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

Member States' Policies for Children with Disabilities

Abstract

This study looks at the situation of children with disabilities in Romania to identify the gaps in the legal frameworks and its implementation, the obstacles faced by children with disabilities and best practices. This country study is part of a larger study which analyses 18 Member States. Based on a comparative analysis of the country studies, the report 'Study on Member States' Policies for Children with Disabilities' provides some recommendations for EU action to enhance the situation of children with disabilities.
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LIST OF ABBREVIATIONS

Art.  Article
Charter  The Charter of Fundamental Rights of the European Union
CJEU  Court of Justice of the European Union
CNCD  National Council for the Fight against Discrimination
CRC  United Nations Convention on the Rights of the Child
CRPD  United Nations Convention on the Rights of Persons with Disabilities
ECHR  Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
EU  The European Union
ICCJ  The Romanian High Court of Cassation and Justice
Par.  Paragraph
RCC  Romanian Civil Code
TEU  Treaty on the European Union
TFEU  Treaty on the Functioning of the European Union
UN  United Nations
EXECUTIVE SUMMARY

In Romania, the rights and interests of children with disabilities are protected through a framework of legal provisions, especially in the field of social protection, assistance, education and medical care. In addition, legal principles regarding children and persons with disabilities in general are included in a number of legislative acts, including the Romanian Constitution, which guarantees the rights of children and youth and sets the obligation to provide assistance to children with disabilities. The Romanian legislation deals with the issue of children with disabilities from a double perspective: they are vulnerable both due to their age, and due to the state of their disability or impairment.

In addition to the general law regarding the legal status of the children, there are a number of legal instruments providing for special rules of protection concerning children with disabilities, such as those governing the medical care, social assistance, or education. More recently, through amendments of the existing legislation, the situation of children with disabilities has been considered from a regulatory perspective with a focus towards their full inclusion, shifting from the traditional policy of institutionalisation.

In terms of international obligations, Romania is a party to both the CRC and the CRPD. Most of the principles and national legal provisions concerning children stem from the provisions of these two Conventions. Therefore, in a general evaluation, it can be assessed that the international principles concerning children with disabilities have been transposed into the national legal framework.

However, from both the conducted literature review and the interviews with stakeholders (particularly NGOs) it appears that there is an important gap between existing legal provisions and their practical implementation. Even if the legal framework (consisting of explicit reference in the legislation or interpretation of more general provisions regarding persons with disabilities) concerning children with disabilities can be considered as satisfactory, the main problem is in the application of the legal framework directly and through the drafting of effective secondary legislation and programmes for the protection of this vulnerable category of children.

Particular problems have been identified with regards to access to education and medical care. Concerning access to education, national legislation has been recently amended in order to reflect the principle of inclusive education. However this legislation has not yet been implemented in practice and cases of non-registrations or expulsions of children with disabilities from mainstream schools are frequent practices. Similarly, access to quality medical care is difficult for children with disabilities due to the lack of financial support and/or lack of specialised medical staff.

The situation of children with disabilities is significantly deteriorated by the lack of public awareness, especially with regard to the situation of persons suffering from mental disabilities, and the existence of strong social prejudices.

In the past years, efforts have been made by central and local authorities to implement programmes targeted at persons with disabilities. However these efforts have been impeded by bureaucracy or the lack of resources. A general strategy on coordination of such programmes throughout the country does not exist. Furthermore, there is lack of a more dynamic and integrated development of public-private projects as private initiatives.
have proved to be more frequent and effective.
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 European Union recognised the challenges persons with disabilities face in securing their rights and highlighted the need for EU actions in that 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 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.\(^1\)

This country report for Romania is part of a larger study which aims at providing the European Parliament with an overview of the situation of children with disabilities in selected Member States, with a view to evaluating the need for European legislation to enhance the rights of children with disabilities in the European Union. The project reviews the existing legal, policy and institutional frameworks in 18 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. The results from the country reports also form the basis for the comparative analysis in the report ‘Study on Member States' Policies for Children with Disabilities’.

The key elements deriving from the CRC and 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 participate / right to be heard;
- The right to be free from violence;
- The right to family life;
- The right to assistance;
- The right to education, including inclusive education.

Given their ratification of both UN Conventions, Member States are obliged to take

\(^1\) All the 27 Member States have ratified the CRC, and all 27 Member States have signed the CRPD (Finland, Ireland and the Netherlands have signed but not yet ratified).
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 the 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 of children with disabilities’ rights in Romania. 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 CRPD and 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 as follows: it first looks at the situation of children with disabilities at the national level. It describes the national legal and institutional framework for the protection of children with disabilities and analyses national implementation of principles and rights developed in the UN Conventions (CRC and CRPD). It then considers specific issues relevant to the situation of children with disabilities, including children as suspects, gender issues, violence 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.
1. OVERVIEW OF THE SITUATION AND CHALLENGES FOR CHILDREN WITH DISABILITIES IN ROMANIA

KEY FINDINGS

- The national action focuses on the following areas: integration of children with disabilities in mainstream schools, development of health care programmes, social assistance, and addressing the problem of the lack of resources.

- The following gaps, problems and challenges have been identified: harassment and difficulties in integration of children with disabilities (in particular those with intellectual disabilities) in schools due to the lack of supportive environment; lack of expertise of public authorities (including teachers of public schools) to deal with children with disabilities; and lack of resources and/or difficulties in using the available resources.

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

In the year 2012, there were 60,890 children with disabilities registered in Romania.2 Most of them are not living in institutions.3 However, reports from NGOs indicate that this figure does not take into account all of the children with disabilities in Romania since it only includes children with disabilities registered in the official database.4 Such registrations are only being made on a voluntary basis by a child’s parents or guardians. In addition, such data does not reflect the real number of children with intellectual disabilities because the legislation and public policies do not define clearly what falls under the scope of intellectual and psychosocial disabilities and mental illness, which generates confusion in providing specialised services and registration.5

The legal framework for children with disabilities is based on the principles and rights set forth by the CRC and CRPD. Romania is a party to both Conventions. Romanian legislation concerning the rights of the child and action plans and strategies established by the national authorities in this area are based on the following principles:

- The principle of best interests of the child;
- Equality of chances and protection against discrimination of any kind;
- Integration of children with disabilities rather than institutionalisation;

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4 Information collected through consultation with national stakeholders.
Taking into consideration child’s opinion on the issues that concern her/him, according to her/his age and maturity;

- Protection against abuse and exploitation;
- Social responsibility;
- Integration and social inclusion, with as equal rights as all other members of the society.

The literature on the situation of children with disabilities in Romania is very scarce. There is some literature regarding legal status of children and their protection, as well as literature on persons with disabilities in general, but in most of the cases there is no special focus on the particular situation of children with disabilities. The identified literature indicates a number of specific problems faced by children with disabilities, especially related to the educational process. Accordingly, children with different types of disabilities are mixed together within the same class and follow the same curricula. The number of schools dedicated for children with disabilities is very low and the situation of integration of children with disabilities in mainstream schools is not covered by a proper legal framework.6

1.2. Review of issues and identification of possible regulatory gaps

Although the Romanian legislative framework reflects the main principles and rights set up by the CRC and CRDP, the practical implementation of these principles remains problematic.

The reviewed literature indicates a number of difficulties that children with disabilities and their families are confronted with. Most of the public services (health, education, and administrative authorities) are not adapted to the particular needs of children with disabilities. For example, they lack properly trained personnel or necessary facilities (e.g. ramps and lifts for persons with physical disabilities, etc.). There are a few of medical centres which deal with persons with disabilities, and even fewer adapted to the specific needs of children with disabilities. A private health system exists in Romania, but is not easily accessible to a family with a medium income, in particular not for a long-term treatment.

The educational system does not provide for suitable solutions for children with disabilities. As a result, in practice, children with disabilities are frequently excluded from the mainstream education environment. Special schools for children with disabilities exist, but they embody a segregationist approach as they fall short of providing educational services adapted to the specific needs of the different types of disabilities.7 The discriminatory view is also reflected by the terminology used in the majority of legal instruments which currently use the term “handicap”, which has rather negative connotation when compared with the notion of “disability”.

Stakeholders raised concerns on the increased risk of vulnerability of children with intellectual disabilities (e.g., Down Syndrome, autism, Dravet Syndrome), generated by

7 Ibid.
the fact that the public perception links the term “disability” to physical disability, rather than intellectual. Consequently, children with intellectual disabilities lack the appropriate attention, resulting in a lack of measures aimed at protection, assistance and social inclusion.

In its National Strategy for the social inclusion of persons with disabilities 2006-2013, the Romanian Government identified an important number of unsolved issues in this area such as the unsatisfactory number of centres for persons with disabilities, as well as the fact that such centres, in addition to persons with disabilities, also accommodate elderly persons, persons without financial means, and persons who suffer from chronic diseases. According to the Government, social aid provided to persons with disabilities (including children) is very low. Most of the persons with disabilities lack access to any kind of social services since such services are underdeveloped, and there is no coherent and uniform State strategy regarding the provision of social assistance. The personnel working in this area are not specialised. Furthermore, the Government sheds light on the fact that the access to education, medical assistance, employment sector, public transportation, and the general living conditions of persons with disabilities are insufficiently considered by local authorities.

There are ‘general departments for social assistance and protection of the child’, which are administrative departments at both national and local levels, with a general competence in the field of social assistance, for both adults and children. However, these departments suffer from a lack of resources and face long-lasting bureaucratic procedures. Particularly persons living in rural areas experience difficulties in access to these authorities and services, as offices are mostly located in county’s capitals.

