THE RIGHTS OF VULNERABLE CHILDREN UNDER **THE AGE OF THREE**

Ending their placement in institutional care

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Europe Regional Office

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EXECUTIVE SUMMARY

This document was commissioned by the Regional Office for Europe of the Office of the United Nations High Commissioner for Human Rights (ROE OHCHR). One of its aims was to stimulate discussion at the Sub-Regional Workshop on the Rights of Vulnerable Children Aged 0 to 3 Years in Prague on 22 November 2011.

It highlights one of the most serious human rights challenges in Europe, namely that many young children, including those under three years of age, continue to be placed in long-term institutional care in many countries in the European Union and across the wider European region. It further provides a normative background from the human rights perspective, drawing above all on the Convention on the Rights of the Child and the Guidelines on the Alternative Care of Children, illustrating the growing emphasis of the relevant human rights framework on overcoming the institutional mode of care for children.

The study extensively reviews available scientific evidence on the negative effects of institutionalization on very young children. It argues that there is now incontrovertible evidence of its harmful effects and that these are not only attributable to poor material conditions in some of the institutions studied, but above all to the lack of emotional attachment and bonding to a particular carer.

The necessary prerequisites for success are listed and analysed, as well as the evidence provided on the prevalence of institutional placement of children under three years of age in the European region. Finally, the document points out some of the contextual, attitudinal and other challenges which have so far prevented the process of de-institutionalization, particularly in countries of Central and Eastern Europe (CEE). It also outlines ways ahead for these (and other) countries to achieve comprehensive transformation of their childcare systems, in line with the development of up-to-date scientific knowledge, international human rights law and practical experience.

1. INTRODUCTION

In October 2010, a seminar entitled *Forgotten Europeans – Forgotten Rights*, organized by ROE OHCHR, took place in Brussels. Those referred to as "forgotten Europeans" are people living in residential institutions – children, persons with physical, intellectual or psychosocial disabilities, and the elderly.

The seminar provided evidence of the alarmingly high numbers of persons living in residential institutions and of the harmful effects of widespread institutionalization of both adults and children. Speakers and participants agreed that reform could and must be achieved, even in the most difficult of circumstances, and that resources in Europe, including European Union (EU) funds, could be instruments of change if used appropriately.

In follow-up to the event, ROE OHCHR decided to focus in the latter half of 2011 on a category for whom the risks associated with institutionalization are particularly high, namely, children under the age of three.

The present study is designed to inform and encourage debate on the issue and on measures to be undertaken by all stakeholders nationally and internationally in order to prevent very young children from being placed in institutional care. Its main purpose is to draw attention to:

a) challenges and obstacles behind the unacceptably high rate of institutionalization of very young children in many European countries; and

b) increasing opportunities, especially in the context of recent and upcoming EU enlargement, for the European region to transform the care system by developing effective family-focused and community-based services for children and families at risk, including children with disabilities.

Although the overuse of institutional care in the enlarged EU is the central theme of this study, the phenomenon of the persistence of institutional care of very young children across Europe, including the non-EU countries of Eastern Europe, is also worthy of analysis. Comparative analysis of successes and failures in three groups of countries – "old" EU Member States, new EU Member States (such as the countries of Central Europe and the Baltic States which joined in 2004, and Bulgaria and Romania in 2007) and the rest of the European region (with focus on the post-Soviet countries of Eastern Europe) is highly relevant for identification of crucial challenges and effective ways to overcome them. However, the Member States which joined the EU in 2004-2007 and which can still be considered in this context as States in transition, are given special attention.

While many governments need to develop and implement strategies for the shift from institutional care to community-based family support services, they must also protect the human rights of young children - both those still in institutional care and those who live in families and family-type homes - during this complicated process of transition.

Why is it so important to raise this issue and to call for action now?

Several recent studies and reports have indicated the urgent need to address the unacceptably high rate of the institutional placement of children, with and without disabilities, including children under three years.[1]

On 28 June 2011, UNICEF and OHCHR jointly published their *Call to Action: End placing children under three years in institutions together* with the UNICEF report *At Home or in a Home?*

[1] See Browne et al, 2004, Gudbrandsson, 2004, Carter, 2005, UNICEF, 2005, European Coalition for Community Living, 2006, Mulheir et al., 2007, European Commission, 2009, Eurochild, 2009, WHO, 2009, Bilson, 2010, EveryChild, 2011, UNICEF, 2011.

The report presented convincing evidence on the very slow change in childcare reform in the past 20 years in the CEE/CIS (Central and Eastern Europe and the Commonwealth of Independent States) region. Simultaneously, ROE OHCHR published the comprehensive study *Forgotten Europeans – Forgotten Rights,* mapping the international and European human rights standards relevant to the situation of persons in institutions.

Now that the third decade of transition has begun, there is an urgent need to raise the general issue of de-institutionalization as high as possible on the political agendas of national governments and the EU. Indeed, this might be the right time for concerted action. If this happens in the new EU Member States, a number of non-EU countries in Eastern Europe could learn from their experience.

Given the complexity of the subject, the present study does not intend to cover every component of the problem that may be of relevance. Nor does it claim to provide a definitive guide of all legal, administrative and other measures required to effectively address the use and overuse of the institutional placement of children under three. It seeks to describe the normative and scientific basis for action and to identify existing gaps, misunderstandings, emerging risks, threats and pitfalls in protecting and promoting the human rights of the youngest children at risk of separation from their parents.

2. NORMATIVE BACKGROUND

2.1. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The Convention and its Committee

Since its adoption in 1989, the United Nations (UN) Convention on the Rights of the Child (CRC) has been the main international treaty and legislative framework with regard to promotion and protection of the rights of the child. The UN Committee on the Rights of the Child, which provides the interpretation of the principles and articles of the Convention, has on numerous occasions emphasized the need to invest effectively in family-support services so that institutional care of children is only employed as a last resort.

Over more than two decades since its adoption, there have been many changes, including the emergence of new scientific evidence and the development of best practices with regard to early childhood, community-based, and family-support systems. This is why the interpretation of the CRC, with regard to protection of all rights of young children, especially when they are placed in institutional care, has been presented by the Committee on many occasions. The relevant General Comments of the Committee are: General Comment No. 7 – Implementing child rights in early childhood (2005), General Comment No. 9 – The rights of children with disabilities (2006), and General Comment No. 13 – The rights of children to freedom from all forms of violence (2011).

General principles of rights of the child

Respect for the dignity, life, survival, well-being, health, development, participation and non-discrimination of the child as a rights-bearing person should be established and championed as the pre-eminent goal of States Parties' policies concerning children. This is best achieved by respecting, protecting and fulfilling all the rights in the CRC and its Optional Protocols. It requires a shift away from child-protection approaches in which children are perceived and treated as "objects" in need of assistance or as "victims" rather than as rights holders entitled to non-negotiable rights to protection.

A child-rights approach is one which furthers the realization of the rights of all children as set out in the Convention by developing the capacity of duty bearers to meet their obligations to respect, protect and fulfil rights (Art. 4) and the capacity of rights holders to claim their rights, guided at all times by the rights to non-discrimination (Art. 2), consideration of the best interests of the child (Art. 3, para.1), life, survival and development (Art. 6), and respect for the views of the child (Art. 12). Children also have the right to be directed and guided in the exercise of their rights by care givers, parents and community members, in line with children's evolving capacities (Art. 5).

This child-rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part. Family and community are most important among these systems. There are convincing messages in the CRC clearly guiding governments to develop child-protection services in such a way that as many children as possible are able live in families, and not in institutions.

Very young children as rights holders and subjects of their rights

The CRC stipulates that the child, including the youngest child, is a holder and subject of his/her rights. The child, as every human being, is entitled to all human rights, which are interdependent and indivisible. There is no hierarchy within human rights.

General Comment No. 7 clearly states that young children are holders of the rights enshrined in the Convention. They are entitled to special protection measures and, in accordance with their evolving capacities, the progressive exercise of their rights. The Committee raised the concern that "in implementing their obligations under the Convention, States parties have not given sufficient attention to young children as rights holders and to the laws, policies programmes and

required to realize their rights during this distinct phase of their childhood".[2] What is particularly relevant to the issue of overuse of the institutional placement of children under the age of three, the Committee recalled, is that the CRC is "to be applied holistically in early childhood, taking account of the principle of the universality, indivisibility and interdependence of all human rights".[3]

It is of the utmost importance to reach an agreement among major stakeholders in the area of child protection on the modern understanding that **children, from the very moment of their birth, are active holders and subjects of their rights.**

The Convention is built on different recognized legal systems and cultural traditions while remaining based on universal agreement on standards and obligations, which are not negotiable. These basic human rights standards set minimum entitlements and freedoms that should be respected by governments. They are founded on respect for the dignity and worth of each individual, regardless of race, colour, gender, language, religion, opinions, origins, wealth, birth status or ability, and therefore apply to every human being everywhere. With these rights comes the obligation to both governments and individuals not to infringe on the parallel rights of others.

These standards are both interdependent and indivisible; rights cannot be ensured without or at the expense of other rights. The age of a human being, including when he/she is in her first days, weeks, months or years of life, cannot serve as an excuse for restriction of rights or for some simplified interpretation of these overriding human rights principles. On the contrary, as children in their infancy are not able to express themselves verbally – and because human beings do not have the ability to retain memories from their infancy and are thus not able to report on possible violations of their rights in the earliest stages of their lives – these important circumstances should encourage the international human rights community to develop special additional mechanisms for the protection and promotion of the human rights of young children. Even newborn babies express themselves clearly when it comes to their needs. Therefore, it is extremely important to respond and to understand the ways in which young children express themselves.

The human rights imperative should be the cornerstone for addressing and eliminating the long-term institutionalization of young children. Securing and promoting children's fundamental rights to respect for their human dignity and integrity, through the prevention of institutionalization are essential for promoting the full set of child rights in the Convention. This human rights imperative is reinforced by other arguments and supported by scientific evidence. All other arguments reinforce but do not replace this human rights imperative. **Strategies and systems to prevent and respond to the institutional placement of young children as a form of institutional violation of human rights must therefore adopt a child-rights approach, not a charity concept or welfare approach.**

Importance of the family

There is no specific right to life in the family contained in the CRC, but many articles throughout the Convention are convincingly in favour of family preservation.

The Preamble sets the scene, with its reference to the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". It emphasizes that the family "should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community" and that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". The importance of the family environment for the harmonious development of the child and the need to protect and promote it (including the role of parents and substitute family) is also highlighted in Articles 5, 9, 18, 21, 23, 27 of the Convention.

[2] CRC/C/GC/7/Rev/1, para. 3.

[3] Ibid.

The CRC builds on the crucial role of the family in a variety of ways through provisions such as:

- the right, as far as possible, to know and be cared for by his or her parents (Art. 7);
- the prohibition of a child's separation from his or her parents against their will, save where this is determined – subject to judicial review – to be in the child's best interests (Art. 9);
- the obligation of the State to render "appropriate assistance to parents ... in the performance of their child-rearing responsibilities" (Art. 18);
- in relation to child abuse and neglect, explicit mention is made regarding preventive efforts and protective programmes "to provide necessary support for the child and for those who have the care of the child" (Art. 19); and
- the State obligation to assist parents in all possible ways to provide the child with an adequate standard of living and, in case of need, to provide "material assistance and support programmes, particularly with regard to nutrition, clothing and housing" (Art. 27).

Right to non-discrimination (Art. 2)

Children with disabilities, children from ethnic minorities, children from single-parent families, children from families with parents who have mental, psychosocial and other disabilities, are disproportionately over-represented in institutions for young children. When children are placed in institutional care on the grounds that they or their parents belong to these or other vulnerable groups, this should be qualified as an expression of direct or indirect discrimination.

Best interests of the child (Art. 3)

As implied by the wording of the CRC (see below on Articles 9 and 20 and on the Guidelines on the Alternative Care of Children), institutional care should only be used as a last resort. This means that in an absolute majority of cases the institutional placement of children should not be considered as a decision in their best interests. It could be argued that at later ages, for example, in protecting the rights of adolescents in difficult situations, institutional care in small group homes could under certain conditions be an option in the best interests of the child. However, this is a very different case if a child is under three years of age. When all measures have been exhausted to preserve the biological family and to secure the stay of the child with biological parents, the State should fulfil its duties to protect the child by ensuring that he or she can live in a substitute family.

