rights and principles applicable to children with disabilities and a certain degree of implementation. However, the existing EU legislation relevant to this area is mainly sectoral (i.e., employment or immigration). The legislation addresses the situation of persons with disabilities separately from the rights of the child, whereas there is a need to consider children with disabilities as they face multiple discrimination, on the basis of age as well as

disability, and to tailor measures to ensure that their rights are respected.

A. Comparative analysis of national legal frameworks

The comparative analysis of the national legal frameworks on children with disabilities' rights in 18 Member States²⁸⁶ is based on a set of criteria developed to enable an assessment of comparable data reported in each national study. The criteria are based on the requirements within each right and principles identified as pertinent to the situation of children with disabilities.²⁸⁷ The criteria are derived from the text of both conventions and the CRC General Comments on their interpretation.

Overall, the 18 Member States have in place comprehensive legal frameworks reflecting the main aspects of the rights and principles identified under the CRPD and CRC. While it may be stated that the rights of children with disabilities are broadly recognised under national legal systems either through general or specific legislation, their practical implementation revealed to be problematic in most Member States.

Consideration of the principle of best interests of the child is generally recognised under national laws. However, implementation is mostly limited to family and social protection decisions affecting children and the specific needs of children with disabilities are not recognised. The country studies found a lack of understanding of what the principle entails, along with insufficient development of the concept through law or jurisprudence and an overall lack of implementing rules.

The right to non-discrimination based on disability or age is reflected in national legislations, however, the implementation of the right is generally only partial and the reasonable accommodation measures are generally insufficient to guarantee the right. In practice, accessibility remains a key problem in most Member States. Reference to the multi-discrimination factors faced by children with disabilities or girls with disabilities is rarely acknowledged. There is a lack of monitoring results and of data on cases of right's violations that could help define more effective measures.

Most countries partially take account of the evolving capacities of the child mainly on the basis of considerations of age, maturity and development of the child. However, the situation of children with disabilities is not specifically acknowledged. The implementation is limited to a certain type of decisions and Member States tend to primarily take into consideration the child's age, which for children with disabilities may not be relevant and which can effectively exclude them from decision making processes that affect them.

The rights to participation and to be heard in decision making processes affecting children with disabilities are recognised under the legislation of the 18 Member States. However, their implementation is often limited to some sectoral procedures mostly regarding family law and at a certain extent in education. In practice, children with disabilities are not systematically involved and do not get to participate in public and

²⁸⁶ For the first phase of this study, 18 selected Member States legal frameworks have been analysed: Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, the Netherlands, Malta, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom. Those countries have been selected by the European Parliament in the Terms of Specifications of this study.

²⁸⁷ 8 rights and principles have been identified as most relevant to the situation of children with disabilities: the best interests of the child, the right to non-discrimination, the consideration of evolving capacities, the right to participation/to be heard, the right to be free from violence, the right to family life, the right to assistance and the right to education.

private life at the same level than their able-peers.

In general freedom from violence is recognised by Member States' legislation. However, abuse against children with disabilities is a key problem acknowledged in all country reports. Violence occurring in institutions is of particular concern. The lack of systematic data and the difficulty for victims to report abuses do not allow an overview of the situation needed for the adoption of appropriate policies and measures.

The right to family life is widely recognised in the laws of the selected Member States. However, insufficient guidance and support to families for the integration of the child with disabilities and for helping them in their day to day lives is a key problem in most of the 18 Member States. Without proper assistance, families with difficulties might give up on their responsibility leading to a situation where alternative options are unlikely and institutionalisation is the only response available.

Overall the right to various forms of assistance (financial, social, health care, etc.) both for children with disabilities and for their families is recognised in legislation or regulatory rules. However, again in most cases assistance is sectoral (mainly social and health) and insufficient (financially and human assistance). The economic crisis is contributing to the removal and reduction of assistance in most Member States. Access to assistance is often perceived not as an instrument enabling protection of rights but rather as a discretionary measure subject to budget constraints.

All Member States recognise the right to education in their Constitutions or legal frameworks; however, the ability to access the school of choice for children with disabilities remains very challenging in practice. Mainstream schools remain largely inaccessible to children with disabilities in many Member States, while in other countries schools have insufficient resources and support for the child with disabilities is scarce. In addition, teachers in mainstream schools lack training and awareness on the needs of children with disabilities and programmes are not systematically adapted to them.