In addition, there is an acute lack of information. Many families or persons taking care of children with disabilities are not aware of their rights and the existence of different forms of assistance provided by the State.

The lack or insufficient amount of resources allocated for support of children with disabilities, including resources aimed at developing awareness raising programmes, has been recognised as a general and structural problem in Romania. In addition, existing programmes and strategies suffer from ineffective implementation.

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8 Information collected through consultation with national stakeholders.
10 However, some social services are provided by private operators.
11 It must be emphasised that these considerations, provided for this governmental document, refer only to the situation of persons with disabilities in general, and not to the specific topic of children with disabilities.
12 Directii generale de asistență socială și protecție a copiilor. 
2. OVERVIEW OF THE LEGAL FRAMEWORK IN ROMANIA

KEY FINDINGS

- Romania has a dualist legal system where international agreements are not directly applicable. Romania ratified both the CRC and CRPD, and it adopted national legislation to meet its obligations arising from these treaties.

- Romanian legislation has very few specific provisions relating to children with disabilities. The legislation focuses either on persons with disabilities or on children. Legal provisions concerning children with disabilities represent an affirmation of general principles arising from the CRC and the CRPD, rather than targeted regulations. The areas considered for this study (social services, education, security, and discrimination) are all covered by legal acts which, however, do not refer to the particular situation of children with disabilities.

2.1. General overview of the national legal and institutional framework

Romania has a civil law legal system with the Romanian Constitution of 1991, as revised in 2003, placed on the top of the legal hierarchy. Subordinated to the Constitution are the laws *lato sensu* (laws and Government ordinances), and subsequently, in decreasing order, the Government decisions and secondary legislation (decisions issued by Ministries, other public authorities). The Government decisions and the secondary legislation develop and detail the legal norms provided in the laws and Government ordinances.

As a general rule, case law is not binding as a legal source. Decisions of the Romanian Constitutional Court have an interpretative character as do some decisions of the Romanian High Court of Cassation and Justice (ICCJ). Jurisprudence may be considered by the courts, but only as a general guidance and an interpretation tool. However, Law no. 304/2004 regarding the judicial system, the Civil Procedural Code and the Criminal Procedural Code provides for a specific competence of the ICCJ, namely solving of the recourses in interpretation of the law, where the judicial practice in the interpretation of a specific legal provision is not unitary. In such cases, the decision of the ICCJ is a decision as to the interpretation of the law and is binding on the lower courts. As far as the decisions of the Constitutional Court are concerned, they are binding from the date of their publication in the Official Gazette of Romania.

International treaties, which, as a general rule, need to be ratified and implemented by the national law are also part of national sources of law. They have the same legal force as the legislative act which transposes them in the national legal system. Special rules are provided for EU legislation. According to legal literature, international human rights treaties to which Romania is a party also enjoy a special regime, in their quality as instruments in the field of human rights, and are considered to have direct effect once they have been

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13 Recursuri în interesul legii.
ratified. Since Romania has ratified both the CRPD and the CRC, it could be argued that their provisions could be directly invoked before the courts; however this is solely a doctrinal opinion.

In Romania, the judicial system is structured on the following levels: (1) local courts (judecătorii), (2) tribunals (tribunale), (3) Courts of Appeal (Curți de Apel). The highest court is the High Court of Cassation and Justice. Finally, the Constitutional Court deals mainly with the verification of the compatibility of legislation with the provisions of the Constitution.

Within these courts there are organised specialised sections (secții), based on the subject matter. There are civil sections, criminal sections, administrative sections, labour and social insurance sections, commercial sections, etc. More specialised sections can also be organised on a case-by-case basis, such as those dealing with cases on intellectual property, or those dealing with cases involving family matters or children.

The Romanian legislation provides for a range of alternative dispute resolution mechanisms, such as the administrative recourses before the administrative authorities which are not compulsory and are free of charge, as provided by the Romanian Constitution; conciliation; and, more recently, mediation.

The institution of the Ombudsman is known in Romanian legal system under the name of People’s Advocate (Avocatul Poporului). S/he is organised as a public authority, autonomous and independent from any other public authorities and his/her competences focus on the protection of the rights of individuals in their relations with public authorities.

2.2. Children with disabilities specific legal and institutional framework

2.2.1. Legal framework

Legal principles regarding the protection of persons with disabilities and the protection of children are contained in the Romanian Constitution. In Article 49, the Constitution provides for the rights of children and youth, and in particular for the obligation of the State to provide allowances for taking care of children with disabilities. It recognises the need of special protection for persons with disabilities and imposes on the State the obligation to promote national policies for equal chances and participation of persons with disabilities in social and community life (Article 50). It is noteworthy that the term used in these provisions is ‘handicap’ and not ‘disability’.

The Romanian Civil Code (RCC) does not provide for a specific legal framework regarding children with disabilities. However, Title III of the Civil Code (‘Protection of the natural persons’) regulates protective measures targeted at all categories of vulnerable persons, who, either due to their age (minors or elderly persons) or their state of health, cannot properly administer their assets or defend their interests (Article 105 of the RCC). Pursuant to Article 106 of the RCC, the protection of the minor is ensured by her/his

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parents, or by placing the minor under custodianship (tutela), and/or by institutionalising the minor or using any other mean of special protection provided by the law. Activities of the custodian are supervised by a family council (consiliu de familie). Within civil sections of the courts there are judges having completed special formations (complete de judecata) who deal with family cases, including cases involving minors. In these judicial procedures specialised State authorities (autoritatea tutelara) are also involved. These authorities are organised within the administrative structures of local authorities.

**Law no. 272/2004 regarding the protection of the child**[^272] (hereinafter 'L272'), represents the main legal framework for the promotion and protection of the rights of children. L272 enumerates the rights of children, including measures for the implementation and protection of such rights, measures to be adopted for children in distress, protection of children against violence, etc. However, these are general provisions which concern all the children. There is a special legal provision concerning children with disabilities (Article 46) which states that **children with disabilities need special care, adapted to their needs.** The provision further continues to list the main rights of children with disabilities:

- The right to education;
- The right to rehabilitation;
- The right to compensation;
- The right to integration;
- The prohibition of non-discrimination.

The Law also contains a general provision requiring central and local specialised authorities to initiate programmes in this area and to facilitate social integration of children with disabilities.

**Law no. 448/2006 regarding the protection and the promotion of the rights of persons with disabilities**[^448] (hereinafter 'L448') represents the national general legal framework for persons with disabilities. It specifically provides that its provisions are equally applicable to adults and children with disabilities (Article 2). The law determines the various forms of **special education** to be provided to persons with disabilities (Article 16): (a) special schools; (b) individual integration in the mainstream education; (c) special groups or classes integrated in the nurseries; (d) educational services provided by teachers outside the institutions; (e) private teaching (at the child’s home) until graduation from high-school, but no later than 26-years old; (f) education in hospital, during hospitalisation; (g) other educational alternatives (however L448 does not specify them).

**Government Ordinance no. 137/2000 regarding the prevention and sanctioning of all forms of discrimination**[^137] (hereinafter 'GO137') is the general national regulation on the prevention of discrimination. The Government Ordinance does not include specific provisions on children with disabilities, but it creates the **National Council for the Fight against Discrimination (Consiliul National pentru Combaterea Discriminarii, hereinafter**

which is in charge of supervising the implementation of the principle of non-discrimination in Romania. The CNCD receives petitions, has the right to investigate alleged cases of discrimination and issues decisions on this matter.

**Law no. 95/2006 on the reform of the medical care system**\(^{19}\) (hereinafter ‘L95’) provides that children with disabilities are insured in the national public health system, even if they have not (and could have not) contributed to it.

**Law no. 19/2000 on the public system of pensions and other social security rights**\(^{20}\) (hereinafter ‘L19’) marginally touches upon social assistance and allowances for children with disabilities. L19 provides that insured persons who are taking care of a child with a disability are entitled to leave and allowances until the child reaches the age of 18.

**Law no. 1/2011 regarding the national education**\(^{21}\) (hereinafter ‘L1’) is the main legal act regulating national system of education. It contains an entire section (Articles 48 to 56) on the special educational system for children with disabilities. It establishes integration as being the leading principle in regards to children with disabilities, but provides also for the option of special educational formation. General competence is allocated to the Ministry of Education for the implementation of a special education programme both in terms of institutions and curricula.

**Government Decision no. 1175/2005** for the approval of the **National Strategy for the protection, integration and social inclusion of persons with disabilities** for the period 2006-2013\(^{22}\) (hereinafter ‘GD1175’) provides for a development of a national plan regarding persons with disabilities, covering the period 2006-2013.

**Order of the Ministry of Health and Family no. 725/2002** regarding the criteria for classifying disabilities of children\(^{23}\) (hereinafter ‘OMHF725’) is a technical regulation, establishing medical (and other) criteria for the categorisation of child’s disability. Based on the provisions of this order, a child included in one of the categories of disability should be granted relevant allowances and other benefits, as provided for under L19.