The Committee on the Rights of the Child has emphasized on many occasions that the interpretation of a child's best interests must be consistent with the whole Convention. It cannot be used to justify practices which conflict with the child's human dignity and right to integrity. An adult's judgement of a child's best interests cannot override the obligation to respect all the child's rights under the Convention. In particular, the Committee has emphasized in General Comment No. 13 (2011) that "the best interests of the child are best served through:

a) Prevention of all forms of violence and the promotion of positive child rearing, emphasizing the need for a focus on primary prevention in national coordinating frameworks; and adequate investment in human, financial and technical resources dedicated to the implementation of a child rights-based and integrated child protection and support system".[4]

Right to life, survival and development (Art. 6)

Residential institutions for children first appeared in Europe – perhaps with good intentions – to protect their right to life and survival. In former times, institutional placement was often considered the only way for many children to survive. There have been many changes since then. Modern

[4] CRC/C/GC/13, para. 61.

understanding of the rights of children goes far beyond their right to life and beyond mere physical survival.

In Article 6, the CRC recalls that there is no hierarchy within human rights and that survival is not the only ultimate goal – protection and promotion of the rights of children must be considered not only in terms of the child's right to life and survival, but also in terms of its right to "development", which must be interpreted in line with the overall goal of child protection. Thus, the obligation of the State Party includes comprehensive protection from violence and exploitation which would jeopardize a child's right to life, survival and development. The Committee on the Rights of the Child expects States (General Comment No. 13), to interpret "development in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development".[5]

When protecting children with a narrow and too simplified conceptual framework of human rights, institutional care fails to secure the basic needs of children by depriving them of their right to develop in a holistic way, which includes emotional, cognitive, social and cultural development, as components of development.

Right not to be separated from family and rights of children deprived of family environment (Arts. 9 and 20)

These two Articles, especially taken in combination, are very important, when interpreted correctly (for instance in the context of Article 19) for the prevention of the use of institutional care for very young children.

Article 9 stipulates:

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence."

In Article 20, the CRC also stipulates that States Parties shall ensure alternative care for children deprived of their family environment or children in whose best interests cannot be allowed to remain in that environment. Such care could include, inter alia, foster placement, adoption or "if necessary, placement in suitable institutions for the care of children". The wording ("if necessary") is at least an implicit indication that the CRC ranks institutional placement as the last option after all other options have been exhausted.

However, the wording "in suitable institutions" needs clearer interpretation to avoid misuse as a justification for institutional care. The CRC was drafted during the 1980s, when the issue of institutionalization was not perceived as one of the most serious concerns. The then-Communist countries of Eastern and Central Europe, where institutional placement of children was part of the ideology governing child-protection systems, were among its active drafters. Therefore, it is understandable that an elastic definition of "suitable institutions" might have represented the lowest common denominator in that geopolitical situation.

Later, the Committee moved towards a clear interpretation. Towards the end of the 20th century it became evident that the de-institutionalization process in many countries was failing (despite promising beginnings in the early 1990s), and the Committee repeatedly expressed increasing concern about the overuse of institutionalization of children in European countries, particularly in Central and Eastern Europe, in its Concluding Observations addressed to these countries.

[5] Ibid, para. 62.

Today, more than two decades after the adoption of CRC, it is appropriate to raise the question of whether institutional care can be a "suitable" option for children at all, especially for children under three years of age; whether any exceptions are acceptable; and whether it is time to seriously consider its elimination. Such interpretation of the need to promote and protect the rights of children in the context of institutional care relies on the UN Guidelines on the Alternative Care of Children (see below).

Right to be heard, respect for the views and feelings of the young child (Art. 12)

One of the CRC's most important principles is the right to be heard. One of the common misunderstandings when interpreting the Convention and its Article 12 is to apply this principle to children who have reached an age which allows them to express their views verbally.

In its 2004 recommendations, the Committee underlined that the concept of the child as rights holder is "… anchored in the child's daily life from the earliest stage".[6] Research shows that the child is able to form views from the youngest age, even when she or he may be unable to express them verbally (Lansdown, 2005). Consequently, full implementation of Article 12 requires the "recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences".[7]

Right to freedom from all forms of violence (Art. 19)

In General Comment No. 13 (2011), the Committee recognized "the primary position of families, including extended families, in childcare giving and protection and in the prevention of violence".[8] The Committee also recognized that "the majority of violence takes place in the context of families and that intervention and support are therefore required when children become the victims of hardship and distress imposed on, or generated in, families".[9]

Regarding institutional violence: "The Committee is also aware of widespread and intense violence applied against children in State institutions and by State actors including in schools, care centres, residential homes, police custody and justice institutions which may amount to torture and killing of children…"[10]

Furthermore, in this General Comment the Committee interprets what is meant by institutional and system violations of child rights:

> "Authorities at all levels of the State responsible for the protection of children from all forms of violence may directly and indirectly cause harm by lacking effective means of implementation of obligations under the Convention. Such omissions include the failure to adopt or revise legislation and other provisions, inadequate implementation of laws and other regulations and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children. It is also an omission when measures and programmes are not equipped with sufficient means to assess, monitor and evaluate progress or shortcomings of the activities to end violence against children. Also, in the commission of certain acts, professionals may abuse children's right to freedom from violence, for example, when they execute their responsibilities in a way that disregards the best interests, the views and the developmental objectives of the child".[11]

[6] CRC/C/GC/7/Rev/1, para. 14.

[7] CRC/C/GC/12, para. 3.

[8] CRC/C/GC/13, para. 3(h).

[9] Ibid, para. 3(h).

[10] Ibid, para. 3(i).

[11] Ibid, para. 32.

It is important to note here that violence, as the Committee highlights in General Comment No. 13, includes "all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse"[12] as listed in Article 19, para. 1 of the CRC. The Committee further emphasizes that "the term violence in the present General Comment must not be interpreted in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, inter alia, neglect and psychological maltreatment)".[13]

In this context, it is also worthwhile pointing out that the UN Secretary-General's Study on Violence against Children[14] convincingly reports on institutional care being a place for systemic violations of children's rights. In its Recommendation No. 12, the study clearly states that governments should ensure that family-based care options are favoured in all cases, and that they are the only options for babies and small children. The study has concluded that the benefits of keeping children within families are incontrovertible in terms of their health and happiness, and the best interests of the child.

Institutional culture that unavoidably inhabits and infiltrates residential institutions for children (including those for the youngest ones) may be considered as equivalent to a culture of violence. When reviewing research on violence against children and institutionalization of children, both their causes and consequences appear to be strikingly similar, overlapping and reinforcing each other. In this respect, the UN Study on Violence against Children can be read to a certain degree as a study on institutional care and its prevention and General Comment No. 13 can be read as normative guidance on why and how institutional care of children and especially young children should be prevented and eliminated.

This interpretation is relevant in the context of debate on the past, present and future of institutional care. Supporters of institutional care for children commonly argue that since conditions have significantly improved in institutional placements, these should now be regarded as safe and suitable places for children to stay. However, as regards children under three years of age, their long-term stay in institutional care is always accompanied by emotional neglect, which is a form of violence – and therefore should not be tolerated.

2.2. THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The CRC is not the only international human rights treaty highlighting the importance of the family. Article 10 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that "the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children".

2.3. THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Another important international treaty, which effectively contributes to the protection of persons from placement in institutional care, is the UN Convention on the Rights of Persons with Disabilities (CRPD). In 2011, it became the first international human rights treaty to be ratified by the EU.

Rights of children with disabilities before the CRPD

Before the adoption of the CRPD, clear guidance on the rights of children with disabilities was already formulated in the CRC. Thus, para. 1 of Article 23 of the CRC should be considered as the leading principle for its implementation with respect to children with disabilities: the enjoyment of a full and decent life in conditions that ensure dignity, promote self-reliance, and facilitate active

[12] Ibid, para. 4.

[13] Ibid, para. 4.

[14] A/61/299, paras. 53-63.

participation in the community. The measures taken by States Parties regarding the realization of the rights of children with disabilities should be directed towards this goal. The core message of this paragraph is that children with disabilities should be included in society. It is obvious that a long stay in institutional care, especially if it begins in infancy, presents very serious challenges to successful integration into society.

Also, in its General Comment No. 9 – The rights of children with disabilities (2006), the Committee on the Rights of the Child emphasized that it "has repeatedly expressed its concern at the high number of children with disabilities placed in institutions and that institutionalization is the preferred placement option in many countries... Institutions are also a particular setting where children with disabilities are more vulnerable to mental, physical, sexual and other forms of abuse as well as neglect and negligent treatment".[15] The Committee has therefore urged States Parties "to use the placement of children with disabilities in institutions only as a measure of last resort, when it is absolutely necessary and in the best interests of the child".[16]

The Committee has recommended that, in addressing institutionalization, States Parties set up programmes for de-institutionalization of children with disabilities, placing them back with their families, extended families or foster care system. Parents and other extended family members should be provided with the necessary and systematic support/training for bringing their child back into their home environment.

The Committee has also recommended that States Parties establish "systems of early identification and early intervention as part of their health services... services should be both community- and home-based and easy to access... Furthermore, links should be established between early intervention services, pre-schools, and schools to facilitate the smooth transition of the child".[17]

Similar recommendations, in a country-specific manner, have been reiterated for many European countries in the Concluding Observations of the Committee when considering the reports of the States Parties.

Specific contribution of the CRPD to the protection of children with disabilities

The CRPD is relevant to the rights of young children in institutional care for several reasons. Firstly, children with disabilities include large numbers of children under three years of age who are in institutional care throughout the European region.

Secondly, the CRPD is especially relevant for the protection of the rights of very young children with disabilities as they are still often, in many European countries (particularly in Central and Eastern Europe), placed in residential institutions instead of all measures being taken to ensure that they enjoy all their rights, living with their families and in their communities. In such circumstances, placement in institutional care of a child born with a developmental disability is a consequence of the active contribution of professionals and officials in health and social protection sectors who represent the State.

Thirdly, research (presented below) shows that children who are born without disabilities are often diagnosed with developmental delays and disabilities after their stay in institutional care as infants.

The CRPD very strongly challenges all these and other practices and policies, and should serve as a powerful instrument (along with the CRC and the UN Guidelines on the Alternative Care of Children) in preventing and eliminating institutional care of children with disabilities in general, and of young children in particular.

[15] CRC/C/GC/9. para. 47.

[16] Ibid.

[17] Ibid, para. 56.

The following articles in the CRPD are the most instructive in this respect:

Article 3 sets out general principles which should guide the implementation of all articles of the CRPD. Many of these principles – such as respect for inherent dignity, individual autonomy, non-discrimination, full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity, respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities – are relevant for protection and promotion of rights of young children with disabilities and for supporting the emerging consensus that institutional placement of young children is not acceptable and cannot be justified.

The CRPD also includes specific obligations to ensure that the rights of children (Art. 7) with disabilities are protected. Among the Articles of the CRPD which are most relevant in protecting the rights of young children with disabilities, including their right to be protected from institutional placement, are:

- equality and non-discrimination (Art. 5);
- right to life (Art. 10);
- equal recognition before the law (Art.12);
- right to liberty and security (Art. 14);
- freedom from torture or cruel, inhuman or degrading treatment or punishment (Art. 15);
- freedom from exploitation, violence and abuse (Art.16);
- respect for physical and mental integrity (Art. 17);
- right to live independently and be included in the community (Art. 19);
- respect for privacy (Art. 22); and
- respect for home and the family (Art. 23).

The importance of the CRPD in raising the issue of harmfulness and inappropriateness of institutional care for children under three years of age is growing with the understanding of the fact that for many persons with developmental disabilities (such as intellectual disabilities, cerebral palsy, etc.), the first years of life are crucial. Effective early intervention services and other community-based services supporting holistic development of a child with a disability in a family environment is an obligatory condition for successful inclusion in later stages of life.