Compliance mechanisms are weak and lack adaptation to the situation of children with disabilities. Lack of information and guidance to families with children with disabilities on their rights, procedures and competent authorities decreases their ability to access these tools.

On the basis of these findings, the study sets forth conclusions and recommendations for EU action, taking into account the competence of the EU conferred by the Treaties on a range of policy areas, including disability and children's rights.

B.1 The role of the European Union

The EU has no explicit competence on children with disabilities. However the EU framework contains provisions recognising the EU's role to promote the protection of the rights of the child as an EU objective as well as its competence to combat discrimination based on disability. Furthermore, the Charter of Fundamental Rights of the European Union, with similar legal value as the Treaties, recognises the right to non-discrimination on ground of disability in Article 21 and the rights of the child under its Article 24. This recognition, while important, cannot extend the competences of the EU as conferred by the Treaties.

The EU, together with Member States in areas of shared competence or national competence, is bound by the CRPD obligations and is required to take the necessary measures to combat discrimination on the grounds of disability within the framework of

Article 19 TFEU or in other matters falling within EU competence. Article 19(1) TFEU provides the legal basis for EU action (see among others the proposal for equal treatment Directive of 2008²⁸⁸) but the unanimity requirement makes achieving agreement under this legal base difficult. Article 19(2) provides the possibility for the EU to adopt basic principles and incentive measures to support Member States' action to combat discrimination through the ordinary legislative procedure.

Neither the above mentioned proposal for an equal treatment Directive nor any other EU measures provide for a definition of disability. Prior to the adoption of the CRPD, in a judgment in July 2006, the Court of Justice of the European Union (CJEU) defined disability in the same sense as the CRPD within the context of employment policy as 'a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'.²⁸⁹ Recently, the CJEU has further developed this concept²⁹⁰ stating that disability results from barriers hindering the full and effective participation of the person concerned in professional life on an equal basis with other workers and calling on the employer to take reasonable accommodation measures.

EU action is also possible when linked to other policy areas of EU competence. Several issues related to the rights of the child with disabilities are linked to EU policies such as social policy, economic, social and territorial cohesion, transport, freedom, security and justice all of which are shared competence. In addition, the EU has the option to take action to support Member States policies in a number of areas affecting children with disabilities such as education, sports, youth or health.

B. 2 Existing relevant EU secondary legislation

The best interests of the child as primary consideration in actions relating to children is a fundamental requirement recognised in EU legislation. Article 7 of the Mediation Directive 2008/52²⁹¹ requires the mediator to take into account the best interests of the child when deciding whether the child can give evidence in judicial proceedings. The Family Reunification Directive²⁹² requires Member States' authorities to consider the best interests of children when examining an application for family reunification (Article 5)²⁹³. The protection of the best interests of the child is explicitly mentioned in Council Directive 2004/81/EC²⁹⁴ on victims of trafficking in human beings.

Non-discrimination at EU level is currently addressed by four EU Directives to combat discrimination on the basis of protected grounds such as sex, racial or ethnic origin, religion

²⁸⁸ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:en:NOT> (last accessed 6.5.13).

²⁸⁹ Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, *Sonia Chacón Navas v Eurest Colectividades*, pt 43.

²⁹⁰ Judgment of the Court, Joint cases C-335/11 and C-337/11 of 11 April 2013, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening acting on behalf of Pro Display A/S (C-337/11)*, pt 47.

²⁹¹ Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

²⁹² Council Directive 2003/86/EC on the right to family reunification.

²⁹³ 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union' FRA, March 2009, available at http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf.

²⁹⁴ Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who has been the subject of an action to facilitate illegal immigration.

or belief, age and sexual orientation, most of them restricted to the area of employment.²⁹⁵ They lay down rules 'for combating discrimination [...] with a view to putting into effect in the Member States the principle of equal treatment'.²⁹⁶ Disability is recognised as grounds for discrimination under Directive 2000/78/EC and, furthermore, protection of equality between men and women in matters of employment and occupation under Directive 2006/54/EC applies to persons with disabilities. Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin does not include disability as a protected ground. Directive 2004/113/EC on equal treatment between women and men in access to supply of goods and services refers to discrimination on grounds of sex but not on age or disability.