The legal framework described above allocates the competences regarding the rights of children and or persons with disabilities to several national and local authorities. The multiplicity of laws and regulations resulted in a lack of certainty as to which authority is competent for which rights. In some areas there are overlaps of competences, in others, gaps. That was the reason why the National Strategy for the protection, integration and social inclusion of persons with disabilities for the period 2006-2013 indicated, as one of its first objectives, the development of the institutional and administrative capacity and a reform of the institutions with competences in this field. For example, in case of education, the evaluation of children with disabilities should be made by a ‘service of complex evaluation’, organised within the general directions of social

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\(^{19}\) Law no. 95/2006 regarding the reform of the medical care system, published in the Official Gazette of Romania, Part I, no. 95/2006, entry into force on 01.05.2006.


assistance and child protection. This service should then present the case to the commission of child’s protection. In the past, the evaluation of children was carried out by internal commissions of permanent evaluation organised within the special institutions of education for children with disabilities, but there was no correlation between the two systems (the child protection departments and the internal commissions), for a uniform use of the instruments of evaluation.\textsuperscript{24}

2.2.2. Institutions and authorities

At national level, the main competent authorities are the following:

The National Authority for the Protection of Persons with Disabilities and the Department for Social Assistance and Child Protection, organised within the Ministry of Labour, Family and Social Protection, are authorities which coordinate the activities of special protection and promotion of the rights of persons with disabilities and of children, respectively. Their role is the one of a general coordinator, having a strategic function and competences in the legislative process in the field.

The Ministry of Education, Research, Youth and Sport has a general role in organising the educational system in Romania, including the special education system (or integrated system) for children with disabilities. The Ministry is obligated to issue the methodology for the special education system but has not done this yet.

The Ministry of Health has a general coordinating competence in organising the medical care system, including special health services for persons with disabilities.

Based on the provisions of L272, a National Authority for the Protection of the Child’s Rights was established. This legal provision was detailed by a subsequent Government Decision no. 1432/2004, which provides that this is a specialised authority organised within the structure of the Ministry of Labour, Family and Social Protection, having as its main attributions the supervision of respect of children’s rights in Romania and the supervision of the legislative framework in the field, with the possibility of making legislative proposals.\textsuperscript{25}

The National for the fight against Discrimination (‘CNCD’) was established under GO137 as an autonomous State authority, under the supervision of the Romanian Parliament. Its main purpose is the prevention of acts of discrimination, mainly by disseminating information on this issue and implementing programmes at local, regional and national level, drafting of studies, reports, etc. It provides mediation services in cases of discrimination but also investigates and sanctions acts of discrimination. The CNCD exercises its functions either when an application is lodged by a natural or legal person or \textit{ex officio} and issues decisions which can be appealed before the administrative courts. If not appealed, decisions of the CNCD are binding upon parties of the proceedings.

The Romanian Ombudsman (Avocatul Poporului) has the following main competences:

- To receive and decide on complaints filed by persons aggrieved by acts or

\textsuperscript{24} Information collected through consultation with national stakeholders (ministerial authority – Ministry of Labour, Family and Social Protection).

\textsuperscript{25} Ministry of Labour, family and Social Protection website, available at: http://www.mmuncii.ro/ro/articole/0000-00-00/autoritatea-nationala-pentru-protectia-drepturilor-copilului-1233-articol.html (last accessed on 20 November 2012).
omissions of the public administration violating their civic rights or freedoms;

- To follow up the legal settlement of the complaints received and to demand the public administration or civil servants concerned to stop the violation of the civic rights and freedoms;
- To reinstate the complainant in his/her rights and redress the damage;
- To issue opinions, at the request of the Constitutional Court;
- To refer to the Constitutional Court any case of unconstitutionality of a law, before the law concerned has been promulgated;
- To refer directly to the Constitutional Court any objection of unconstitutionality with regard to laws and ordinances; to submit reports, once a year or whenever so requested, to the two Chambers of Parliament.  

In 2011, the Peoples’ Advocate proposed a legislative amendment to allow for one of its deputies to be appointed as a ‘Child’s Advocate’, having special competences in the field of children’s rights. According to the proposed amendment, the Child’s Advocate should have a special consideration on the situation of children with disabilities. The amendment has been submitted to the Parliament, and the legislative procedure is currently pending.

The main responsibility for providing support to children with disabilities falls on the local authorities (local councils). Social services (general departments for social assistance and child protection) are organised within the structures of local authorities and have tasks related to the social assistance and protection of children in distress. They are organised at the level of each county (judet) and, in case of Bucharest, at the level of each district (sector). The child protection commissions (comisii pentru protectia copilului), established under L272, are also organised within the local structures and have special competences regarding children with disabilities, namely the determination of the degree of disability; periodical evaluation; adoption of measures of special protection and their follow-up and revocation, if necessary. As provided by L1, the county centres for educational resources and assistance are competent to evaluate, assist, and provide educational and professional counselling for children with special educational needs.

Finally, the RCC establishes judges specialised in children and family matters. However, a future law needs to detail the specialised judge’s role and competences within the judiciary system. In respect to children involved in criminal proceedings, the Romanian Code of Criminal Procedure provides for the designation of specialised judges to decide on such cases (Article 483 of the Code of Criminal Procedure).

2.2.3. Definitions

According to the Law no. 272/2004 regarding the protection of the child, the child is ‘any person who is not 18 years old and does not have full civil capacity (capacitate deplina de exercitiu)’, according to the law. A very similar definition of a child is provided by the Romanian Civil Code. This Code defines the child as ‘the person who is not 18 years old and does not have full legal capacity’.

The notion of ‘disability’ is defined in the Law no. 448/2006 regarding the protection and
the promotion of the rights of persons with disabilities as generic term for ‘deficiencies, limiting activities or restrictions of participation, as defined by the International Classification of functionality, disability and health, adopted and approved by the WHO, which reveals the negative aspect of the interaction in an individual context’.

According to the Government Decision no. 1175/2005 approving the National Strategy for the protection, integration and social inclusion of persons with disabilities for the period 2006-2013, ‘persons with disabilities’ are persons who are prevented totally or partially from having equal chances to participate in the life of the society, because they are not adapted either physically, intellectually, sensorial, and therefore need special measures of protection for their social inclusion.

The Government Ordinance no. 137/2000 regarding the prevention and sanctioning of all forms of discrimination defines ‘discrimination’ as being any form of difference, exclusion, restriction or preference, based on, inter alia, age and disability.
3. LEGAL FRAMEWORK AND IMPLEMENTATION ASSESSMENT

KEY FINDINGS

- The provisions of the CRPD and CRC are effectively incorporated in the national legal framework.

- Although principles enshrined in the CRC and CRPD are included in the Romanian legislation, implementation measures putting the principles into effect are missing. For example, Law no. 1/2011 regarding the national education provides for special measures for children with disabilities. However, secondary norms for implementation have not been adopted yet.

- One of the most important problems faced by children with disabilities in Romania is the problematic access to the educational system adapted to their special needs, as well as to accessibility of medical care system.

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)

This principle is explicitly contained and largely detailed in several laws, first and foremost L272 and the RCC. Those acts provide for the best interests of the child as a general principle to govern all matters in which a child is involved.

The L272 states that the best interests of the child must prevail in all actions and decisions regarding children, performed by the public authorities and authorised private organisms, as well as in court cases. The Romanian Civil Code also states that any measure regarding the child, irrespective of its author, must be taken with the observance of the best interests of the child. Also, the courts are obligated to apply this principle in cases where children are involved in judicial proceedings.

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

The principle of non-discrimination is explicitly established in Romanian Constitution and detailed in the law on the prohibition of discrimination (GO137). Reference is made to direct and indirect discrimination, and also to the acts of harassment. Article 16 of the Constitution establishes a general prohibition of discrimination, while Article 30 prohibits incitement to discrimination. Article 50 of the Constitution provides that the State should ensure equal opportunities for persons with disabilities. The discrimination is defined also in relation to the criteria of disability, as provided under both GO137 (Article 2) and L272 (Articles 6 and 7).

With respect to the requirement of reasonable accommodation and accessibility, local
authorities are competent to initiate programmes and to allocate necessary resources in order to ensure that public services for children with disabilities enhance their independence and their inclusion in the community’s life.29 According to the relevant legal text, this obligation is incumbent to local authorities, therefore it depends on each authority how it will allocate resources for this purpose. However, the execution of this obligation depends not only on the will of the authority, but also on the availability of financial resources which, in the context of the economic crisis of the past years, are quite limited.

Practice shows that some areas of children’s lives are particularly sensitive to discrimination (e.g. access to education, access to specialised medical care), but general statistical data on the number and types of such cases challenged in front of the national courts or CNCD does not exist.30

3.1.3. Evolving capacities of the child31 (Art. 5 CRC and Art. 3 CRPD)

Only a few legal provisions reflecting the concept of the evolving capacities of the child could be identified within the Romanian legal framework. The concept is explicitly provided in the Law regarding the protection of the child only as an obligation of the parents, not as an obligation of the authorities. L272 also states that, as a principle, the respect for and guarantee of the child’s rights shall be granted taking into account the individual and personal needs of each child.

L272 provides that during all administrative or judiciary procedures concerning children, it is compulsory to hear the opinion of a child who is 10 or more years old. A child under 10 years of age can be heard, if the competent authority considers it necessary for solving of the case. Heard child’s opinions should be taken into consideration and should be accordingly considered, with due regard to her/his age and maturity. The RCC also gives the same rights to children (Article 264 of the RCC).

L272 states that a child who has discernment has the right to freely express her/his opinion on any problem concerning her/him (Article 24).

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

The Romanian Constitution states that ‘public authorities are bound to contribute to securing the conditions for the free participation of young people in the political, social, economic, cultural and sporting life of the country’ (Article 49(5)).