In the case of institutional placement of a child with a disability, very different scenarios are expected – an infant home may be just the beginning of further stays in residential institutions for the rest of his/her life, with poor quality of life and systemic violations of rights as a rule, throughout life. **This means that young children with or without disabilities, should not be placed in institutional care, except in an emergency and only for a short stay.**

2.4. UN GUIDELINES ON THE ALTERNATIVE CARE OF CHILDREN

In the light of the problems with the interpretation of Article 20 of the CRC, there was a growing concern expressed by a number of organizations in the international child-rights community that international guidelines needed to be drawn up and adopted on the alternative care of children.

This concern contributed to the decision by the Committee to hold a Day of General Discussion in 2005 on children without parental care.

A key recommendation of this Discussion was that international guidelines on children without parental care be drawn up for adoption by the UN General Assembly. This was taken up in 2009 when the General Assembly adopted the UN Guidelines on the Alternative Care of Children. Although it is a guidance document rather than a normative text, it was one more important step in guiding States Parties in the direction of critical evaluation of child protection systems, which in many countries rely excessively on the systems of residential institutions for children.

The UN Guidelines explicitly state in para. 22:

> "In accordance with the predominant opinion of experts, alternative care for young children, especially those under the age of three years, should be provided in family-based settings. Exceptions to this principle may be warranted in order to prevent the separation of siblings and in cases where the placement is of an emergency nature or is for a predetermined and very limited duration, with planned family reintegration or other appropriate long-term care solution as its outcome."

The UN Guidelines (in para. 23) also point out that "where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalization strategy, with precise goals and objectives, which will allow for their progressive elimination. To this end, States should establish care standards to ensure the quality and conditions that are conducive to the child's development, such as individualized and small-group care, and should evaluate existing facilities against these standards. …"

Furthermore, the UN Guidelines stipulate (in para. 15) that poverty is not a legitimate reason for placing the child into alternative care (let alone into institutions):

> "Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family."

The UN Guidelines outline key principles that should be adhered to in all care and protection options for children. Among these, the following are of special relevance to the issue of institutional care of children under three years of age:

- Efforts should primarily be directed at enabling children to remain in, or return to, the care of their parents or, where necessary, of other close family members.

- The removal of a child from his or her family should be considered an option of the last resort and for the shortest possible duration.

- The State is responsible for ensuring appropriate alternative care only where the family is unable, even with appropriate support, to provide adequate care for the child. Any alternative care placement should therefore be decided and provided on a case-by-case basis, by qualified professionals, and should respond to the best interests of the child concerned.

- Alternative care for all children, and especially those under the age of three, should be provided in family-type settings within the child's community, rather than in residential institutions.

The adoption of the UN Guidelines has been a landmark in terms of reaching international agreement on the decision that for children under three years of age, **institutional care is not acceptable and that family-type alternatives should be promoted and supported.**

In other words, if for older children there might be situations when their stay in an institution - such as a group home - might be in their best interests (this is a matter for another debate), institutional care for young children is totally unacceptable, and the variations in the opinions of experts might differ only on the precise description of the term "young child". Although the UN Guidelines specifically cover the first three years of age, it could be suggested for further consideration of major international and national stakeholders that all children under five or under eight years of age should be raised in family without exceptions.

In this regard, the UN Guidelines provide very important guidance to governments and other stakeholders. They explicitly state in para. 22 that alternative care for children, especially those under the age of three years should be provided in family-based settings, and (in para. 23) alternatives should be developed in the context of an overall de-institutionalization strategy, which will allow for progressive elimination of large residential institutions, and that poverty is not a legitimate reason for placing the child into alternative care.

2.5. OTHER GUIDING DOCUMENTS

WHO European Declaration on Health of Children and Young People with Intellectual Disabilities and their Families

This is another important guiding document which is relevant to the issue of institutional care of young children in the European region. It was endorsed by all Member States in the WHO European region in 2010. This initiative, supported by many stakeholders, is the timely expression of concern that rights of children with intellectual disabilities are violated in many European countries, including the overuse of institutional care from infancy. It clearly recommends that children with intellectual disabilities should not be placed in institutional care.

Council of Europe Recommendation on de-institutionalization and community living of children with disabilities

The recommendation emphasizes that the placement of children in institutionalized forms of care "raises serious concerns as to its compatibility with the exercise of children's rights" and recommends that governments of Member States "take all appropriate legislative, administrative and other measures adhering to the principles set out in the appendix to this recommendation in order to replace institutional provision with community-based services within a reasonable timeframe and through a comprehensive approach".[18]

3. EFFECTS OF INSTITUTIONAL CARE ON CHILDREN AND ON SOCIETY

3.1. EVOLUTION OF VIEWS ON DEVELOPMENTAL EFFECTS OF INSTITUTIONAL CARE

There can be little doubt that the development of institutional care for children in the 19th and early 20th centuries was guided by good intentions (as it is, indeed, in contemporary humanitarian efforts in poor countries of Africa, Asia or Latin America, which often focus on the establishment of orphanages and childcare homes as a means to guarantee simple survival). Moreover, the belief in institutions can be described as an expression of an early modern paradigm - with the emphasis on scientific rationalism rather than on emotion, on "objective" findings of physiology rather than on unscientific speculation, and on the capacity of large State-run organizations to provide effective solutions for societal problems.

[18] CM/Rec(2010)2.

In the second half of the 20th century, this paradigm was increasingly challenged. The emotional and social environment was increasingly recognized as an important component of the health and development of children. Gradually, evidence emerged of the damaging effects of early institutional care for the social and behavioural development of children as well as for their cognitive development. The pioneering publications of Goldfarb[19] and Bowlby[20] were particularly influential in this respect, highlighting a number of emotional, behavioural, and cognitive impairments that characterized individuals who had been raised in institutional care. These cognitive impairments included specific difficulties in language development, problems in concentrating and forming emotional relationships; and the individuals raised in institutional care were often described as seeking attention.

Initially, in the 1950s, these problems were attributed (by Bowlby and his school) to the separation from the biological mother. Later, Bowlby revised his theory, emphasizing that the primary caregiver with whom the child needed to experience individualized emotional attachment bonding – particularly in early infancy – was not necessarily the biological mother, and indeed not necessarily a woman. The influential attachment theory emphasized the importance of a primary caregiver for normal development and the negative consequences of institutional care compared to family-based care.[21] It emphasized that the need for intimacy and continuity of emotional relations between the primary caregiver and child during the first weeks, months and years of life is as vitally important for the healthy development of the child as are physiological needs of the infant. Instead of intimacy and continuity of relations with parents (or substitute parents), children in institutional care are exposed to a lack of individualized emotional attachment.

The damaging effects of institutionalization depend on the age at which it occurs as well as on the *length of stay* in institutional care. While the detrimental effects of large-scale institutional care on child development have been documented for decades, contemporary evidence suggests that children under the age of three are particularly vulnerable.[22] Research has demonstrated that infants who are institutionalized *before the age of six months* suffer long-term developmental delay.[23] Regarding the relation of harmful effects to the length of stay in institutional care, there is increasing evidence from research about devastating effects to health and development of young children if they stay for *longer than three months* in institutional care.

Research has also found that young children who have experienced residential care *after* the age of six months as an emergency measure are more likely to recover from their deprived background and catch up on their physical and cognitive development once they have been placed in a caring family environment.[24]

3.2. RECENT FINDINGS FROM "HARD" SCIENCE

For decades, institutional care establishments – particularly in Central and Eastern Europe – have tended to focus on physiological criteria and ignore or dismiss psychological factors, evidence of emotional and behavioural problems and troublesome sociological outcomes as "soft science". More recently, however, the levels of damage inflicted by institutional care, which had long been documented by social sciences, have been increasingly corroborated by the very sciences traditionally referred to as "hard". Damaging physiological effects of institutionalization have

[19] Goldfarb, W. (1945). Effects of psychological deprivation in infancy and subsequent stimulation. *American Journal of Psychiatry*, Vol. 102: 18-33.

[20] Bowlby J (1951). Maternal Care and Mental Health. Geneva: World Health Organization.

[21] Bowlby J (1969). *Attachment and Loss: Attachment.* New York: Basic Books.

[22] Browne, K. (2009). The Risk of Harm to Young Children in Institutional Care. London: Better Care Network and Save the Children, p.14.

[23] Rutter, M., English and Romanian Adoptees Study Team (1998). Developmental catch-up, and deficit, following adoption after severe global early privation. Journal of Child Psychology and Psychiatry, 39:465–476;Marcovitch, S., Goldberg, S., Gold, A., Washington. J., Wasson, C., Krekewich, K., Handley-Derry, M. (1997). Determinants of behavioural problems in Romanian children adopted in Ontario. International Journal of Behavioral Development, 20:17-31.

[24] Rutter, M., Op.Cit. Journal of Child Psychology and Psychiatry, 39:465–476; Marcovitch, S., Goldberg, S., Gold, A., Washington. J., Wasson, C., Krekewich, K., Handley-Derry, M. (1997). Op.Cit. International Journal of Behavioral Development, 20:17-31

been shown, for instance, in terms of general physical development of children in institutions as well as in terms of the development of their central nervous systems.

The Bucharest Early Intervention Project[25] compared the developmental capacities of children raised in large-scale institutions with non-institutionalized and fostered children. It took random samples of 208 children (with a mean age of 22 months) spread across these three care arrangements in Romania. It then followed their emotional, behavioural and cognitive development as well as brain activity and physical growth over several years. The findings were alarming. Compared with children raised at home or in foster families, institutionalized children were far more likely to have social and behavioural abnormalities such as disturbances and delays in social and emotional development, aggressive behaviour problems, inattention and hyperactivity, and a syndrome that mimics autism. In addition, however, they were far more physically stunted (for every 2.6 months spent in a Romanian orphanage, a child falls behind one month of normal growth) and they had significantly lower IQs and levels of brain activity. The effects were particularly pronounced in children who had entered institutions at a very young age.

In recent years, new evidence has appeared on the harmful neurobiological consequences of institutional care of young children. The overview of these findings[26] confirms earlier hypotheses by many researchers and clinicians that the quality of development of structures of the human brain is closely related with the quality of human relations in early childhood. Thus, an infant is born with some 100 billion neurons and each neuron forms about 15,000 synapses during the first few years of life.[27] The overabundance of synapses and neurons in the infant's brain allows it to adapt in response to the environment (neuroplasticity). Living and responsive environment contributes effectively to normal brain development as the quality of early experience determines the quantity and quality of neural pathways.[28]

An infant is genetically predisposed to respond to a caregiver who will respond to, talk to, and handle him or her in a sensitive way and introduce new stimuli in a manner that is safe, predictable, repetitive, gradual, and appropriate to the infant's stage of development.[29] Thus, the growth and development of the brain can be promoted by good quality of care and through secure attachment.

Conversely, the growth and development of the brain can be negatively affected by poor quality of relations and lack of stimulation. If the child is deprived of the supportive relationship with a primary caregiver the process of development of neural pathways is seriously affected. Emotional neglect, which is linked to institutional practice, constitutes the basis for chronic emotional deprivation of young children in institutional care and subsequent neurobiological consequences.[30] Indeed, it can cause regions of the brain to atrophy.[31]

Future research is likely to provide more evidence on exact correlations between quality of early relations and quality of brain functioning in the later stages of life. However, it is obvious from the research findings to date[32] that the first three years of life are the most sensitive period for brain development, and that continuous emotional relations with sensitive carers are crucial for normal

[25] Bucharest Early Intervention Project (2009). Caring for Orphaned, Abandoned and Maltreated Children, available from www.crin.org/docs/PPT%20BEIP%20Group.pdf

[26] Johnson, R. Browne, K. Hamilton-Giachritsis C. (2006). Young children in institutional care at risk of harm. Trauma, Violence and Abuse 7(1):1–26.

[27] Balbernie, R. (2001). Circuits and circumstances: the neurobiological consequences of early relationship experiences and how they shape later behaviour. Journal of Child Psychotherapy, 27(3):237–255.

[28] Ibid.

[29] Perry, B., Pollard, R. (1998). Homeostasis, stress, trauma and adaptation: A neurodevelopmental view of childhood trauma. *Child and Adolescent Clinics of North America*, *7*, 33-51.

[30] Giese, S., Dawes, A. (1999). Child care, developmental delay and institutional practice. *South African Journal of Psychology*, *29*(1): 17-22 Glaser, D. (2000). Child abuse and neglect and the brain – A review. *Journal of Child Psychology and Psychiatry*, 41(1): 97-116.