The European Commission has acknowledged the differences of protection provided across the various grounds and published a proposal for a Directive in 2008 aiming at completing the legal framework on anti-discrimination law and providing for a more equal level of protection across the grounds²⁹⁷.

Other measures in policy areas such as the internal market or transport have an impact on children with disabilities' access to services with no-discrimination. For example, Directive 2001/85/EC on the carriage of passengers, requires accessibility features for persons with reduced mobility and visually impaired persons. Other instruments cover rights of persons with disabilities when travelling by air, accessibility to lifts, in carrying out public procurement or in measures for telecommunication²⁹⁸.

Within the remit of its competences, the EU's action to combat discrimination is complemented with activities by the EU Institutions to improve knowledge about discrimination (e.g. by raising awareness), support intermediary actors (e.g. NGOs, social partners and equality bodies) to improve their capacity to combat discrimination and to encourage the exchange of national good practices.

The consideration of children's evolving capacities is recognised in the Brussels IIbis Regulation 2201/2003 which requires courts to hear the view of the child according to his/her age or degree of maturity. The same formulation is found in EU legislation concerning immigration and asylum in relation to unaccompanied minors.

Children's right to participation is recognised in some Commission strategic documents including the 2005 'European policies concerning youth', the 2006 'EU strategy on the rights of the child', the Youth in Action Programme and the EU Agenda for the Rights of the child of 2011. EU legislation on immigration and asylum recognise the right of the child to be heard during proceedings under the Brussels IIbis Regulation 2201/2003.

The EU has adopted a number of measures on the protection of children from

²⁹⁵ Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast directive); Directive 2004/113/EC on the principle of equal treatment between women and men in the access to and supply of goods and services; Directive 2000/43/EC on the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

²⁹⁶ Article 1 Directive 2000/43/EC.

²⁹⁷ Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426). It is currently blocked in the Council.

²⁹⁸ 'Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities VC/2008/1214', European Commission, Brussels, 2010, Executive Summary available at http://www.efc.be/programmes_services/resources/Documents/UN_Covention_Summary_EN.pdf.

violence²⁹⁹ relating to child trafficking, to the sexual exploitation of children and to the protection of victims including several Directives³⁰⁰ that have been adopted to replace some of these instruments. For example, the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, focus on the protection of children which are more vulnerable than adults and establishes more severe penalties when the offence is committed against vulnerable persons such as children and persons with disabilities.

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of the victims of crime recognises that a victim of crime should be treated without discrimination based on any ground including age and disability. Lastly, Directive 2011/92/EU on combating sexual abuse, the sexual exploitation of children and child pornography³⁰¹ provides the need for specific protection of children with disabilities.

The right to family life and the maintenance of the child in family context is at the heart of Council Regulation 2201/2003 Brussels IIbis (EC)³⁰². In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification³⁰³ and the provisions of the Directives on asylum³⁰⁴ regarding unaccompanied minors and the respect for the family unit.

The principle of maximum inclusion in society of children with disabilities is reflected in strategy documents such as the Disability Strategy 2010-2020³⁰⁵ and the EU 2020 Programme in relation to education and training³⁰⁶. The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities³⁰⁷ addressed the problem of access to

²⁹⁹ Framework Decision 2002/629/JHA on combating trafficking in human beings; Council Directive 2004/81/EC on the residence permit issued to third-country nationals victims of trafficking in human beings; Council Framework Decision 2004/68/JHA on combating sexual exploitation of children and child pornography; Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings; Council Resolution 2001/C 283/01 on the contribution of civil society in finding missing or sexually exploited children. Decision No 1351/2008/EC establishing Safer Internet Programme 2009-2013.

³⁰⁰ Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

³⁰¹ Article 1 Directive 2011/92/EU.

³⁰² Council Regulation (EC) No 2201/2003, concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

³⁰³ Council Directive 2003/86/EC on the right to family reunification; Council Regulation (EC) No 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; Council Directive 2004/83/EC of on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who need international protection; Directive 2008/115/EC, on common standards and procedures in Member States for returning illegally staying third-country nationals.