In addition, the right of children to express their views is carefully considered in two main
legal instruments: in L272 and in the more recent RCC which provide that the child is to be
heard and given the opportunity to express her/his view on any matter
concerning her/him in any administrative or judicial procedure concerning her/him.

Hearing the opinion of a child 10 or more years old is compulsory, while a child under 10
years of age can be heard, if the competent authority considers it necessary for solving of
the case. This right includes the possibility of the child to request for and receive any
pertinent information, to be consulted, to express her/his opinion and to be informed on
the consequences her/his opinion may entail, as well as regarding the consequences of any
decision in her/his regard. In addition, heard child’s opinions should be taken into
consideration, with due regard of her/his age and maturity.

With regard to the right to participate, the Romanian Constitution states that ‘public
authorities are bound to contribute to securing the conditions for the free participation of
young people in the political, social, economic, cultural and sporting life of the country’
(Article 49(5).

Specialised departments for children protection have internal procedures regarding the
complaints and the protection report abuses, explaining the procedure to children taking
into account his/her age and disability, and also use of adequate materials (including an
interpreter who uses sign language, written materials in Braille alphabet, audio tapes).
However, the lack of methodological norms in this field renders the implementation of
these principles and rights fragmented throughout the country (as these departments are
organised within each county in Romania).\(^{32}\) It is not known how many departments have
in fact facilities adapted for effectively hearing (taking the opinion of) children with
disabilities.

It is noteworthy that the relevant provisions of L272 and the RCC currently overlap (Article
24 of L272 and Article 264 of the RCC).

\subsection*{3.1.5. Freedom from violence (Art. 19 CRC; Art. 16 CRPD)}

National law provides for the protection of children against any form of
maltreatment, exploitation and abuse. This protection is guaranteed at constitutional
level (Article 49 of the Romanian Constitution), but also in L272 (Articles 85 and 86).
Article 85 L272 provides for a general obligation of any public officer and any private
person to require competent authorities to protect a child from violence, including sexual
violence, physical damage or mental or physical abuse, maltreatments or exploitation,
abandonment or negligence. In addition, the officers of any State institution have a specific
obligation to inform the competent authorities immediately when they gain knowledge or
suspect that a child is a victim of abuse, maltreatment or exploitation.

According to the Romanian Criminal Code (Article 64 and Article 71 par. 3), the parental
rights may be suspended or be taken away as accessory or complementary punishments
(applied in addition to the main criminal punishment) if the physical, mental, moral,
spiritual and social development of the child is endangered by ‘an abusive behaviour or
grave negligence during the fulfilment of parental duties’\(^{33}\)

\(^{32}\) Ibid.
\(^{33}\)See also ‘The Right of Roma Children to Education’, UNICEF, 2011, available at:
Acts of exploitation and violence against children are sanctioned under criminal law. The Romanian Criminal Code distinctly criminalises sexual acts against children under 18 years old (Article 198) and maltreatment of children (Article 306). According to Article 198 of the Romanian Criminal Code, the sexual acts of any kind, with a child under 15, irrespective of her/his gender, is punishable with imprisonment from 3 to 10 years. In case of children between 15 and 18, sexual acts are punishable if committed by tutors, persons who take care of the child, professors, physicians, or by any person who has an influence or authority over the child. Rape of minors is incriminated under the same Article and the foreseen punishment is more severe (imprisonment from 5 to 18 years). Article 306 of the Romanian Criminal Code foresees sanctions against gravely endangering, by measures or treatments of any kind, the physical, intellectual or moral development of the child, by the parents or by any person who takes care of the child. Similar incriminations are to be found in the new Romanian Criminal Code whose entree into force is foreseen on 1st February 2014.

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

The right to a family life is a fundamental right, provided by the Constitution (Article 48). In addition, it is referred to by L272 (Articles 47 to 49) and the RCC which refers specifically to children.

L272 provides for the right of a child to grow up together with her/his parents, as well as for the obligation of the parents to raise and educate their child (also Article 261 of the RCC). The parents have the responsibility to ensure, in a manner consistent to the evolving capacities of the child, the necessary orientation and advice for the proper exercise of the child’s rights.

The RCC provides that, as a general rule, the child’s domicile is at her/his parents’ common domicile, or, in case of separation, at the domicile of the parent with whom the child habitually lives (Article 92 of the RCC). The RCC states that the child cannot be separated from her/his parents, without their consent, except for the cases provided by the law (e.g., the life, health, mental condition of the child is put into danger). In case a child does not live together with her/his parents, she/he is entitled to a personal relation with them (Article 262 of the RCC). In case of children with disabilities, if such a child cannot stay with his/her own family, the authorities should consider whether the child can be placed with an immediate relative or a family member.

According to statistics of the Ministry of Labour, Family and Social Protection, in Romania majority children with disabilities are not institutionalised, hence they live together with their parents or families.

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

The right to allowances and social protection for children with disabilities or children suffering from illnesses is enshrined in the Constitution (Art. 49).

National legislation ensures that children with disabilities, their parents, or families have the right to receive assistance in the form of specialised medical care, recovery, special care, consultancy from the authorities for the protection of the child and other forms of support. Children with disabilities are entitled to assistance at home, and arrangements for living in a family home or in a special institution, in case of children who
cannot stay with their families. Such special institutions function under the authority of local municipalities.

According to L272, the child is entitled to social assistance and social insurance, in accordance to her/his resources or the material situation of her/his family (Article 43).

**3.1.8. The right to inclusive education (Art. 28 CRC; Art. 24 CRPD)**

The right to education and inclusion is provided, as a general principle applicable to all children, by Article 3 of L272 which states that one of the principles governing the educational system is the principle of social inclusion (letter ‘o’ of Article 3). The right to education of children with disabilities is explicitly provided by Article 46 of L272. The main feature of this right is the obligation to adapt the educational system to the child’s special needs. The educational system must ensure the development of the child with disabilities at all levels (spiritual, mental, physical and social).

Inclusive education is referred to by the recently adopted L1 regarding the educational system in Romania. The legislator dedicated one of the sections of this law (Articles 48-56) to regulate the special educational system for children with disabilities. Under this law, special education can either be integrated in the mainstream education or take place separately in special educational units. The assessment of whether to include children in special schools or classes is to be conducted by specialised centres organised at local level. Provisions of L1 should be further elaborated in a methodology to be developed by the Ministry of Education. As to date, such methodology has not been established yet. It is noteworthy that the term ‘disability’, and not ‘handicap’, is used in the section dedicated to the special educational system.

**3.2. Specific issues faced by children with disabilities**

**3.2.1. Gender vulnerability**

Under the Romanian law there are no specific provisions regarding gender discrimination of children with disabilities. However, the general anti-discrimination provisions stipulate that any discrimination based on sex or disability is prohibited in education, health and social services (Article 2 of the GO137).

There is no programme for sterilisation of young women with disabilities in Romania. No information regarding reproductive education programmes or awareness raising tools targeted to young persons with disabilities could have been identified.

A particular problem highlighted by stakeholders (NGOs) is the increased vulnerability of children with intellectual disabilities to human trafficking, especially for sexual exploitation. It appears that the competent State authority, namely the National Agency against the Traffic of Persons, did not yet implement a special plan or procedure concerning trafficking of children with disabilities. Human trafficking is a criminal offence under the Romanian law, as stipulated in the Law no. 678/2001 concerning human trafficking.

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34 Ibid.

Article 13 of this law specifically incriminates the trafficking of children. Human trafficking will be also criminalised under the future Romanian Criminal Code, whose entree into force is foreseen for 1st February 2014.

3.2.2. Violence

Any act of violence against children is prohibited, pursuant to Article 85 of the L272. Any person who acquires knowledge, from any source, of an act of abuse committed against a child, must immediately inform the competent authorities. In addition to this, public officers also must inform the general department for social assistance and protection of the child. In case of child abuse, the parents of the victim or, as the case may be, her/his legal representative, or the authorities, must take all measures in order to provide the necessary psychological support and to facilitate social reintegration.

Acts of violence against children represent criminal offences. The Romanian Criminal Code penalises any act of sexual violence against children (Article 198), as well as the maltreatment of minors (Article 306). Both crimes are punishable with imprisonment.

In 2003, the Romanian Parliament adopted the Law no. 217/2003 regarding the prevention of domestic violence.36 The Law provides for a certain numbers of protective measures for the victims of domestic violence (the most important being the possibility to issue an order of protection against the aggressor).

There are no legal provisions concerning special measures of protection against violence in case of children with disabilities.

Reports reveal that children from the Roma minority attending mainstream schools routinely suffer from bullying by non-Roma students and ‘are placed in the back of classrooms, where they are ignored by teachers.’37 Accordingly, Roma children having a disability may be particularly vulnerable to bullying in mainstream schools.

3.2.3. Children as vulnerable suspects

Minors under the age of 14 do not face criminal liability under the Romanian Criminal Code and only special educative measures can be taken against them by the authorities. Minors between 14 and 16 years can be held criminally liable only if it is proven that the minor had a capacity of discernment when she/he committed the offence. Minors over 16 years old are criminally liable.38 The Criminal Code contains a number of provisions governing the criminal procedures in cases where minors are involved (Article 480-493 of the Code of Criminal Procedure). However, as long as the criminal liability of a child over 16 years old is proved in front of the tribunal, the child-offender should be deemed liable and should execute a sentence.