[31] Balbernie, R. (2001). Op.Cit. Journal of Child Psychotherapy, 27(3):237–255.

[32] Johnson, R. Browne, K. Hamilton-Giachritsis C. (2006). Op.Cit. Violence and Abuse 7(1):1–26.

development, while neglect in the early years of life adversely affects development and later functioning of brain. This is a key argument against placing young children in institutional care.

As mentioned above, there is evidence that the sooner the children are moved out of institutional care, the better their recovery. However, even in children who had been institutionalized for a relatively short time, brain mechanisms for social behaviour and attachments may be permanently affected,[33] leading to a greater probability of antisocial behaviour.[34]

3.3. BAD VS. "GOOD" INSTITUTIONS

There is also emerging – though still very incomplete – evidence of the prevalence of abject neglect and violence in institutional care. Children with disabilities are reported to suffer from physical neglect and violence even more than other institutionalized children. There have been many reports regarding residential institutions for young and older children in Europe of appalling physical conditions as well as of behaviour of staff amounting to cruel, inhuman and degrading treatment, or even torture during the 1990s and early 2000s. Numerous deaths of children from malnutrition or exposure, for example in cases recently investigated by the Bulgarian Prosecutor General. Although various forms of abuse and neglect undoubtedly exist within families, it does appear that the impersonal character of institutional care makes it likely to develop into systematic abuse rather than as an exception or individual failure.

Most of these reports, as well as most research findings on the effects of institutionalization, at least in the initial periods, have concerned children staying in poorly equipped institutions. This could (and sometimes still does) lead to the erroneous interpretation that all harmful effects would be eliminated if physical conditions in institutions were substantially improved. Indeed, many governments in the European region have reported improvement of conditions in such institutions, including in infant homes and other institutions for children under three years of age.

However, it needs to be emphasized that the improvement of conditions and hygiene does not solve the basic problem of the harmful effects of institutional care, especially in the cases of children below three or even children younger than five to eight years. While some factors can indeed be significantly improved (e.g. feeding practices and physical conditions which appear to have reduced mortality rates in Bulgarian "orphanages"), other key factors are intrinsic to institutional care, not only to "bad" or poorly equipped institutions. It is not just a question of adequate nutrition and heating, or the absence of open violence and physical neglect.

As demonstrated above, *emotional* neglect and the absence of key elements in the relationship with primary caregivers cause damage to children's development. These include continuity of care by a primary caregiver and close emotional relations, which are basic preconditions for the development of healthy attachment and trust in relations with other people in later stages of life. They cannot be secured in the institutional culture, despite all efforts to invest financial and human resources in those facilities.

Therefore, it is not surprising that even relatively well-run care institutions can have negative developmental effects on children. For example, the distress caused by being separated from parents and siblings can leave children with lasting psychological and behavioural problems. A lack of positive adult interaction from consistent carers can also limit children's ability to develop personal confidence and key social skills, including those necessary for positive parenting.[35]

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[33] Schore, A. (2001a). Effects of a secure attachment relationship on right brain development affect regulation and infant mental health. Infant Mental Health Journal, 22(1-2): 7–66.

[34] Glaser, D. (2000). Op.Cit. *Journal of Child Psychology and Psychiatry*, 41(1): 97-116; Schore, A. (2001a). Effects of a secure attachment relationship on right brain development affect regulation and infant mental health. *Infant Mental Health Jou*rnal, 22(1-2): 7–66 and 209-269.

[35] Rutter, M. et al. (2007). Early adolescent outcomes for institutionally deprived and non-deprived adoptees. 1: disinhibited attachment. Journal of Child Psychology and Psychiatry, 48 (1): 17–30.

3.4. SOCIAL CONSEQUENCES FOR INDIVIDUALS

Institutional care is contributing to creating "lost generations" of young people who are not able to fully integrate into society. Many children who enter institutional care at a young age suffer at later stages in life from serious failures in their social and emotional development. Those who experience severe physical and psychological violence in early childhood can struggle with lasting developmental problems, injuries and trauma. As care institutions are often cut off from communities, children are prevented from developing social networks essential for later life. This is usually reinforced by the stigma associated with having grown up in care.

All of these problems limit the life chances of children, especially of those who have spent their early childhood in institutional care. After years of following a structured routine in which they exercise very little choice, individuals who grew up in institutions may not know how to manage the everyday challenges of independent living. They are especially vulnerable to exploitation and abuse as they are less aware of their rights and accustomed to following instructions without question. They may be less able to develop social relationships. After years in institutional care, the lack of life options available to them makes them more prone to delinquent behaviour. They are also more likely to develop antisocial behaviour, attachment disorders, and to have serious difficulties in intimate relationships and in the role of parents. Research in Russia has shown that one in three children who leave residential care becomes homeless; one in five ends up with a criminal record; and in some cases as many as one in ten commits suicide.[36]

3.5. COSTS FOR SOCIETY

The harm caused to children from spending substantial parts of their childhood in care inevitably has consequences for society as a whole. The human, social and economic costs of denying children's right to live in a family environment are enormous. Direct and indirect costs may include possible lasting injury or disability, psychological costs or other effects on a person's quality of life, disruption or discontinuation of education, and productivity losses. They also include costs associated with the criminal justice system as a result of offences committed by children who have experienced institutional placement.

As concluded by Bilson,[37] the high numbers of children in State care has direct and hidden costs. International research shows that a high proportion of children growing up without parental care do not attain their potential in terms of education and life skills, thus failing to contribute to the economy and, worse, many go on to have serious problems exacerbated by their experience in care that require expensive State intervention into and throughout their adult lives. Generally, children leaving care are more likely to be dependent on the State and other service providers for their own well-being and survival.

Moreover, funding institutional care rather than the alternatives is misguided when the relative costs are considered. Analyses of children of all ages in Moldova, Romania, Russia, and Ukraine show that institutional care is six times more expensive than providing social services to vulnerable families or voluntary kinship carers; three times more expensive than professional foster care; and twice as expensive as community residential/small group homes.[38] Furthermore, analysis of data from 13 countries in Western and Central Europe demonstrated that institutional care was twice as expensive as foster care for young children with disabilities, and three times more expensive than foster care for young children without disabilities. This finding was independent of the level of spending on quality of care in each country.[39]

[36] Tobis, D. (2000). Moving from Residential Institutions to Community-Based Social Services in Central and Eastern Europe and the Former Soviet Union. Washington, D.C.: The World Bank, p.33

[37] Bilson A. (2010). The development of gate-keeping function in Central and Eastern Europe and the CIS. Lessons from Bulgaria, Kazakhstan, and Ukraine. University of Lancashire and UNICEF, preface, iv.

[38] Carter R (2005). Family Matters: A Study of Institutional Childcare in Central and Eastern Europe and the Former Soviet Union. London: EveryChild., p.34-35.

[39] Browne, K., Hamilton-Giacritsis, C.E., Johnson, R., Ostergren, M., Leth, I. M., Agathonos, H., Anaut, M., Herczog. M., Keller-Hamela, M., Klimakov, A., Stan, V., Zeytinoglu, S. (2005). A European Survey of the number and characteristics of children less than three in residential care at risk of harm. Adoption and Fostering, 29(4): 1-12.

4. PREVENTING AND ELIMINATING INSTITUTIONAL CARE

4.1. PREREQUISITES FOR SUCCESS

There is considerable experience accumulated across the European region in the field of supporting biological or substitute families. If this experience is implemented in a systemic and sustainable way and if both top-down and bottom-up approaches positively reinforce each other, then institutional care of young children will no longer be needed. There are countries in Europe which have proved that this is possible.

However, achieving this is not easy. Simplistic and reductionist solutions, which fail to apply the holistic approach to human rights of children, need to be avoided. There have been (and remain) many temptations to solve problems of child welfare and protection in ways that narrow the scope of the problem. Only complex solutions, based on a comprehensive human rights-based approach and scientific evidence, may be effective when addressing such a complex phenomenon as use and overuse of institutional care.

For comprehensive reforms to be successful, there are several necessary pre-conditions:

- independent monitoring;
- comprehensive system of data collection;
- involvement of NGOs and the rest of civil society as equal partners; intersectoral coordination; and governance, transparency and modern management of decision-making processes in all stages of transformation of services.

When monitoring the implementation of the CRC, the Committee on the Rights of the Child raises all these important issues. Only if there is an effective and transparent level of governance, with mechanisms securing transparency, independent monitoring, accountability and relations with civil society based on mutual trust, can positive outcomes be expected in management of specific issues such as family-support systems or services for children in alternative care.

There is a need for an open public discussion on important societal issues, such as effective ways of support for families and children, and to raise awareness on the basic needs of children with the focus on attachment, emotional bonding and the need to feel secure and to develop. Better understanding of all rights and needs of children among all stakeholders facilitates common agreement and leads to broad societal consensus on basic principles of investing in children and families.

4.2. SERVICES NEEDED TO SUPPORT FAMILIES

Universal services and resources

Services such as healthcare, education and community-based care should be available to all families, as laid down by (inter alia) the International Covenant on Economic, Social and Cultural Rights. Moreover, the Convention on the Rights of Persons with Disabilities explicitly stipulates that services for the general population should also be available to persons with disabilities and responsive to their needs.

Social services for families at risk or in need

These services may be preventive, supportive or rehabilitative, and should be based on an assessment of the child and her/his family situation. They should build on individual and community-based

resources. Programmes that support strengthening families include:[40]prevention programmes focusing on the family's coping abilities and its social and economic resources;

- community-based support such as child or respite care, and vocational training;
- in-home services where workers or volunteers provide guidance and support;
- family-centred community building, which brings together community leaders, families, volunteers and others to coordinate services that support and strengthen families; and
- parent education programmes.[41]

Income generation and economic support programmes

Programmes such as conditional or unconditional cash transfers, childcare grants, social pensions, tax benefits, subsidized food, fee waivers, microfinance, savings schemes, skills training, and other livelihood opportunities can have significant direct and indirect benefits for children. Evidence shows that where one person in a poor household receives additional financial assistance, other children in that household are more likely to be better cared for (e.g. to eat better, grow taller and go to school) and are less likely to do harmful work and be physically injured, abused or exploited.

Such measures are likely to increase family cohesion and functioning, reducing the numbers of children forced out of the home and onto the street or into institutions. Combining these economic and social programmes can help mitigate many of the most extreme risks for children and the need for alternative care. Their success will depend on key factors such as:[42] the degree to which children, parents, other caregivers and the general public are consulted; their ability to target the children and families most in need; a supportive and coherent legal and policy framework; trained staff and volunteers capable of supporting children and families and delivering programmes; and coordination across governmental agencies, services and professional groups.

Targeted care interventions

These include:[43] gatekeeping to ensure that only children whose families are unable or unwilling, even with support, to care for their children, are admitted into alternative care;

- care planning to enable children to be placed appropriately and to return home where possible;
- home-visiting services to provide parenting support, referrals for services, advice and information;
- child-protection services to prevent and respond to risks to children;
- psychological and social support to children and families to help them overcome personal and interpersonal problems;
- prenatal and parenting education, including for carers of children with special needs;
- drug and alcohol abuse prevention and response services for children and parents;

[40] Save the Children, Family Strengthening and Support: Policy Brief (2010). Available from http://www.crin.org/docs/Family_Strengthening_Final_Sept_2010__3_.pdf.

[41] Ibid. p.3.

[42] Ibid, p.3.

[43] Save the Children (2009). Keeping children out of harmful institutions. Why we should be investing in family-based care. London, p.14

- integrated services for children and families with disabilities or illness, including families with parents who have mental disorders or disabilities;
- advocacy and legal support to vulnerable families to ensure that children have birth certificates and are accessing basic services;
- family tracing and reunification services, particularly in areas affected by conflict or natural disaster, and where children are living on the streets or in institutions; and broader family strengthening activities.