³⁰⁴ Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons; Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers; Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals, stateless persons or refugees as persons who otherwise need international protection; Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting or withdrawing refugee status.

³⁰⁵ Area of action 5 of the Commission Communication European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe COM(2010) 636 final.

³⁰⁶ Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020'), 2009/C 119/02, OJ C 119/2, of 28 May 2005.

³⁰⁷ Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.

education by children with disabilities. In 2010, the Resolution of the European Parliament on mobility and inclusion of children with disabilities³⁰⁸ stressed the need to ensure full respect for the rights of the child, including the right to education and the right to participate in community life of children with disabilities. The EU Institutions also support the European Agency for Development in Special Needs Education, the independent organisation acting as a platform for collaboration on special educational needs and the promotion of full participation within mainstream education and training³⁰⁹.

C. Recommendations for EU action

When evaluating the need for specific recommendations aimed at improving the situation of children with disabilities, it is important to highlight that children with disabilities are first and foremost children with the same needs as any other children and who should be beneficiaries of all rights recognised by the CRC. Their intrinsic difference with their peers needs to be recognised for designing appropriate legislative and policy measures.

Horizontal issues

- As a first and general recommendation, all EU Member States which have not already done so should ratify the two conventions referred to in this study and implement their provisions by adopting national legislation and ensuring its practice.
- The European Commission, liaising with the UN Secretariat for the CRPD and the UN Secretariat for the CRC, should ensure Member States understanding and implementation of several definitions of the Conventions that are cornerstones for the implementation of the rights of children with disabilities, namely the definition of "disability", the "best interests of the child" and the "evolving capacities of the child". They should lead the development of initiatives to ensure that the specificities of children with disabilities are taken into account.
- To that end, it is recommended that the Commission takes the initiative to provide clarification at EU level of the CRPD definition of "disability" as it is considered to be too broad in practice and its implementation at national level is therefore difficult. The development of guidance documents, exchange of best practices and promotion of existing manuals are recommended.
- The European Commission should take action to promote that children with disabilities are considered in existing mainstreaming initiatives for non-discrimination and equal treatment.
- The EP, the Council and the Commission should promote the development of national information tools to assist families with children with disabilities to understand the legal frameworks applicable to them, including access to assistance measures, competent authorities, procedures and compliance mechanisms. Specific tools addressed to these families could include an EU web portal which could be linked, where possible, to national portals providing full information on rights, requirements, criteria for implementation, competent authorities, and coordination systems. This initiative could bring citizens closer to the EU.
- The EU Institutions should take a leading role in promoting awareness-raising on issues concerning the rights of children with disabilities, their interests and

³⁰⁸ European Parliament Resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 (2010/2272(INI)).

³⁰⁹ European Agency for Development in Special Needs Education website available at <http://www.europeanagency.org/about-us>.

specific needs in order to promote the full implementation of the principle of best interests of children with disabilities. The EP and the Council could also use their budgetary powers to provide for financing of awareness-raising campaigns.

Best interests of the child

- While most countries have legislation recognising the principle of best interests of the child, only few Member States contain in their legislation a general requirement for its systematic consideration in all decisions affecting children. Some Member States (such as Sweden and the UK) have introduced child impact assessments of proposed legislation. It is recommended that the European Commission promotes the exchange of these initiatives and develops a guide on methodologies for carrying out these child impact assessments implementing the best interests of the child principle.

Right to non-discrimination

- The concept of reasonable accommodation in relation to the specific situation of children with disabilities needs clarification and further development to define the boundaries for the use of disproportionate burden. The EU, through the Commission, could support this through exchange of best practices at national level on the implementation of reasonable accommodation covering different situations. This would help defining the baselines from which the respect of the right requires public authorities' action and prevents it from being subject to arguments of disproportionate costs.
- The 2008 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, if adopted, has the potential of addressing the situation of children with disabilities. Amendment 37 introduced by the European Parliament refers to multiple discrimination. Within this context, clarification could be introduced in the recitals of the proposed Directive in order to ensure that the situation of children with disabilities is considered as a part of its scope.
- The European Commission's draft for an upcoming European Accessibility Act should explicitly cover children with disabilities' access to goods and services, at least with a reference to multiple discrimination cases.