The sentencing system for children varies from the one directed at adults. According to Article 100 of the Romanian Criminal Code stipulates that, in case of a minor whose criminal liability has been established, the court can either order an ‘educational

36 Republished in the Official Gazette of Romania, Part I, no. 365/2012.
38 Article 99 of the Romanian Code of Criminal Procedure.
measure’ or a punishment. The educational measures, as provided under Article 101 of the Romanian Criminal Code (and detailed under Articles 102–108) are: (a) reprimanding; (b) supervised liberty; (c) internment in a centre of re-education; and (d) internment in a medical and health centre. Under Article 109 of the Romanian Criminal Code, the punishments that can be applied to minors are either the imprisonment or the criminal fine, but their lower and upper limits are reduced in half when compared to the limits provided in case of adult offenders.

The situation of apprehended minors has changed due to the amendment of the Romanian Criminal Procedural Code. The new provisions (Articles 160a to 160h) establish the following main principles: the duration of arrest must be usually shorter than the one provided for adults; the judiciary authorities have an obligation to inform the parents, family, custodians or other legal representative about this measure and they must be assisted by a lawyer, either the one designated by the child or its parents, or, if not, appointed by the authorities ex officio. The facilities where minors are detained are to be separated from the ones of the adults.

The L272 provides for the obligation of the authorities to grant assistance in the cases involving children as vulnerable suspects (Articles 80 to 84). The Law furthermore regulates cases when the child is not criminally liable (under 16 years old children), and competences of the general department of social assistance and child protection. This department can have the initiative and propose either a specialised supervision of the child or place the child under the supervision of a member of the family, a specialised person or a specialised institution. Also, Article 81 of the Code of Criminal Procedure provides that the minor under 14 should be heard (either as suspect or as witness) in the presence of one of her/his parents, of the tutor or of the persons who are taking care of the child.

A document called ‘Guide for the hearing of the child in judicial procedures’ issued by the judiciary authorities addresses the technical aspects of such hearings in order to facilitate the communication between the child and the judge or the prosecutor, as the case may be. As this guide is an internal document it is not publicly available.

3.2.4. Inclusive education

The lack of access to education was considered by some of the stakeholders as one of the most significant infringements of the rights of children with disabilities. According to the stakeholders, children with disabilities face several impediments to access the educational system: (1) refusal of the schools to register a child with disabilities, particularly with intellectual disabilities; (2) expelling children with disabilities from schools in the course of the school year (in this case children with intellectual disabilities also represent a more vulnerable segment); (3) difficulty in the formal participation to the educational system. Even if children with disabilities are included in a mainstream class, no particular attention is paid to them. This phenomenon affects most particularly children with intellectual disabilities.

The school authorities justify the non-registration or expulsion arguing that the educational management becomes particularly difficult if a child with disabilities is included in the

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40 Information collected through stakeholder consultation.
41 Information collected through stakeholder consultation (NGOs and Ministry of Labour, Family and Social Protection).
educational community due to the lack of adapted curricula, personal reluctance of other children or parents, and a lack of information. In principle, abusive exclusion of a child from school can be appealed in front of the courts of law, but usually the procedures are lengthy, therefore the practical efficiency of such step can be very low.

**Special schools** are not always a viable alternative to the mainstream education, due to the low quality of the educational services provided in such institutions and to the fact that most of those schools are not adapted to the specific requirements of the various types of disabilities. For example, the curriculum has not been modified for 20 years, while the manuals used for teaching children with disabilities are more than 10 years old.\(^{42}\) It appears that in such units, the personnel in practice only supervises children with disabilities (who may be mixed with other children having different disabilities) but does not teach them adequately.\(^{43}\) Also, the number of such schools is very low. According to the findings of the project, there may be around 100 special schools and nurseries\(^ {44}\) in the entire country. Most of these schools and nurseries are located in Bucharest, while a considerable number of the counties do not have even one such institution. Majority of special education units are in urban areas, 84.9% as compared to 15.1% in rural areas.\(^ {45}\) About one third of all children with special educational needs in Romania attend mainstream schools, mainly children with low or medium special educational needs.\(^ {46}\) In total, “19,315 pupils attend special classes, of which 61.8% are boys and who mostly have learning difficulties (data compiled in 2009). The number of children in these schools decreased by 9.8% as compared to the 2004-2005 academic year”\(^ {47}\).

Since the 1990s, there has been however an increase of children with disabilities attending mainstream schools and a decrease of them attending special schools (see Annex 3).\(^ {48}\)

The stakeholders (ministerial authority) revealed, from a monitoring report on the rights of children with intellectual disabilities performed during a project of Inclusion Europe in 2011 (questionnaires submitted to families), that almost half of children with disabilities have not attended a nursery school. From those who attended, most of them attended a nursery school for children with special needs. The access to the regular nursery schools is regularly being refused because of the disability.\(^ {49}\)

The Ministry of Education, Research, Youth and Sport has implemented several *programmes aimed at improving education for disadvantaged children*, such as PETI (the ‘Project of Inclusive Early Education’, financed by the World Bank and the


\(^{43}\) Information collected through stakeholder consultation.

\(^{44}\) These institutions are considered orphanages, homes for children with disabilities whose parents cannot give them adequate care, and others for children from dysfunctional families and children seen as having emotional or behavioural difficulties (Daunt 1993, Zamfir 1997). Children residing in these institutions are considered to have special needs. Some schools also specialise in children with particular disabilities; thus, in the 1996/7 school year there were 124 schools for children with intellectual disabilities, 12 for children with hearing impairments, and three for children with visual impairments (Vrasmas and Daunt 1997), report available at [http://sid.usal.es/idocs/fb/fdo7202/eps67.pdf](http://sid.usal.es/idocs/fb/fdo7202/eps67.pdf) (last accessed on 23 November 2012); while those numbers are quite old, research suggests they remain relatively constant.


\(^{46}\) Ibid.

\(^{47}\) Ibid.


\(^{49}\) Ibid.
Romanian Government, performed for the period 2007-2011. The project concerned all kinds of disadvantaged children and did not only focus on children with disabilities. The project provided for building new educational institutions for children and training for the personnel.  

### 3.2.5. Other particular issues faced by children with disabilities in Romania

The quality of medical care provided to children with disabilities is considered to be an issue of particular concern. The medical care system is not adapted to the particular needs of children with disabilities. The high income parents are encouraged to use medical services abroad, while the middle and low income families are forced to use the not adapted medical system. The issue is even more acute due to the fact that, according to stakeholders (NGOs), many children with disabilities also suffer from other related illnesses (congenital malformations, chronic diseases, etc.). According to the stakeholders (NGOs), there are cases of abandonment of children (including children with disabilities) in hospitals, either by their parents (mostly in situation of families with low incomes) partially due to the lack of space in the specialised institutions. To the knowledge of the expert, there are no statistical data reflecting the amplitude of this phenomenon, even if media constantly reports such cases. In certain cases, children with disabilities are denied even simple medical care due to the inability of the personnel to deal with them.

In addition, children with disabilities suffer from a lack of inclusion in social life and participation in society. There are lots of misconceptions, at institutional and private level, in respect to children with disabilities, particularly to children with intellectual disabilities. The visibility of this social problem continues to be very low. For example, in a survey performed in 2010 by a stakeholder (anti-discrimination authority), 44% of the interviewees considered that discrimination is a frequent phenomenon in Romania. 56% of the interviewees considered that the economic and financial crises worsened the phenomenon of discrimination. 38% of the interviewees considered that persons with disabilities are highly discriminated against. Under the same survey, 68.4% of the interviewees answered positive to the question if they agree to have as a close friend a person with a physical disability, while, in case of a person with intellectual disabilities, only 32.8% gave a positive answer.

A particular issue regards Roma children enrolled in special schools or classrooms for children with disabilities. Language differences or erroneous assessment of the child’s abilities result in a gap in the quality of education received by Roma children and non-Roma children. The placement in special schools or classroom often results from ethnic, linguistic and behavioural patterns mistaken for learning disabilities. Some data mentions that Roma children ‘make up as many as 80% of children in special schools in Romania.’

Another concern in relation to Roma children having a disability is discrimination in access to health care, education and social services. It has been reported that 25% of Roma (in general) have experienced discrimination based on their ethnicity. However, such numbers

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51 Information collected through consultation with national stakeholders.
53 Ibid., p.17.
may not reflect reality, since the vast majority of Roma do not report discrimination.\textsuperscript{54} In addition, data shows that only 31.7% of Roma children (with and without disabilities) complete primary school and 9.6% finish secondary school (data for 2008). It can be concluded from such statistics that Roma children having disability most likely lack education.\textsuperscript{55}

\textsuperscript{54} Ibid., p.15.
\textsuperscript{55} Ibid., p.16.
4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES

**KEY FINDINGS**

- The implementation of the legal framework is moderate. Efforts have been made in the past years to improve the legislation (especially secondary legislation) and to develop a national strategy for children with disabilities. However, the practical implementation of the national framework remains poor.

- There is no specific reporting or enforcement system addressing specific problems of children with disabilities; hence the general rules are applicable.

- The most important gaps and problems related to the practical implementation of the rights and legal principles reside in the lack of an effective national strategy and efficient programmes, involving local authorities; lack of resources; and bureaucracy.

- The literature recommends: 1. Developing and implementing programmes for the support of children with disabilities, including public-private partnerships; 2. An integrated effort to manage the situation of children with disabilities; 3. Allocation of more financial resources; 4. A special focus on integration of children with disabilities in society.