Many of the services provided under the headings of "community development" or "basic services" can be included within this category. Family strengthening should be accompanied by support for community-based monitoring and response mechanisms, to help identify vulnerable children and intervene where necessary. Activities include:[44] ensuring that children have access to formal and non-formal education;

- tackling stigma, discrimination and social exclusion that can lead to neglect, abuse and abandonment;
- ensuring that children and their families have access to healthcare, including treatment for HIV and AIDS;
- raising awareness of children's rights and child protection issues with children, families and other adults;
- providing day-care facilities and out-of-school activities (including during weekends and holidays), to give parents time to earn a living;
- developing community-based child-protection committees and children's clubs, to help support vulnerable families and identify children at risk;
- supporting the material needs of the family;
- empowering and involving parents and the extended family members; and strengthening the economic capacity of the family.

4.3. FAMILY-BASED CARE ALTERNATIVES

Even if preventive services for families with children exist, some children will not be able to be cared for and protected within their own families. If children are separated from biological families, effective services need to be developed to find a substitute family, through support of extended-family/kinship care, foster families and an in-country adoption process.

Even more importantly than for older children, family-based care for young children that is well monitored and supported is recognized as the best form of alternative care. It avoids risks of harmful institutionalization, and potentially offers the continuity of individual care and love from a parent figure and opportunities to experience family and community life. Living in a family will make it possible for the child to develop in a healthy way and many problems of development will be prevented. As already noted, the benefits of family-based care alternatives are recognized in the CRC and in the UN Guidelines on the Alternative Care of Children.

[44] Ibid, p.14

All forms of alternative care are not without risk, and need to be supported in their development by the State in a sustainable and sensitive manner in order to ensure that they are effective, safe, and prioritize the best interests of the child.

Building family-based care options requires the development of comprehensive systems and services such as:[45]

- selected and trained substitute families;
- legal, policy and procedural frameworks to ensure effective gatekeeping, and to clarify the roles and responsibilities of the carer and the State minimum standards and care planning, monitoring and inspection services;
- social protection mechanisms to ensure that the substitute family has the financial means to provide for the child;
- technical and social support to ensure that the child is cared for and protected;
- sufficient professional social work staff to support the child, substitute caregiver, and the child's biological parents;
- campaigning and awareness raising to ensure public support for family-based care at every level; and
- providing the resources required for supplementary care with regular quality supervision, vocational training and backup services, including respite care.

To minimize possible failures in parenting, the State must ensure that substitute families receive all the assistance they require to adequately care for the child. Extended family care and foster care are the most recommended options, especially because reunification with the biological family is one of the top priorities. If reunification is not possible, in-country adoption may be recommended, while international adoptions should be seen as a last resort.

5. PREVALENCE OF INSTITUTIONALIZATION AND OBSTACLES TO CHANGE

5.1. OVERVIEW OF AVAILABLE DATA

If relevant international human rights standards and authoritative recommendations from human rights mechanisms, of contemporary research on child development, and the overwhelming experience from real life all point in one direction, namely that institutional care of children under three years should be replaced by family-based care, then what prevents policies from moving swiftly in this direction and why has there been such slow progress in this field?

The reality is divergent – not just on a global scale, but also among the Member States of the European Union. There are huge methodological differences and confusion with definitions, as well as problems with data collection. Nonetheless, several surveys carried out in the last 10 years have been helpful in recognizing the extent of institutional placement of young children and its wide diversity across Europe and within the EU.

In 2003, a project conducted within the European Commission's Daphne Programme surveyed 33 European countries (i.e. broader than the EU, but excluding the Russian-speaking States) to

[45] Ibid, p.17.

map the number and characteristics of children less than three years old in institutional care for more than three months without a parent.[46] The study found that 23,099 young children (out of an overall population of 20.6 million children under the age of three) had spent more than three months in institutions. This represented 11 children in every 10,000 under three years of age in residential institutions. However, the figures varied enormously between the different countries:

- four countries had none or less than 1 per 10,000 children under three in institutions - Iceland, Norway, Slovenia and the United Kingdom all had a policy to provide foster care rather than institutional homes for all needy young children under the age of five;
- 12 countries had between 1 and 10 children under three per 10,000 in institutions;
- seven countries had between 10 and 30 children under three per 10,000 in institutions; and
- eight countries had between 31 and 60 children per 10,000 under three in institutional care.

Of most concern, according to the project, were the 15 countries forming the last two categories. In 2003, these were Belgium, Bulgaria, the Czech Republic and Latvia, with more than 50 per 10,000; Hungary, Lithuania, Romania and the Slovak Republic with more than 30 per 10,000; Estonia, Finland, Malta and Spain, with more than 20 per 10,000; and France, the Netherlands, and Portugal with more than 10 per 10,000.

Another 2003 survey using official statistics from 27 countries in Central and Eastern Europe and the former Soviet Union showed that most Russian-speaking European countries and countries in Central Asia had at least 20 children in every 10,000 under three years in "children's homes".[47] There was an overlap in the two surveys, and a strong correlation was found for the number of young children resident in children's homes between the 11 countries that appeared in both surveys.[48] This suggests that, although difficulties exist when collecting such information, reasonable estimates can be made and the data can be considered reliable enough to inform policy and practice.

Browne et al. (2006) averaged the official data from both surveys and estimated the total number of children under three in institutional care for 47 out of the 52 countries (90.4%) in the WHO European and Central Asian regions.[49] The five countries with no data for 2003 were Israel, Luxembourg (later estimated to be 12 per 10,000 under three), Monaco, San Marino and Switzerland. It was calculated that 43,842 young children from a population of 30.5 million in the category under three years of age (14.4 per 10,000) were in residential care homes without parents. The greatest numbers were found in Russia (10,411), Romania (4,564), and Ukraine (3,210).

The UNICEF TransMONEE database indicates that at the end of 2008 there were 33,100 children in infant homes in 19 States providing figures. Compared with older children in institutional care these numbers may not seem to be significant. However, many of these infants, as a consequence of such a start to their lives, will suffer from further institutionalization, violence, problems related to physical and mental health, cognitive, emotional and social development. Research now confirms

[46] Browne, K. et al. (2004). Mapping the Number and Characteristics of Children Under Three in Institutions Across Europe at Risk of Harm. European Union Daphne Programme. Final Project Report No. 2002/017/C, Publication 26951. Birmingham, University of Birmingham.; Browne, K., Hamilton-Giacritsis, C.E., Johnson, R., Ostergren, M., Leth, I. M., Agathonos, H., Anaut, M., Herczog. M., Keller-Hamela, M., Klimakov, A., Stan, V., Zeytinoglu, S. (2005). A European Survey of the number and characteristics of children less than three in residential care at risk of harm. Adoption and Fostering, 29(4): 1-12

[47] UNICEF (2004). Innocenti Social Monitor. The Monee Project. Florence, Innocenti Research Centre.

[48] Browne, K., Hamilton-Giachritis, C.E., Johnson, R. and Ostergren, M. (2006). Overuse of institutional care for children in Europe. British Medical Journal, 332: 485-487 (25/02/06).

[49] Ibid.

that this harm is due to the child's experience of even relatively short stays in these institutions at key developmental periods; it is not due to genetic factors or poor nutrition during pregnancy.[50]

More recently, a study of available evidence from EU Member States by Eurochild, based on input from national-level NGOs,[51] also showed strong differences between the degrees of placement of children – not only in the age category under three years – in institutional care across Europe, with particularly high numbers in Central and Eastern Europe.

5.2. THE SUB-REGIONAL DIMENSION

Western Europe

In a number of countries of Western Europe, the dominant policies since the end of World War II have followed the development of research on this issue and have largely reflected the paradigm change which was subsequently expressed in the CRC and in the UN Guidelines. From the 1960s and 1970s onwards, the attachment theory and the findings of Bowlby and his school have been increasingly taken into account by policymakers, professionals and the public at large.

While it may be said that this trend emerged in the United Kingdom, it quickly found an echo in a number of other countries of Northern and Western Europe, leading to a decline in the use of institutional care or large children's homes. In a number of these countries, the placement of children (particularly those under the age of three) in institutional care happens, if at all, only as an emergency measure, with most cases being motivated by the need to prevent harm and abuse to the child.

Apart from research on child development as such, there were also other influences on State policies. The decline in recourse to institutional care was often mirrored by a similar re-orientation from institutional to community-based care (de-institutionalization) for other vulnerable groups, e.g. persons with intellectual and psychosocial disabilities. Examples include Sweden, which entirely dismantled its system of institutional care for persons with disabilities over a period of three decades, and Italy, which developed its own policy of de-institutionalization in areas ranging from childcare to mental healthcare.

However, even among Western European States there are significant differences, with some still having a high or relatively high prevalence of institutional care of children in this age category. As indicated in the studies above, in 2003 these countries included Belgium, Finland, France, the Netherlands, Portugal, and Spain.

Central and Eastern Europe

In Central and Eastern Europe, childcare policy has tended to be less influenced by the writings of Bowlby and his school, and there has been less emphasis on meeting the psychosocial needs of children. Instead, the emphasis has continued to be placed on physiological needs and on controlling the physical environment. This approach, consequently, has been detrimental to the development of family-support services and substitute parenting, such as foster care and adoption, leading instead to continued reliance on residential institutions (Browne, 2002).

Most post-Communist countries of Central and Eastern Europe have largely maintained both the system of large-scale residential institutions for children of all ages and the overall approach which had dominated in West Europe until the 1950s–1970s, an approach which could be described as "before Bowlby". In this perspective, placement of children (including those under three years of age) into alternative care is society's response to factors such as family poverty, disability and lack of parental skills rather than a measure of protection from individual abuse. Again,

[50] Nelson, C.A., Zeanah, C.H., Fox, N.A. et al. (2007). Cognitive recovery in socially deprived young children: The Bucharest Early Intervention Project. Science, 318 (5838): 1937-1940.

[51] Eurochild. *National Surveys on Children in alternative care. Executive summary (2009).* Available from http://www.eurochild.org/fileadmin/user_upload/Publications/Eurochild_Reports/FINAL_EXEC_SUMMARY.pdf

there are exceptions such as Slovenia, which is among the countries with the lowest numbers of children under three in institutions. Some other EU Member States in Central and Eastern Europe (e.g. Poland, Romania or Slovakia) have reported recently to have made progress in reducing the numbers of young children in institutional care, but, in general, overuse of institutional care remains alarming in most countries of Central and Eastern Europe, as shown also by the UNICEF report, At Home or In a Home?

The report – and other reliable sources – make the case that in a number of Central and Eastern European countries, there have been insufficient changes in childcare over the past 20 years. Indeed, the study suggests that, despite governments' declared engagement in reforms and positive GDP growth in the same period, the numbers of children in institutions have remained fairly stable, which means that (given the lower overall numbers of children in respective age cohorts), the rate at which children are separated from their families has in fact continued to increase. Although this report focuses on Eastern Europe (it covers only two new EU Member States – Bulgaria and Romania) and although it explores the extent and reasons for institutional care of children in all age groups, much light is shed on the situation with institutionalization of young children. Thus, absolute numbers of children under three years of age in institutional care have remained alarmingly high in many countries such as Bulgaria, Russia, Ukraine, and Kazakhstan. During the first decade of the 21st century, there was no significant decline in these numbers in most countries of Eastern Europe. Furthermore, the UNICEF report reveals that throughout the region, children with disabilities represent a large proportion of children in residential care.

5.3. THE WAY AHEAD

How can the countries of Central and Eastern Europe (or other countries concerned) make the transition from relying on residential institutions to developing family-based models of care? Based on the review of successful strategies in both developed and transition countries, one strategy was proposed that included the following elements:

- Developing models of alternative care to demonstrate that the new approach works.
- Changing public opinion and mobilizing community support around the new approach.
- Creating a national social welfare infrastructure and training all key social service professionals in the new approach.
- Scaling up pilot projects by changing the legislation on classification, placement, and rights while developing new funding streams and monitoring systems and closing or converting existing institutions.[52]

Mulheir et al. (2007) suggest 10 basic steps as a country aspires to move towards the development of family-type care:

Step 1: *Raising awareness of the harmful effects of institutional care on young children and their development.*

Step 2: *Managing the process. The establishment of an effective multi-sector project management team (at national and regional levels) to pilot projects in one or more areas or institutions.*

Step 3: *Country-level audit. To audit the nature and extent of institutions for residential care of children nationally and to measure the number and characteristics of children who live in them.*

[52] Tobis, D. (2000). Op.Cit. Washington, D.C.: The World Bank, foreword, v.