Evolving capacities of children with disabilities

- The EP should consider ways to raise awareness and promote taking into account the evolving capacities of children, including children with disabilities, with the aim to have the principle applied in all decision making processes affecting them.
- Any new legislation on child-friendly justice should include consideration of the ability of the child with disabilities to be heard in judicial proceedings affecting them. The Commission should ensure that these provisions are included in the anticipated EU law on special safeguards for suspected or accused persons who are vulnerable, including children, or the anticipated EU law for the recognition and enforcement of decisions on parental responsibility.

Furthermore, it is recommended that the European Commission, the Council and the EP promote the use of the Council of Europe Guidelines on child-friendly justice and support training for the relevant professionals at all levels.

Right of participation of children with disabilities

- The anticipated European Accessibility Act could provide for the development of tools to ensure the participation of children with disabilities in the consultation processes of the legislative and policy initiatives affecting them.
- The EP should explore ways to raise awareness on the requirements needed to ensure the right of participation of children with disabilities through concrete measures such as simulation of plenary meetings in the EP involving children with disabilities, guaranteeing physical access to the EP buildings or designing tools to ensure nonphysical participation.

Right to be heard of children with disabilities

- In order to enable effective implementation of the right to be heard by children with disabilities, changes in the attitudes of judicial, administrative and enforcement officers are needed. To that end, the EP, the Council and the Commission should encourage Member States to develop awareness-raising actions and training addressed at public authorities.
- The Commission in preparing legislation on child-friendly justice, should ensure that adequate steps are taken to identify the ability of the child to express his/her views in judicial proceedings affecting them, enabling a climate of trust between the child and the judicial and enforcement officers and providing reasonable accommodation to ensure the effective right to be heard of children with disabilities.

Freedom from violence

- It is recommended that the EP, the Council and the Commission promote the development of statistical information on the situation of violence affecting children, and in particular children with disabilities. Furthermore, they should promote the development of indicators (such as disability, children, girls, family environment) to be mainstreamed in other policy or general surveys so as to provide systematic data on the situation of children with disabilities.
- The European Commission and the EP should promote FRA to examine the situation of violence against children, particularly in institutions, including children with disabilities as they are particularly vulnerable. The necessary funding should be proposed to the budgetary authority.
- The European Commission should consider in particular the need for measures at EU level aimed at reducing the number of cases of violence against children, especially children with disabilities, in Member States (both in a domestic context and in public institutions). The Commission could start preparatory work by organising working groups with Member States experts to consider:
 - proposals for ensuring that Member States set up preventive measures and proper monitoring systems to detect cases of violence and abuse against children,
 - the set-up of control mechanisms and regular inspections,
 - peer reviews or the Open Method of Coordination for implementation of proposals,
 - access to information and communication services targeted at improving the system of complaints concerning children's right to freedom from violence.
- The Commission could promote the organisation of specialised EU-wide training and workshops amongst professionals to share knowledge on complaint procedures, reporting measures and accessibility of communication services for children with disabilities, especially for children with severe disabilities or

intellectual impairments. The budgetary authority should provide adequate funding for these activities.

Right to family life of children with disabilities

- The Commission, the Council and the EP should encourage Member States to set up appropriate support structures for families with children with disabilities in order to reduce the risks of the child losing family life while safeguarding the best interests of children with disabilities.
- Within the Open Method of Coordination, the Commission should develop Guidelines on minimum requirements of residential institutions with regards to children with disabilities. The Guidelines would aim at ensuring that residential care centres have a small number of users and the capacity to host children with autism or with intellectual disabilities.
- The Commission should propose to the budgetary authority the use of EU funds for the protection of children's right to family life, prioritising funds for families while ensuring that the good quality of the institutions is maintained.

Access to assistance

- A special single national body (with regional offices) responsible for the management of services, budget and assistance of children and their families should be established in order to ensure consistency, coordination, effectiveness, increase accessibility and better guidance for families on the funding support available.
- The EP should continue to lead actions on children with disabilities to inform Member States on the negative impacts of budget cuts on implementation of their rights, especially in the field of education, social protection and health care.
- Within the European Semester process, the Commission should provide appropriate recommendations to Member States on how to use existing resources effectively instead of just cutting the necessary assistance for children with disabilities who belong to the most vulnerable citizens.