4.1. Enforcement and reporting mechanisms

The legislation governing situation of children with disabilities does not contain specific procedures or mechanisms for the enforcement of the rights of children with disabilities, therefore the general rules are applicable. While the administrative authorities are responsible for the application of the legal framework, the courts have a general competence to decide on complaints concerning the violation of fundamental rights, including those of children with disabilities. As a rule, in case where an administrative act infringes such rights, a complaint can be lodged with a higher administrative authority. However this is not a compulsory procedure. In any case, infringing administrative acts can be appealed before administrative sections of the courts. In case of any other act violating a child’s right, civil or criminal sections of the courts are competent.

In addition, there are two administrative bodies competent for the supervision of fundamental rights and freedoms, and non-discrimination, respectively: the People’s Advocate (the Romanian Ombudsman) and the National Council for the Fight against Discrimination (CNCD).

The **Romanian Ombudsman** defends the rights and freedoms of individuals in their relations with the public authorities. The Ombudsman has a general competence of supervising the observance of human rights and investigation of alleged cases of infringement. Furthermore, it has the power to ask the public administration authorities or civil servants concerned to end the violation of the civic rights and freedoms, and it can reinstate the complainant in his/her rights and redress the damage. However, the Ombudsman is not a judiciary body.
The CNCD has special tasks in the non-discrimination area, and also carries out jurisdictional activities concerning infringements of the non-discrimination principle. The CNCD is entitled to investigate the alleged cases of discrimination and to issue a decision on the matter, ascertaining or not a case of discrimination.

4.2. Gaps, problems and issues in the implementation

As analysed under Section 3, Romanian legal framework ensures protection for children with disabilities. The main principles set forth by the CRC and the CRPD have been transposed into Romanian legislation. However, the main issue, underlined by stakeholders from both public and private sector, concerns the practical implementation of such norms. Over the recent years, many laws have been issued and the existing legislation has been modified (even several times) in order to ensure effective protection for children with disabilities. Nevertheless, there are gaps or overlaps (e.g. in the attribution of competences between authorities involved in the protection of children with disabilities). Therefore, there is a lack of coherent and uniform vision concerning the legislation on children with disabilities.

The public is not informed or made aware in regards to the real situation concerning children with disabilities, as there are no official general statistics on this phenomenon.

The main areas of concern are the following:

- The medical care system characterised by a lack of special programmes for the recovery and rehabilitation of children with disabilities;
- The educational system that discriminates against children with disabilities with respect to the access to mainstream schools;
- Lack of financial resources to address specific problems faced by children with disabilities;
- Excessive bureaucracy in many procedures regarding children with disabilities (e.g. for the recognition of the statute of ‘person with disability’, for obtaining allowances etc.);
- Lack of efficient actions taken by the competent authorities and a lack of integrated and coordinated system in this field;
- The lack of an efficient national strategy constitutes impediments for the social integration of children with disabilities in practice.

4.3. Best practices

With a view to ensure the nation-wide protection of persons with disabilities the Direction for the Protection of Persons with Disabilities has been established within the Ministry of Labour, Family and Social Protection.

The legislation provides for a monthly allowance for the parents of children with disabilities,
and extended medical leave, covered by social insurance, in order to take care of a child with disabilities.

Another example of best practice is the initiative of the People’s Advocate to appoint one of its deputies as a Child’s Advocate.

Ad hoc best practices have also been identified in Romania, such as the creation of the rehabilitation Foundation Speranta. The Foundation is a non-profit NGO set up in 1992, aiming to develop recuperative and rehabilitation services for children with disabilities and with a goal of inclusion of children into the community. Initially, the centre supported in particular children with intellectual disabilities as a private entity. In 1995, Speranta Centre became a private-public partnership between the Rehabilitation Foundation Speranta and the Ministry for Education as the Ministry took over the responsibility for ensuring the basic right to education. Children receiving services provided by the Speranta Center are also integrated in the mainstream education. Speranta provides specialised support according to the individual needs of children. Such support is developed by a psycho-pedagogical service for children with disabilities. The Centre is considered to be a pioneer in providing early intervention services to families. The centre has been recognised as model of good practice.\(^{57}\)

Another example of a positive initiative is the functioning of the ‘European Centre for the Rights of Children with Disabilities’. The Centre is a private entity working on improving the vulnerable situation of children with disabilities.\(^{58}\) The centre brings together legal experts (human rights, international cooperation, EU funding), experts in the fields of psychology, social assistance, journalism, and a team of 20 volunteers and 5 doctors willing to offer counsel and medical orientation to the beneficiaries.

### 4.4. Data and monitoring mechanisms

The Direction for the Protection of Persons with Disabilities established within the Ministry of Labour, Family and Social Protection provides statistics regarding the number and situation of persons with disabilities, including some information on children with disabilities.

According to the most recent statistics (dated 30 June 2012), out of 689,156 persons with disabilities registered with the Direction for the Protection of Persons with Disabilities, 60,890 are children. The distribution based on gender of persons with disabilities (both adults and children) is the following: 46.03% - male; 53.97% - female. From all persons with disabilities, there are 5,913 persons suffering from HIV infection, out of which 183 are children. Majority of the registered children with disabilities are children between 10 and 14 years old. There are 389 centres for assistance of persons with disabilities subordinated to the Direction for the Protection of Persons with Disabilities. They serve 19,150 beneficiaries, of which only 48 are children.

Also the People’s Advocate and the CNCD carry out monitoring activities which show and assess the situation of persons with disabilities with respect to fundamental rights (the

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People’s Advocate) and the observance of the principle of non-discrimination (particularly the CNCD but also the People’s Advocate).

4.5. Recommendations given by the literature

In order to improve the legal framework towards the protection of children with disabilities and to enhance the implementation of their rights, the literature recommended the following measures:

- Legislative proposals must take into account the relevant international and EU regulations, and must have a comparative view with regard to the measures, actions and policies considered in other countries;
- Drafting legislative proposals for improving the existing legislation;
- A general statistical investigation is necessary in order to have a better image of the real situation in regards to children with disabilities. There is a considerable lack of data on this issue;
- Raising public awareness on the life situation of children with disabilities and their need for social inclusion, including through campaigns and programmes and by developing a partnership between public authorities and private actors;
- Increasing the number of programmes dedicated to children with disabilities;
- Specialised training for persons working with children with disabilities and increasing the amount of personnel working in this field;
- Simplifying the administrative procedures;
- Allocation of more resources for projects concerning children with disabilities (including access to European funds).  

59 Proposals made by the European Center for the Rights of Persons with Disabilities, information collected through consultation with national stakeholders.
5. CONCLUSIONS

The findings of this study suggest that efforts have been made in order to implement provisions of the CRC and the CRPD into Romanian legal order. The most important principles concerning protection of children with disabilities are present in the national legislation.

Furthermore, efforts have been made in order to put in place both a national and local framework of institutions competent to address specific problems faced by children with disabilities. The competent Ministries, such as the Ministry of Labour, Family and Social Protection and the Ministry of Education, Research, Youth and Sport have developed programmes concerning children with disabilities, including partnership with international institutions (e.g. the World Bank).

The major problems in this field do not reside in the national transposition of international norms or principles but mostly in the fact that these norms are not efficiently implemented in practice. Currently, there is no integrated, complete and efficient national strategy in this area. One of the reasons for this may be that complete statistical data reflecting the situation of children with disabilities in Romania does not exist. This data would obviously provide a clear view on the magnitude of the phenomenon.

One of the most sensitive areas is the provision on medical services to children with disabilities. The reason for this is that health services lack adequate infrastructure and specialised personnel to offer the necessary medical treatment to those children. Similarly, access to education for children with disabilities is problematic as competent authorities are confronted with the lack of financial resources, adapted infrastructure and personnel. Moreover, reluctant attitudes and social prejudices result in cases of exclusion and discrimination of children with disabilities, not only in the education sector. Public opinion, confronted with other problems related to daily life (e.g. the economic crisis), most of the time overlooks the issue of children with disabilities. The lack of information and education in this field further deteriorates the situation.

Special attention must be paid to the following issues: lack of relevant strategies addressing problems of children with disabilities, bureaucracy, lack of resources and the difficult situation of the most vulnerable categories of children with disabilities, such as children with intellectual disabilities.

It may be true that the legal framework could be improved. However, better implementation in practice of affirmed norms, principles and rights deemed more significant.
REFERENCES

1. Legislation

a. International Law


b. National Law

- Order of the Ministry of Health and Family no. 725/2002 regarding the criteria based on which shall be determined the degree of disability for children and shall be applied the measures of special protection for them, published in the Official Gazette of Romania, Part I, no. 781/2002.