Step 4: *Analysis at institution level. Data collection and analysis within an institution of admissions, discharges and length of stay of children and an assessment of individual needs of the children in residence.*

Step 5: *Design of alternative services, based on individual needs of children and an assessment of family based services currently available (e.g. mother-baby unit for infants at risk of abandonment) and those new services that need to be developed (e.g. day care and foster care services for children with disabilities).*

Step 6: *Plan transfer of resources. Management plan and practical mechanism for the transfer of resources - financial, human, and capital. Finances should always follow the child.*

Step 7: *Preparing and moving children. Preparing and moving children on the basis of their individual needs and treatment plans. Matching these needs and plans to the new placement and the capacity of the new carers. Transfer procedures need to respect the rights of the child and always be in their best interest.*

Step 8: *Preparing and moving staff by assessing staff skills, staff training needs and staff expectations in relation to the new demands of transformed services for children.*

Step 9: *Logistics. Carefully considering logistics to scale up a successful pilot project involving one institution or one region, to a national strategic plan.*

Step 10: *Monitoring and evaluation. Setting up a national database of children in public care to monitor and support the transfer of children from institutional care to family-based care. This involves health and social service staff making home visits to families with de-institutionalized or newly placed children to assess, monitor and evaluate the treatment plans and optimal development of the children.*[53]

While it is urgent to reduce the numbers of children in institutions and move them to more appropriate family placements, abrupt relocation to unfamiliar carers (without community health and social services to support families and carers) can result in placement breakdown and further damage the children (Parker et al., 1990). Therefore, it is essential to adopt gradual and sensitive approaches, focused on the process of attachment, and to develop guidelines which protect the rights of the child during the process.

Also, proper management of the process of change is needed to avoid a typical "stalemate" situation experienced in a number of CEE countries today, namely, the absence of high-quality alternative services focused on family support being used as an excuse for making further investments in institutional care - although it is obvious that this weakness of alternative services is a direct consequence of the lack of political will to implement systemic changes and of decades of a clear preference for funding of institutional forms of care.

[53] Mulheir, G. et al. (2007). De-institutionalising and Transforming Children's Services: A Guide to Good Practice. Birmingham: University of Birmingham, p.140-143.

6. ANALYSIS OF THE KEY CHALLENGES IN OVERCOMING THE LEGACY OF INSTITUTIONAL CARE OF CHILDREN UNDER THREE YEARS OF AGE ACROSS THE EUROPEAN REGION

6.1. GENERAL COMMENT ON THE EXTENT AND CONTEXT OF THE CHALLENGES

An overview and analysis of the situation in Bulgaria, the Czech Republic, Hungary, Italy, Lithuania, Slovakia, and Ukraine can be found on the website of the ROE OHCHR.[54] It reveals that progress in many European countries is too slow – indeed, with apparent regression in some. This indicates that pitfalls and misunderstandings still exist at different levels of the complex process. It is of the utmost importance to identify all factors which continue to create powerful incentives for institutionalization of young children, thereby reinforcing vicious circles and learned helplessness among many policymakers, professionals and parents.

While many good practices have been identified in many countries of Europe, including in the CEE countries, they often remain fragmented and lack sustainable support from governments. This is one possible explanation why there is no critical mass of innovative programmes and services in many CEE countries: these efforts to carry out reforms still too often fail to break the vicious circle of outdated attitudes and ineffective solutions feeding the phenomenon of the institutional placement of children.

6.2. BASIC HUMAN RIGHTS PRINCIPLES: NOT FULLY UNDERSTOOD; NO POLITICAL WILL

It was expected in the early 1990s that the 29 new democracies which emerged in Central and Eastern Europe would enthusiastically follow the same pathways as in other parts of Europe.[55] However, initial euphoria was followed by more cautious assessments and the understanding that the process of societal change in this region was confronted by serious obstacles of a different nature.

These challenges and obstacles have been well reflected in the process of monitoring of the implementation of the CRC and in the Concluding Observations on State Party reports. After all the new UN Member States in Central and Eastern Europe had ratified the CRC, the Committee on the Rights of the Child recommended that most of them should strengthen good relations with civil society and develop, as a priority, community-based and family-focused services to reduce and eliminate heavy reliance on institutional care. Despite some progress, the Committee subsequently observed that in many countries the same concerns remained, and that it needed to reiterate them and make recommendations. State Party reports have often been focused more on the strengths developed by the former system (such as positive indicators of mortality, immunization and enrolment in education of infants and children under five years of age), while issues related to family-support services and prevention of institutional care were often reported with reluctance and lack of self-critical analysis. In some reports, especially from the countries of Eastern Europe that were formerly part of the Soviet Union, a systemic message emerged that institutional care of children was considered to be an appropriate and necessary form of protection, and an adequate response to cases where children are abandoned by their parents in high numbers. Meanwhile, the Committee was receiving alternative reports from the emerging NGO sector from many countries in the region which cast a different light on the general picture. Numerous pilot projects, replicating best practices from other parts of the world, were enthusiastically introduced by NGOs, very often with the support of international donors. Unfortunately, these initiatives were not always backed by national and local authorities, thus threatening sustainability and

[54] http://europe.ohchr.org/EN/Publications/Pages/Publications.aspx

[55] Dahrendorf R. (1990). Reflections on the Revolution in Europe. London: TimesBooks.

creating a paradox of parallel systems, where government officials refer to State-owned, rather than NGO-run services, as those in need of priority funding.

Public debate on the issue of human rights is urgently required, even if this is very difficult to achieve. In many CEE countries, particularly those on the territory of the former Soviet Union, human rights principles, when applied in practice, are met with reluctance or resistance by large parts of the population, especially where the civil rights of vulnerable groups are concerned. One of the biggest misunderstandings is the tendency to see human rights and child-rights principles as rules imported from (or even imposed by) Western societies and cultures.

The principle that all human rights are equally important and indivisible, as well as the right of children to holistic development, and the key message that children are owners and subjects of their own rights has not been fully understood and implemented in many Eastern European countries. The human rights of young children are still difficult to accept for many, including healthcare professionals, after years of different value systems that dominated in medical practice.

The framework and legislative background of modern child rights and human rights need to be more convincingly interpreted so that the principles enshrined in the CRC, CRPD, and the UN Guidelines on Children in Alternative Care leave no space for flexible interpretation of Article 20 of the CRC, which refers to institutional care as the last option, with the wording "if necessary, placement in suitable institutions for the care of children". This wording is often misused as an excuse for the lack of political will to develop a full spectrum of effective alternatives to institutional care, so that the exception too often turns into a rule. The fact that thousands of young children are placed in institutional care each year in many European countries is a clear signal that human rights principles are still poorly understood by major stakeholders, including policymakers, in a large part of Europe, including the EU countries.

6.3. A SYSTEMIC VICIOUS CIRCLE

Lack of self-reflection and self-critical analysis, an inherited culture of avoiding transparency, a lack of understanding of the value of independent expertise and a reluctance to develop independent monitoring mechanisms lead to further ineffective investments in the infrastructure of services.

Economic growth in many countries of the CEE region has not been followed by investments in services based on human rights and social inclusion. The civil rights of vulnerable groups, including persons with disabilities, children and parents representing vulnerable groups of populations, have not been among the priorities of main political parties and governments. Even more alarmingly and ironically, intolerance for many vulnerable groups emerged as one of the unexpected "faces" of the CEE region, as if these nations had forgotten that they themselves had suffered for many decades from neglect of civil and political rights as whole populations. These tendencies to "sacrifice" civil rights of vulnerable groups, including parents who lack parenting skills and children with or without disabilities, sent a message from the electorate to policymakers that there was no urgent need to address issues such as high rates of children in institutional care. Thus, a vicious circle of outdated attitudes, a culture of violence, helplessness and dependency, ineffective investments - all reinforcing each other - emerged and can still be traced in countries which have not managed to reduce significantly numbers of young children in institutional care.

Around the turn of the 21st century, research began to appear showing that dependency on institutional care and other patterns of learned helplessness, ineffective investments and poor governance of systems was a possible serious systemic problem in large parts of Europe. Heavy reliance on institutional culture appeared to be a major symptom of this vicious circle, along with epidemics of intolerance towards many vulnerable groups. Commentators have described an unprecedented crisis of mortality and morbidity in some former Communist countries, with four million "unplanned" deaths in 1990–2000 and many more lives having regressed in quality

with the deteriorating status of physical and mental health and well-being.[56] The main risk factor for this public-health crisis appears to have been the unhealthy response of a large portion of the population to prolonged and unexpected societal stress in the new environment of an open society and the free market.

The response from most governments to this unprecedented crisis was rarely pro-active, and not particularly effective. Indeed, the vicious circle was further reinforced by weak responses and continued investment in traditional budget lines despite priorities changing dramatically.

Lack of social capital

By the end of the first and the beginning of the second decade of transition there was increasing knowledge in the CEE region of obstacles and challenges regarding human relations and governance at different levels in society. It was clear that the new European democracies had adequate physical and human capital. However, what was missing, was positive social capital,[57] a sense of coherence, social cohesion and social inclusiveness,[58] trust in relations and sense of citizenship,[59] critical analytical studies of the prevailing governance methods, and participatory involvement of citizens.[60] This "missing chain" may be one of the explanations for the relative failure of CEE countries to use the opportunity of societal transition and economic growth as a historic opportunity. The vicious circle of learned helplessness and poor governance, both reinforcing each other, resulted in high levels of destructive and self-destructive behaviour (including domestic violence, heavy drinking, child abuse and neglect) and, on the other hand, a lack of mature evidence-based policies in health, social welfare and child-protection policies, with little transparency and high levels of corruption.

Similar mechanisms reinforce the vicious circles if a critical mass of programmes and services is not reached; efficient demonstration projects/services, often funded by international donors, however, remain the exception, while governments fund traditional infrastructure, such as the system of residential institutions.

6.4. SERVICES: THE NEED FOR A PARADIGM SHIFT

As regards the formulation, development and implementation of **family support and child-protection policies and services,** there still remain huge gaps and problems in terms of quantity, quality and philosophy, when providing essential services, such as healthcare and social services intended to support both biological and substitute parents. Healthcare services and family-support services require adequate numbers of well-trained social workers and other professionals, with skills and knowledge in the area of human relations. In this context the phenomenon of "abandonment" and misuse of its popular interpretation, based on prevailing views that children are first and foremost objects of charity and victims suffering from their irresponsible and incapable parents, needs to be seriously reconsidered by all stakeholders.

If human and financial resources are invested in the system of services based on the philosophy that "the State is a better parent", it will only reinforce the still strong tradition of helplessness and social exclusion. This is why the main goal of transforming the system is not just to strengthen in quantity the still very limited community-based and family-focused services, but to change the philosophy so that qualified professional support is provided for families to prevent separation and to empower biological families to become more competent in their parenting capacities.

[56] Cornia, G.A., Paniccia, R. (2000). The Transition Mortality Crisis: Evidence, Interpretation and Policy Responses. In: Cornia, G.A., Paniccia, R. (Eds.), The Mortality Crisis in Transitional Economies. Oxford: Oxford University Press, 337.

[57] Paldam, M., Svendsen, G. (2000). Missing Social Capital and the Transition in Eastern Europe. Working papers 00-5, University of Aarhus, Aarhus School of Business, Department of Economics.

[58] Rutz, W. (2001). Mental health in Europe: Problems, advances and challenges. Acta Psychiatrica Scandinavica, 104 (suppl. 410): 15-20.

[59] Kickbusch, (2004) *Citizen's rights and community mobilization*. In: Health Systems in Transition: Learning from Experience, Figueras M., McKee M., Cain J., Lessof S. (Eds.). Geneva, World Health Organization, 123-124.

[60] Tomov, D., (2001) Mental Health Reforms in Eastern Europe. Acta Psychiatrica Scandinavica, 104 (suppl. 410), 21-26.

Development of family-support and child-protection services

Despite the end of the Cold War and the fall of communism, cooperation between eastern and western parts of Europe has been fraught with challenges in the theoretical understanding of children's needs. For example, most of Eastern Europe was unfamiliar with Bowlby's "attachment theory". Eastern European experts had developed theories which basically ignored the emotional needs of human beings. For example, Soviet psychiatry and child psychiatry developed on the basis of an ideological statement that psychosocial risk factors no longer existed in Soviet society. Soviet paediatrics ignored the developmental and behavioural components of paediatrics, creating a large gap in provision of services for children and their parents. This theoretical orientation led to the excessive medicalization of healthcare services and related fields and to maintenance and use of residential institutions to address the needs of children in adversity, rather than professionally supporting parents at risk of social and emotional problems and contributing to development of substitute parenting (foster care and adoption).