Access to inclusive education

- The Commission should develop actions to support Member States in improving education systems for children with disabilities through the Open Method of Coordination or peer review while respecting their general competence for matters related to education. Action at EU level could include:
 - Development of best practice guides and recommendations on the minimum type of resources needed in mainstreaming schools, and on the role of parents and children with disabilities in decision-making processes affecting children with disabilities or the development of education objectives;
 - Promotion of training for teachers on better understanding of children with disabilities' needs and evolving capacities, teaching methodologies and handling of children with specific disabilities in a class together with their able-peers;
 - Promotion of teaching tools that help the inclusion of children with disabilities in schools and outside of schools such as the Council of Europe's COMPASS manual;
 - Promotion of anti-bullying and anti-stigmatisation initiatives, including awareness-raising campaigns promoting inclusion of children with disabilities; and
 - Development of quality objectives for education offered to children with

disabilities and the promotion of initiatives to maintain the support for higher education.

EU Funding

- The EP, the Council and the Commission should promote among Member States the use of the Structural Funds to foster the development of quality social services provided for children with disabilities, while facilitating the implementation of the Voluntary European Quality Framework for Social Services;
- The EP, the Council and the Commission should promote the development of family and community-based alternatives with the purpose of de-institutionalisation.

The EP, the Council and the Commission should encourage the use of structural funds for improving accessibility and inclusive education.

ANNEX 4 - OVERVIEW OF RELATED STUDIES

Name of the Study	PE number	ISBN number
Study on Member States' Policies for Children with Disabilities	PE 474.416	978-92-823-4548-1
Country Report on Belgium for the Study on Member States' Policies for Children with Disabilities	PE 474.417	978-92-823-4542-9
Country Report on the Czech Republic for the Study on Member States' Policies for Children with Disabilities	PE 474.418	978-92-823-4549-8
Country Report on Estonia for the Study on Member States' Policies for Children with Disabilities	PE 474.419	978-92-823-4561-0
Country Report on Finland for the Study on Member States' Policies for Children with Disabilities	PE 474.420	978-92-823-4552-8
Country Report on France for the Study on Member States' Policies for Children with Disabilities	PE 474.421	978-92-823-4562-7
Country Report on Germany for the Study on Member States' Policies for Children with Disabilities	PE 474.422	978-92-823-4553-5
Country Report on Greece for the Study on Member States' Policies for Children with Disabilities	PE 474.423	978-92-823-4563-4
Country Report on Hungary for the Study on Member States' Policies for Children with Disabilities	PE 474.424	978-92-823-4554-2
Country Report on Ireland for the Study on Member States' Policies for Children with Disabilities	PE 474.425	978-92-823-4564-1
Country Report on Italy for the Study on Member States' Policies for Children with Disabilities	PE 474.426	978-92-823-4555-9
Country Report on Malta for the Study on Member States' Policies for Children with Disabilities	PE 474.427	978-92-823-4565-8
Country Report on the Netherlands for the Study on Member States' Policies for Children with Disabilities	PE 474.428	978-92-823-4556-6
Country Report on Poland for the Study on Member States' Policies for Children with Disabilities	PE 474.429	978-92-823-4566-5
Country Report on Romania for the Study on Member States' Policies for Children with Disabilities	PE 474.430	978-92-823-4567-2
Country Report on Slovenia for the Study on Member States' Policies for Children with Disabilities	PE 474.431	978-92-823-4557-3
Country Report on Spain for the Study on Member States' Policies for Children with Disabilities	PE 474.432	978-92-823-4558-0

Country Report on Sweden for the Study on Member States' Policies for Children with Disabilities	PE 474.433	978-92-823-4568-9
Country Report on England, Wales and Northern Ireland for the Study on Member States' Policies for Children with Disabilities	PE 474.434	978-92-823-4559-7
Country Report on Austria for the Study on Member States' Policies for Children with Disabilities	PE 519.195	978-92-823-6950-0
Country Report on Bulgaria for the Study on Member States' Policies for Children with Disabilities	PE 519.196	978-92-823-6971-5
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