2. Literature

- ANED country report on equality of educational and training opportunities for young disabled people, available at: http://www.disability-europe.net/content/aned/media/RO-15-ANED%202010%20Task%205%20request-
3. Statistics


4. Other

## ANNEX 1 – SUMMARY TABLE

### Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Best interests of the child</strong></td>
<td></td>
</tr>
</tbody>
</table>
| L272  
Art. 2.  
(1) This law, any other regulation adopted in the field of respect and promotion of children’s rights, as well as any legal act issued, or, if the case may be, concluded in this field shall be subordinated with priority to the principle of best interests of the child.  
(2) The principle of best interests of the child shall be imposed inclusively in relation to the rights and obligations belonging to the child’s parents, as well as to any other persons to which the child has been legally given into custody.  
(3) The best interests of the child shall prevail in all actions and decisions regarding children, performed by the public authorities and authorised private organisms, as well as in cases dealt with by the courts. [...]  
Art. 6.  
The observance and granting the child’s rights shall be done by following these principles:  
a) respect and promoting with priority of the best interest of the child [...]. | Effective implementation: National legislation ensures systematic consideration of the best interests of the child.  
Courts are obligated to apply the principle of child’s best interests in cases where children are involved in judicial proceedings. In particular, principle of the best interests of the child governs all matters concerning children and which are subject to provisions of the Civil Code and Law on the Rights of Child. |
| RCC  
Art. 263.  
(1) Any measure regarding the child, irrespective of its author, must be taken with the observance of the best interests of the child. |                                                                                                          |
| **Non-discrimination**                                                                                      |                                                                                                          |
| Romanian Constitution  
Art. 50  
Persons with disabilities enjoy special protection. The State ensures the performance of national policies of equality of chances, of prevention and treatment of the disability for an effective participation of the persons with disabilities to the community life, with the observance of the rights and duties of parents and tutors.  
Art. 16 | Incomplete implementation: Romanian legislation ensures prohibition on discrimination based on disability and provides certain measures to ensure accessibility of public services, cultural activities, etc. However, the requirement of reasonable accommodation is not fully implemented. |
## Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Citizens are equal before the law and public authorities, without any privilege or discrimination.</td>
<td></td>
</tr>
</tbody>
</table>

L272  
**Art. 6.**  
The respect and the guarantees of the child’s rights shall be done according to the following principles: [...]  
b) equal chances and non-discrimination; [...]  
**Art. 7.**  
The rights provided under this law are granted to all children without discrimination, irrespective of race, colour, sex, language, religion, political opinion and any other opinion, ethnical or social origin, wealth, grade or type of disability, birth status or any other acquired status, difficulties in formation or development or of any kind of the child, parents or other legal representatives, or any other distinction.  

GO137  
**Art. 1.** (2) The principle of equality between citizens (...) is granted for the exercise of the following rights:  
a) right to equal treatment in front of the courts and any other jurisdictional organ;  
b) the right to the security of a person and to State protection against violence or maltreatment from any other individual, group or institution;  
c) political rights, namely electoral rights, the right to participate to the public life and to have access to public functions and offices;  
d) civil rights [...]  
e) economical, social and cultural rights, especially [...]  
(iv) right to health, medical care, social security and social services;  
(v) right to education and professional training;  
(vi) right to be part of, in equal conditions, to cultural and sport activities;  
f) right to access to all places and services destined to the public use.  
(3) The exercise of the rights provided under this article regards persons found in similar situations.  
(4) Any natural or legal person has the obligation to observe the rights provided under par. (2).
### Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Evolving capacities of the child</strong></td>
<td></td>
</tr>
<tr>
<td><strong>L272</strong></td>
<td>Incomplete implementation:</td>
</tr>
<tr>
<td><strong>Art. 6.</strong></td>
<td>National legislation explicitly provides for the evolving capacities of the child only as an obligation of the parents, not as an obligation of authorities.</td>
</tr>
<tr>
<td>The respect and the guarantees of the child’s rights shall be done according to the following principles: [..]</td>
<td></td>
</tr>
<tr>
<td><strong>Art. 24.</strong></td>
<td></td>
</tr>
<tr>
<td>(1) The child who has discernment has the right to freely express her/his opinion on any problem concerning her/him.</td>
<td>L272 states that a child who has discernment has the right to freely express her/his opinion on any problem concerning her/him.</td>
</tr>
<tr>
<td>f) granting an individualised and personalised care for each child;</td>
<td>In addition, the Civil Code refers to the age and maturity of the child that need to be taken into account when the child expresses his/her opinion during the administrative or judiciary proceedings.</td>
</tr>
<tr>
<td><strong>Art. 30.</strong></td>
<td></td>
</tr>
<tr>
<td>(2) The parents have the obligation to ensure to the child, in a manner in accordance to the evolving capacities of the child, the necessary orientation and advices, for the proper exercise of the rights provided under this law.</td>
<td></td>
</tr>
<tr>
<td><strong>RCC</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Art. 264.</strong> (1) During the administrative or judiciary procedures which concern her/him, hearing the child who is 10 years old is compulsory. However, the child who is less than 10 years old can be heard, if the competent authority considers it necessary for solving the case. (..)</td>
<td></td>
</tr>
<tr>
<td>(4) The opinions of the child who has been heard shall be considered taking into consideration her/his age and maturity.</td>
<td></td>
</tr>
<tr>
<td><strong>Right to be heard/to participate</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Romanian Constitution</strong></td>
<td>Incomplete implementation:</td>
</tr>
<tr>
<td><strong>Art. 49(5) Public authorities are bound to contribute to securing the conditions for the free participation of young people in the political, social, economic, cultural and sporting life of the country.</strong></td>
<td>In the light of the L272, during the administrative or judiciary procedures which concern a child, hearing the child who is 10 years old is compulsory. However, the child who is less than 10 years old can be heard, if the competent authority considers it necessary for solving the case. Any child can request to be heard. In case of rejection, the competent authority shall provide a</td>
</tr>
<tr>
<td><strong>L272</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Art. 6.</strong></td>
<td></td>
</tr>
<tr>
<td>The respect and the guarantees of the child’s rights shall be done according to the following</td>
<td></td>
</tr>
</tbody>
</table>
Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
</table>
| priciple: [...] h) hearing the opinion of the child and taking it into consideration, with due regard of her/his age and degree of maturity; Art. 24.  
(1) The child who has discernment has the right to freely express her/his opinion on any problem concerning her/him.  
(2) During the administrative or judiciary procedures which concern her/him, hearing the child who is 10 years old is compulsory. However, the child who is less than 10 years old can be heard, if the competent authority considers it necessary for solving the case.  
(3) The right to be heard includes the possibility of the child to request for and to receive any relevant information, to be consulted, to express her/his opinion and to be informed on the consequences her/his opinion may entail, if respected, as well as regarding the consequences of any decision in her/his regard.  
(4) In all cases provided under par. (2), the opinions of the child who has been heard shall be taken into consideration and shall be accordingly considered, with due regard of her/his age and maturity.  
(5) Any child can request to be heard, according to the provisions of par. (2) and (3). In case of rejection, the competent authority shall grant a reasoned opinion.  
(6) Legal provisions regarding the consent or the presence of the child during the procedures that concern her/him, as well as the provisions regarding the designation of a tutor, in case of conflict of interests, are and remain applicable. |
| RCC Art. 264.  
(1) During the administrative or judiciary procedures which concern her/him, hearing the child who is 10 years old is compulsory. However, the child who is less than 10 years old can be heard, if the competent authority considers it necessary for solving the case.  
(2) The right to be heard includes the possibility of the child to request for and to receive any information, considering her/his age, to express her/his opinion and to be informed on the consequences her/his opinion may entail, if respected, as well as regarding the consequences of any decision in her/his regard.  
(3) Any child can request to be heard, according to the provisions of par. (1) and (2). The rejection of her/his request by the competent authority must be explained. |

reasoned opinion. Similar provisions are contained in the Civil Code.

The implementation is assessed as 'incomplete' due to the overly general nature of the national provisions, which do not establish sufficiently specific legal safeguards in the field of social protection and education.
### Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4) The opinions of the child who has been heard shall be considered taking into consideration her/his age and maturity.</td>
<td></td>
</tr>
<tr>
<td>(5) Legal provisions regarding the child’s consent or presence, in the procedures which concern her/him, as well as the provisions regarding the designation by the court of a representative in case of conflict, remain applicable.</td>
<td></td>
</tr>
</tbody>
</table>

### Right to be free from violence

**Romanian Constitution**

**Art. 49.**

(3) The exploitation of minors, using them in activities that may prejudice their health, morality or may endanger their life or normal development are prohibited.

**Art. 6.**

The respect and the guarantees of the child’s rights shall be done according to the following principles: [...]

- g) the respect of child’s dignity;
- k) insuring protection against child’s abuse and exploitation;

**Art. 85.**

(1) The child has the right to be protected against any forms of violence, abuse, maltreatments or negligence.

(2) Any natural or legal person, as well as the child, can request to the authorities competent according to the law to take the necessary measures in order to protect her/him against any form of violence, including sexual violence, physical damage or mental or physical abuse, maltreatments or exploitation, abandon or negligence.

(3) The employees of the public institutions who, by the nature of their profession, get in contact with a child and have suspicions regarding the existence of an act of abuse, negligence or maltreatments, have the obligation to immediately report it to the general direction of social assistance and protection of the child.

**Criminal Code**

**Article 64**

(1) The complementary punishment of interdiction of some rights consists in the prohibition of one or the following rights: [...]