The importance of attachment theory to highlight the limitations and negative consequences of institutionalization of children cannot be overestimated. However, it should be kept in mind that several generations in former communist countries were isolated from modern psychology, with its insights into the nature and practice of human behaviour and human relations and how to professionally prevent these relations from going wrong. There is evidence that this gap has not been adequately filled. The time is yet to come when routine health check-ups will include the emotional development of the child, the state of his/her emotional relations with the primary caregiver, and education of professionals such as medical doctors will include, as obligatory knowledge and skills, holistic development of the child and effective psychosocial interventions to promote the emotional well-being of children and parents.

Browne et al[61] found different reasons for young children being taken into institutional care in economically developed countries within the then 15 EU Member States in 2003, compared with EU accession countries that were in economic transition at the time. In "old" Member States, the vast majority of children (69%) were placed in residential care because of abuse and neglect, 4% due to abandonment, 4% because of disability and 23% for social reasons, such as family ill-health or parents in prison. No biological orphans (i.e. without living parents) were placed in institutions. By contrast, in CEE countries (then EU accession countries) reasons for children under three years of age being placed in residential care were different. Only 14% were placed in institutions due to abuse or neglect, 32% were abandoned, 23% had a disability, 25% were "social orphans" (placed because of family ill-health and incapacity) and 6% were true biological orphans.[62]

This important finding also means that most children in CEE countries are placed in institutional care not because of the need to protect them from abuse, but because of difficulties parents face with lack of support. Nevertheless, in many countries in CEE, both professionals and policymakers still tend to blame bad parenting. This culture of finding scapegoats and of demonizing "bad parents" is one of the major contextual obstacles to be addressed. All professionals trained to work in human services should have sufficient skills and knowledge to manage complex cases – clinically, ethically and from a management perspective. The basic understanding behind this training and functioning of the whole system is that blaming parents is counterproductive, and that, in the best interests of children, the parents at risk should be professionally supported to become more competent as parents.

Not surprisingly, the most unsuccessful component in developing the spectrum of obligatory services is that of support services for biological parents after the child has been placed in alternative out-of-home care. The idea of returning children to biological families is still very unpopular among

[61] Browne, K.D., Hamilton-Giacritsis, C.E., Johnson, R., Chou, S.
(2005). Op.Cit. EarlyChildhood Matters, 105: 15–18.

[62] Browne, K. et al. (2004). Op.Cit. Final Project Report No. 2002/017/C, Publication 26951. Birmingham, University of Birmingham.

major stakeholders, including the staff of child-protection services and the general public in many countries of the CEE region.

Development of healthcare services

Maternity wards appear to be the place where a decision is made whether a new-born child will stay with its mother or be abandoned by her. A discussion has been raised in recent years by UNICEF and many experts on the nature of abandonment and whether this word correctly reflects what usually happens. In the CEE region medical doctors and other healthcare professionals actively or passively contribute to the process of separating children from their biological parents. In its recent report UNICEF (2011) rightly raises the question that "abandonment" is a misleading term in this respect and, instead, the term "relinquishment" should be used.

The role of healthcare services in protecting and promoting the rights of children has been and remains controversial in many parts of Europe. In CEE countries the paradox is that while many important public-health indicators have been and remain good or even very good (e.g. immunization, infant mortality), other fields such as children with disabilities, child mental health, healthcare policies and services, are still subject to a culture of social exclusion, stigma and a superficial biomedical model. It is obvious that the biomedical model is not wrong per se; however, if this model does not involve human rights and child-rights principles, human rights violations may ensue. There remains a serious challenge within the healthcare sector to overcome the legacy of excessive medicalization of healthcare services and to effectively introduce modern public-health approaches and address social determinants of health.

Stigma and discrimination need to be addressed through changes in medical education and through the introduction of best practices in healthcare services. One major component is the need to strengthen partnership between professionals and parents (for example, when managing an early intervention plan for a child with a developmental disability) and to find an effective role for healthcare services in the social model of disabilities promoted by the CRPD.

It is a well-known fact that prenatal and post-partum treatment and support are keys to mother-child bonding and the development of positive parental skills and experience. The ongoing health system reforms in the CEE need to introduce more integrated approaches on early childhood development to empower parents to take care of their own children, rather than encouraging them to hand them over to State care.

Changes in healthcare policies are needed to address social determinants of health and develop modern public-health approaches, through sustainable preventive programmes and primary care, supporting developmental paediatrics as an obligatory sub-specialty of paediatrics. All healthcare professionals, especially those working with families before, during and after the birth of the child, need to be trained and possess sufficient skills and knowledge to professionally support families. Training should include ethical, managerial and psychosocial issues.

Another important observation concerns the disproportion in healthcare services regarding the different levels of importance attributed to physical health development and to mental health, emotional well-being and emotional and social development. The legacy of Soviet healthcare, including both curative and hygiene components, did not address mental health issues broadly speaking as an aspect of health and development, but just as a disease. The Soviet mental healthcare system was well-known for human rights abuses, and primitive biomedical approaches in management of mental disorders of adults and children, while the doctrine of hygiene was excessively focused on the physical environment and prevention of infectious diseases, with a total neglect of issues such as public mental health and emotional well-being. During the two decades of transition, despite many attempts to introduce modern public mental-health concepts, mental-health services remain under the control of representatives of the biomedical model and stigmatized psychiatric institutions. The reasons for this are:

- It remains a rule, rather than an exception, that children who are born to parents (particularly mothers) with a diagnosed mental disorder are separated from such parents. This is a typical example of "common sense" being guided by stigma and myths about such parents being socially dangerous and incompetent to raise their children.

- Most family support services suffer from simplified approaches and lack of training of professionals in the field of human relations.

- The introduction of programmes promoting emotional literacy and constructive management of feelings for young parents and future parents (including children as future parents) is lacking but could be achieved through cost-effective and non-sophisticated home visiting programmes. To date, few countries in the CEE region have begun to invest in a sustainable way in such programmes.

- The emotional needs of young children are not adequately addressed in formulating and implementing of childcare policies and services. The physical environment, with a particular focus on preventing children from getting dirty, has been the dominant preoccupation for numerous public-health agencies throughout the region. Paradoxically, this disproportionate focus on the sterility of the physical environment has created a problem for the emotional well-being and mental health of vulnerable children. Lack of effective interventions aimed at promoting the mental health of both parents and children is a huge systemic gap which needs to be addressed at the highest political level. The European Pact for Mental Health and Well-Being,[63] has included, among other priorities, the promotion of child and youth mental health and the promotion of parenting skills. However, the response by many governments to this European Commission initiative has been vague.

- Huge problems have accumulated in addressing the problems of children and adults with intellectual and other developmental disabilities. This issue, which has been raised and investigated in depth in a 2011 European Report,[64] is discussed below.

Development of services for children with disabilities

Although there are many innovative community-based services, usually initiated and provided by NGOs, many children with disabilities are still accommodated in large residential institutions, with their basic rights systematically violated. It is still a common medical practice (though not a rule, as it was two decades ago) to convince parents that "in their best interests" they should abandon a child with a disability, even if it is not in the child's best interests.

In the Soviet system, children with developmental disabilities (except for those with mild intellectual disability) were assumed to have no prospects at all. This value system has infiltrated practices of all services, including healthcare practices which should by their mission be especially supportive of the most suffering citizens. For instance, competent doctors were supposed to convince parents to abandon their children in cases of a developmental disability (such as, for example, Down's syndrome). Behind this approach was the idea that normal parents with their normal children have the right to live a normal life and should not be disturbed by the existence of children born with a disability, while the rights of children with a disability to live with the family were not taken into account as they were not considered able to perceive any difference in where they were living.

This indicates that a serious question should be raised whether governments in countries where there is an overuse of institutional care of children with disabilities fulfil their duties in adequately supporting families so that the worst scenario for all (child, the parents and the state) – that of institutionalization – can be avoided.

[63] European Commission,'European Pact for Mental Health and Well-being', (Brussels, 12-13 June 2008). Available from http://ec.europa.eu/health/ph_determinants/life_style/mental/docs/pact_en.pdf .

[64] Latimier C.,and Šiška J., Children's Rights for all! Implementation of the UN Convention on the Rights of the Child for Children with Intellectual Disabilities (Brussels, Inclusion Europe, 2011). Available from http://www.childrights4all.eu/.

Intellectual disabilities and autism are the most prevalent forms of disability among children. The initiative of the WHO European Office, which resulted in the endorsement of the European Declaration on Health of Children and Young Adults with Intellectual Disabilities and their Families, deserves the most positive response.The healthcare sector has a moral obligation to eliminate these practices and the values behind them, and to contribute to the development of modern early intervention services for children with intellectual disabilities and their families.

It may be argued that the role of healthcare services should be somewhat limited in the light of the modern idea of promoting a social model of disabilities – particularly in the case of developmental disabilities, which should not be medicalized. Indeed, the education sector needs to take the lead in coordination, as all children with disabilities should have access to education. However, the best practices from the CEE countries and from other European countries indicate that the healthcare sector can and should play a vital role during early childhood in the case of developmental disabilities. As parents of all children make use of primary healthcare and paediatric services, it is important that early intervention services be developed as close as possible to mainstream general and child healthcare services, in order to provide infants and young children with developmental disabilities with all they need for a good start in life.

The dynamic created by the "medical model" versus "social model" discussion of disability is part of a wider dialogue, that of charity versus human rights. The charity approach has long held sway and has framed persons with impairments or functional limitations as unfortunates who must rely on the support of families and the kindness of the community or State. But persons with disabilities have the same rights as any individual, and in order to have their rights realized, may need different but equalizing treatment in society. In this scenario, these persons claim not so much support as entitlements. The "social welfare" approach that characterizes many modern States is, arguably, a transition between these two philosophical approaches.[65]

The experience of many countries indicates that the involvement of parents of children with disabilities is a crucial precondition for the development of modern services. Organizations of parents, if they are empowered and supported by governments, become powerful and constructive partners in changing the system. There are many examples in CEE of such services.

Similarly, the involvement of parents as equal partners is crucially important for management of individual cases of children with disabilities, for example, in early intervention services. In the former system, only minimal information on diagnosis and management was provided to parents, with the prevailing attitude being that "the less they know the better". In the modern paradigm, parents are equal partners with doctors and other professionals, and professionals can learn from parents as experts on their own child. However, as this requires a truly major change in the mentality of professionals, there is still a great deal of resistance within the health services and in medical education systems to this approach. The required changes tend to be perceived as an unwelcome loss of monopoly in decision-making.

6.5. POLITICAL WILL

The easiest explanation for the fact that many countries still exercise ineffective and abusive practices of institutional care of children under three is a lack of political will. However, this is too simplified an explanation. Political will does not appear in a vacuum; it is a consequence of a national consensus. Examples from different European countries clearly indicate that a situation of stagnation – with ineffective investments in old infrastructure and a de-personalized culture of services – tends to continue until a critical mass is reached on the understanding of the human rights of children, investing in competent parenting and an effective pyramid of family support services. Governments act when they feel that they are under pressure from the concerted efforts

[65] UNICEF (2005). Children and Disability in Transition in CEE/CIS and the Baltic States. Innocenti Insight. Florence: Innocenti Research Centre, introduction, xvii

of civil society and that they will have the support of NGOs as partners during the process of reform. Recent developments in Bulgaria, the Czech Republic and Slovakia are promising examples of how this critical mass of programmes and services is reached and how the issue of the elimination of institutional care of young children appears on the highest level of political agenda of governments.

One of the dilemmas often raised in debates is about which stakeholder should take the lead when the situation is one of a vicious circle. The general public is not sufficiently open to the idea of social inclusion of vulnerable groups and may even call for repressive measures against some of them as "irresponsible parents". There is no simple solution to this dilemma, but the general principle is to continue raising awareness and contributing to the growth of a critical mass.