Effective implementation:
In Romania, children are protected from violence by the Constitution as well as by the criminal and family legislation.
### Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>d) the parental rights.</td>
<td></td>
</tr>
<tr>
<td><strong>Article 198</strong></td>
<td></td>
</tr>
<tr>
<td>(1) The sexual intercourse, of any nature,</td>
<td></td>
</tr>
<tr>
<td>with a person of a same or a different</td>
<td></td>
</tr>
<tr>
<td>gender which is under 15 years old, shall</td>
<td></td>
</tr>
<tr>
<td>be punished with imprisonment from 3 to</td>
<td></td>
</tr>
<tr>
<td>10 years and the prohibition of some</td>
<td></td>
</tr>
<tr>
<td>rights.</td>
<td></td>
</tr>
<tr>
<td><strong>Article 306</strong></td>
<td></td>
</tr>
<tr>
<td>The act of severely endangering the</td>
<td></td>
</tr>
<tr>
<td>physical, intellectual or moral</td>
<td></td>
</tr>
<tr>
<td>development of the minor person, by</td>
<td></td>
</tr>
<tr>
<td>measures or treatments of any kind, by</td>
<td></td>
</tr>
<tr>
<td>the parents or any person to which the</td>
<td></td>
</tr>
<tr>
<td>minor has been assign for her/his</td>
<td></td>
</tr>
<tr>
<td>caretaking and education, shall be</td>
<td></td>
</tr>
<tr>
<td>punished with imprisonment between 3 up</td>
<td></td>
</tr>
<tr>
<td>to 15 years and the prohibition of some</td>
<td></td>
</tr>
<tr>
<td>rights.</td>
<td></td>
</tr>
</tbody>
</table>

### Right to family life

<table>
<thead>
<tr>
<th>L272 Art. 6.</th>
<th>Effectiveness implementation: The right of the child to be raised in family environment is ensured by the national law.</th>
</tr>
</thead>
<tbody>
<tr>
<td>c) making the parents responsible with regard to the exercise of the rights and the fulfilment of their obligations as parents;</td>
<td>Separation of the child from his parents is regulated.</td>
</tr>
<tr>
<td>d) the primacy of the parents’ responsibilities regarding the observance and granting the child’s rights;</td>
<td></td>
</tr>
<tr>
<td><strong>Art. 30.</strong></td>
<td></td>
</tr>
<tr>
<td>(1) The child has the right to grow up beside her/his parents.</td>
<td></td>
</tr>
<tr>
<td>(2) The parents have the obligation to ensure to the child, in a manner in accordance to the evolving capacities of the child, the necessary orientation and advices, for the proper exercise of the rights provided under this law.</td>
<td></td>
</tr>
<tr>
<td>(3) The parents of the child have the right to receive the necessary information and assistance in order to take care, raise and educate the child.</td>
<td></td>
</tr>
<tr>
<td><strong>Art. 31.</strong></td>
<td>(1) Both parents are responsible for raising their children.</td>
</tr>
<tr>
<td>(2) The exercise of the rights and the fulfilment of the parental duties must take into consideration the best interest of the child and to ensure the material and spiritual welfare of the child, especially by the care showed to her/him, by maintaining personal relations with her/him, as well as by her/his legal representation and administration of her/his patrimony.</td>
<td></td>
</tr>
</tbody>
</table>
## Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3) In case of misunderstandings between the parents with regard to the exercise of the rights and fulfilment of the parental duties, the court, after hearing both parents, shall decide in accordance to the child’s best interests.</td>
<td></td>
</tr>
<tr>
<td><strong>RCC</strong>&lt;br&gt;Art. 262.&lt;br&gt;(1) The child cannot be separated from her/his parents without their consent, except for the cases provided by the law.&lt;br&gt;(2) The child who does not live together with her/his parents or, as the case may be, lives with one of them, has the right to personal relations with them. The exercise of this right can be limited only under the conditions provided by the law, for justified reasons, taking into consideration the best interests of the child.</td>
<td></td>
</tr>
</tbody>
</table>

### Right to assistance

**Romanian Constitution**

Art. 49(2) The State shall grant allowances for children and benefits for the care of ill or disabled children. Other forms of social protection for children and young people shall be established by law.

**L272**

Art. 43. (2) The access of the child to medical care services and recovery, as well as to the medication corresponding to her/his state of illness is granted by the State, the related costs being incurred by the Unique National Fund of health insurances and by the state budget.

Art. 45. (1) The child has the right to benefit from social assistance and social insurance, according to her/his resources and the situation and of the persons who take care of her/him.

Art. 46. (1) The child with disabilities has the right to special care, adapted to her/his needs.<br>(2) The child with disabilities has the right to education, recovery rehabilitation and integration, adapted to her/his personal needs, in order to develop her/his personality.<br>(3) The special care must ensure the spiritual, mental, physical or social development of children with disabilities. The special care consists in an aid adequate to the situation of the child, ensuring the right to a life of dignity and quality for each child.

Effective implementation: Allowances for children with disabilities are safeguarded at constitutional level. L272 specifies various forms of assistance that children with disabilities can receive (e.g. medical care, special care, rehabilitation, etc.).
### Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>child or of her/his parents, or, if the case may be, to the situation of the persons who are taking care of</td>
<td></td>
</tr>
<tr>
<td>the child and shall be free of charge whenever possible, in order to facilitate the effective access and</td>
<td></td>
</tr>
<tr>
<td>without discrimination to education, professional training, medical services, recovery, rehabilitation,</td>
<td></td>
</tr>
<tr>
<td>training for finding a job, social activities, as well as any other activities able to allow them a full</td>
<td></td>
</tr>
<tr>
<td>social inclusion and development of their personality.</td>
<td></td>
</tr>
</tbody>
</table>

### Right to education (including inclusive education)

**L1 Art. 3.** The principles governing the pre-academic and academic system of education [...] are:

- **a)** principle of equity – based on which the access to education shall be done without discrimination; [...]  
- **j)** principle of equal chances; [...]  
- **o)** principle of social inclusion; [...] 

**L272 Art. 46.** (1) The child with disabilities has the right to special care, adapted to her/his needs.  
(2) The child with disabilities has the right to education, recovery rehabilitation and integration, adapted to her/his personal needs in order to develop her/his personality.  
(3) The special care must ensure the spiritual, mental, physical or social development of children with disabilities. The special care consists in an aid adequate to the situation of the child or of her/his parents, or, if the case may be, to the situation of the persons who are taking care of the child and shall be free of charge whenever possible, in order to facilitate the effective access and without discrimination to education, professional training, medical services, recovery, rehabilitation, training for finding a job, social activities, as well as any other activities able to allow them a full social inclusion and development of their personality.  

Incomplete implementation: There is no explicit provision reflecting the principle of inclusive education, even if the law refers to an "integrated education system" for children with disabilities.
## ANNEX 2 – STATISTICAL INFORMATION

<table>
<thead>
<tr>
<th>Year</th>
<th>Violence</th>
<th>Gender discrimination</th>
<th>Other discrimination</th>
<th>Criminal suspects</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2009</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>2010</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

No data has been identified on these issues.

---

60 Cases reported to any relevant body; depending on the availability of data.
# ANNEX 3 – TYPOLOGY OF PERSONS REPORTING CASES ON DISCRIMINATION

<table>
<thead>
<tr>
<th>School Year</th>
<th>Number of students in special schools</th>
<th>Number of students with disabilities integrated in mainstream schools</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999-2000</td>
<td>53,446</td>
<td>1,076</td>
</tr>
<tr>
<td>2000-2001</td>
<td>48,237</td>
<td>5,659</td>
</tr>
<tr>
<td>2001-2002</td>
<td>37,919</td>
<td>10,779</td>
</tr>
<tr>
<td>2002-2003</td>
<td>29,359</td>
<td>11,493</td>
</tr>
<tr>
<td>2003-2004</td>
<td>27,634</td>
<td>12,843</td>
</tr>
<tr>
<td>2004-2005</td>
<td>27,945</td>
<td>14,179</td>
</tr>
<tr>
<td>2005-2006</td>
<td>28,873</td>
<td>14,193</td>
</tr>
<tr>
<td>2006-2007</td>
<td>27,445</td>
<td>16,290</td>
</tr>
</tbody>
</table>

Number of students with disabilities in special and in mainstream schools, per school year (source: Ministry of Education, Research, Youth and Sports and RENINCO organisation)61

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ANNEX 4 - 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 States 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. 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.

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62 For this study 18 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.

63 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.
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 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 2008\textsuperscript{64}) 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’\textsuperscript{65}. Recently, the CJEU has further developed this concept\textsuperscript{66} 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 2008/52\textsuperscript{67} 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

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\textsuperscript{65} Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, Sonia Chacón Navas v Eurest Colectividades, pt 43.

\textsuperscript{66} 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 Boligelskab (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.

\textsuperscript{67} Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.
Family Reunification Directive\textsuperscript{68} requires Member States’ authorities to consider the best interests of children when examining an application for family reunification (Article 5)\textsuperscript{69}. The protection of the best interests of the child is explicitly mentioned in Council Directive 2004/81/EC\textsuperscript{70} 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 or belief, age and sexual orientation, most of them restricted to the area of employment.\textsuperscript{71} They lay down rules ‘for combating discrimination (...) with a view to putting into effect in the Member States the principle of equal treatment’.\textsuperscript{72} 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 grounds\textsuperscript{73}.

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 telecommunication\textsuperscript{74}.

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 violence relating to child trafficking, to the sexual exploitation of children and to the protection of victims including several Directives 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 pornography 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) 78. In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification and the provisions of the Directives on asylum regarding unaccompanied minors and the respect for the family unit.

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77 Article 1 Directive 2011/92/EU.


The principle of **maximum inclusion in society** of children with disabilities is reflected in strategy documents such as the Disability Strategy 2010-2020\(^{81}\) and the EU 2020 Programme in relation to education and training\(^{82}\). The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities \(^{83}\) addressed the problem of access to education by children with disabilities. In 2010, the Resolution of the European Parliament on mobility and inclusion of children with disabilities\(^{84}\) 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 training\(^{85}\).

### 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 CRDP 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

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\(^{83}\) Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.


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 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 non-physical 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 5 - OVERVIEW OF RELATED STUDIES

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CITIZENS’ RIGHTS AND CONSTITUTIONAL AFFAIRS

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