The "old" EU Member States had many problems in promoting and protecting rights of children and supporting families; but most now have very low numbers of children in institutional care, and some have fully eliminated the phenomenon. Even before the CRC was adopted in 1989, national consensus had emerged in most of these countries that the worst outcome was placement of a child in institutional care.

A combination of factors, including the development of family-support services, training of new generations of social workers and other professionals with skills and knowledge in the field of management of human relations, good governance at the level of national and municipal authorities, involvement of NGOs and civil society as equal partners in the decision-making process and provision of services, investments in competent parenting by implementing effective parent training programmes – these and many other components have contributed to long-term institutional placement no longer being a serious issue.

Positive factors include the maturity of democracy in a given country, the level of trust between government agencies and civil society, tolerance to vulnerable groups of the population, and agreement among major stakeholders that protection of children's rights all need to be based on modern principles enshrined in the CRC and CRPD. These factors contribute to the growth of a critical mass among stakeholders and generate the political will to move to transparent decisions aimed at the elimination of institutional care.

6.6. AVOIDING SIMPLIFIED SOLUTIONS

Many opportunities have been missed in the CEE countries regarding the development of effective family support services at the community level. For example, programmes aimed at increasing the competence of young parents in child-rearing practices have not been considered a priority by many governments, and this concept remains on the margins of national policies in many countries. This is not due to a lack of financial resources, but to deeply rooted stereotypes. It reinforces ineffective and even harmful concepts, such as the Lithuanian family-policy concept, based on a narrow definition of family and a moral judgement (overt or hidden) concerning those parents who are "not good enough" to fully comply with that definition.

Another example of pitfalls in child protection is the focus on international adoption, which is often perceived as an effective and humane alternative to institutional care. This debate, which has been raised on many occasions, including in relation to children in Romanian "orphanages", is important as it touches upon crucial issues of protection of children in alternative care.

It is important to keep in mind and to remind policymakers that real orphans in fact constitute only about 4% of children placed in institutional care in the CEE countries. The stories about crowded orphanages in CEE countries are misleading and confusing, as is the jargon of "social orphans" usually employed in these countries to characterize the problem of children who have been separated from their parents and lost contact with them. The discourse is complicated and touches on delicate issues such as the commitment of many families from other countries to adopt

a child from a CEE country. However, it is of the utmost importance to keep such debates alive in the public sphere, so that arguments can be presented which convincingly demonstrate[66] (Chou and Browne, 2008) that international adoption should not be considered as the first priority or a recommended option of alternative care. Indeed, high numbers of international adoptions should be qualified as an indicator of poor performance of child-protection systems.

"Abandonment" as a major contextual factor

Another important subject for debate is that of "abandonment". This, too, is a misleading concept, reflecting the lack of a comprehensive and holistic approach to the rights of children and human rights in general. Partly, this is a reflection of simplified "black and white" thinking that parents are either good or bad, and that the State, as a "better parent", needs to protect children, mainly with its residential institutions, from those parents who are not good enough.

In many cases, the real reason for so-called abandonment is the attitude of the State and its institutions (including its healthcare and child protection services). Driven by stigmatizing attitudes, the system fails to provide family support services such as day care, psychosocial support, family outreach, and healthcare, and instead contributes, in an active or passive way, to the process of separation of a child from his/her parents. This phenomenon, sometimes referred to as "relinquishment", occurs to a large extent because parents are under pressure from the authorities and medical staff. In some countries, medical staff discriminate against some mothers, encouraging them to hand over or relinquish their child after birth to the care of the State; for example, mothers diagnosed with a mental disorder, drug addiction, tested HIV positive, unmarried or very young.

The word "abandonment" is often wrongly used, implying that these children have been completely deserted and have no hope of being reunited with their parents. This creates another self-fulfilling prophecy, especially as many countries have no sustainable services working with biological parents after the child is separated from them. The truth, based on experience from best practices, is that with adequate support, many parents from groups at risk can or would be able to resume their responsibility for their children. The real problem is not with parents, but with systems which are supposed to support them, as in many countries these have not yet seriously attempted to provide sustainable support for families in need, in order to prevent separation.

As concluded in the UNICEF report *At Home or in a Home?* the indiscriminate use of "abandonment" as a reason for institutionalization ignores the need to focus on working with the biological parents and exploring every opportunity to support the family to enable the child to safely return home. Secondly, there are important legal aspects linked to the term, which may have implications for adoption. Only a small proportion of parents formally "abandon" their children to the care of others, a maternity hospital for example, thereby relinquishing their parental duties and allowing their children to be adopted by other families. If the mother lacks identity papers, the child is not formally relinquished and therefore cannot be adopted under the law of several countries. According to international guidelines, only children who have no hope of returning to their families should be considered "adoptable", and only children unable to find adoptive families within their own countries should be considered for adoption abroad. The idea that there are thousands of "abandoned" healthy baby orphans needing to be adopted is largely a myth. Many may be in need of adoption, but are disqualified due to their status, while others have parents who – if they received adequate support – would be able to care for their children themselves.[67] This systemic problem may be interpreted as another example of things going wrong if the basic principles of the CRC are not followed, or when they are interpreted in a superficial way.

A lack of understanding that institutional placement of young children is harmful may be also connected with tolerance of the culture of violence in general and violence against children in

[66]Browne, K.D., Hamilton-Giacritsis, C.E., Johnson, R., Chou, S.
(2005).Young children in institutional care in Europe. *EarlyChildhood Matters*, 105: 15–18.

[67] UNICEF (2011). At Home or in a Home? Formal care and adoption of children in Eastern Europe and Central Asia. Geneva.

particular. The general public and policymakers in many countries still tolerate corporal punishment of children, and even more so emotional neglect as a form of violence. In this context, not surprisingly there is a reluctance to accept that institutional care of young children could be qualified as a form of violence.

The Committee has consistently maintained the "no exceptions" position that all forms of violence against children, however minimal, are unacceptable and its statement "No forms of physical or mental violence" leaves no room for any alternative interpretation. The frequency and severity of harm, and intent to harm, are not prerequisites for the definitions of violence. States Parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.[68]

If all forms of violence are unacceptable, and if institutional placement of children under three amounts to violence (in typical situations in the form of neglect), then the issue requires a serious debate on whether institutional placement of children under three years of age can be tolerated at all, or whether it should rather be qualified as a violation of human rights and a manifestation of institutional violence.

Recent experience in the region shows that there are many other pitfalls. These may be presented as "the devil in the detail", but in fact they are simply the inadequate interpretation of human rights principles.

Thus, moralistic family-policy concepts, re-invented in some European countries as another attempt to solve complex social and demographic problems, contradict basic human rights principles, and policymakers should be warned that they will not be effective if implemented.

For instance, some countries in Central and Eastern Europe have recently moved to proliferation of baby boxes for abandoned newly born children, which are presented by the media as positive and supported almost unanimously by most stakeholders in these countries. In 2011, when considering the State Party report of the Czech Republic, the Committee on the Rights of the Child expressed its serious concern about its Baby Box programme, which is in violation of, inter alia, articles 6, 7, 8, 9 and 19 of the Convention. In its recommendations, the Committee "strongly urges the State Party to undertake all measures necessary to end the programme as soon as possible and expeditiously strengthen and promote alternatives, taking into full account the duty to fully comply with all provisions of the Convention. Furthermore, the Committee urges the State Party to increase its efforts to address the root causes which lead to the abandonment of infants, including the provision of family planning as well as adequate counselling and social support for unplanned pregnancies and the prevention of risk pregnancies".

The reaction by many stakeholders in the Czech Republic has been one of strong disagreement. A similar situation has been developing recently in Lithuania, where amendments to the legislation have been adopted with strong support from a broad coalition of politicians, to enable the proliferation of baby boxes throughout the country.

There have been several attempts by independent experts to initiate debate on the pros and cons of baby boxes. However, the prevailing view of basically all stakeholders, including politicians and the general public, silenced what few opponents there were with the single argument that the initiative is about saving the lives of children and for this reason it should be fully supported. Such examples indicate that many misunderstandings remain in CEE countries regarding the very substance of what the rights of children and the support of families are really about. It is obvious that dissatisfaction with the Committee, as in the Czech Republic, will be expressed by

[68] CRC/C/GC/13, para.17.

many stakeholders in other countries, who present baby boxes as on obvious success. Without elaborating on this classic example of strikingly different approaches, it is important to address the issue of educating the general public about a deeper understanding of the rights of children and effective ways of investing in childhood.

One more important example of a "simple solution" is the legal ban on institutional placement of young children without supporting it with other measures that address root causes of separation of children from their parents. In Romania, for example, although new child-protection laws forbid the placement of children under three in institutions, maternity wards and paediatric hospitals effectively act as substitute institutions in cases of child abandonment (4,000 newly-born children were abandoned in 150 medical units in 2004, according to UNICEF and the Ministry of Health). Because of a procedural void, 31.8% of children left in hospitals/paediatric hospitals lack identification papers, which leaves them particularly vulnerable to exploitation, including trafficking.[69]

6.7. RESOURCES AND THE ROLE OF STAKEHOLDERS, INCLUDING THE EU

Investing in the improvement of residential institutions in principle

Paradoxically, since accession to the EU of CEE countries, EU funds have created an additional incentive to rely on institutional care and to continue investing in the modernization of existing infrastructure.

There have been several cycles of such investments in many countries of the region that have blocked effective change. The first was in the early 1990s, when investing in institutional care was justified by the very poor physical conditions in all residential institutions for children and adults. Rapid growth of GDP at the beginning of the 21st century was a second missed opportunity. Finally, EU accession and the arrival of EU funds presented a third window of opportunity and a test of maturity of new Member States.

During public debates, supporters of the existing system frequently claim that lack of financial resources is the main obstacle to basic reforms in the field of protection of children in alternative care and development of family support services. In fact, there is considerable evidence that the opposite is true. Investments in institutional care are the most costly and least effective – and the sooner this will be realized, the more resources will be saved from being wasted (especially through corruption). It is also important to realize that contextual and attitudinal obstacles, deeply entrenched in everyday patterns of relations between people and organizations in the CEE region, and not the lack of financial resources, are the primary concern to be addressed by all stakeholders who seek change. The culture of violence, learned helplessness and social exclusion, which has existed for up to 70 years in these countries has infiltrated all layers of society, thus seriously affecting the ability of individuals, families and organizations, including governments, to respond to challenges in a positive and constructive way.

The idea of improving institutions is popular, and is supported by politicians, professional groups, and especially by the influential lobby of directors of institutions. Many international organizations have contributed, apparently with noble intentions, to investment in residential institutions.

At first glance, this seems to be a rational investment. While community-based services are still not in place or not sufficiently developed, children have to stay in institutional care, so efforts are made to improve the quality of their lives there. However, this argument appears weak from a human rights and long-term perspective:

1. Development of community-based services will be postponed again if resources are allocated to residential institutions as a priority.

[69] Eurochild, Op.Cit. Executive summary (2009). Available from http://www.eurochild.org/fileadmin/user_upload/Publications/Eurochild_Reports/FINAL_EXEC_SUMMARY.pdf

2. Most projects are focused on investment in refurbishing buildings and not on improving the quality of human relations between people living and working there, meaning that the institutional culture will most likely persist.

3. After residential institutions have been renovated, this fact is used as an argument that services need to be provided in these buildings because they were renovated with the support of EU funds.

4. A renovated building may serve as an additional incentive to motivate parents to accept that placement in the institution will be a suitable option for their child.

Comparisons between Bulgaria and Lithuania are enlightening in this respect. Lithuania has been heavily investing in the improvement of residential institutions for the last 20 years. One of the effects is that the resistance of the system of institutions has remained strong, and there are arguments that institutions are now well equipped to meet the needs of children and adults there. This resistance may block the political will to substantially change priorities and to invest in alternatives.

Meanwhile, there seems to be more political will in Bulgaria on the part of the government and a coalition of civil society to proceed in practical terms to basic change and this may be driven by the poor conditions in residential institutions themselves as much as by other factors.

Similar opportunities are available in countries such as Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, and Serbia, as well as in Belarus, Moldova, Ukraine, and the Russian Federation. In Serbia, for example, open discussion on this issue has already achieved positive results.[70] However, these countries will need enormous political will to develop effective alternatives, which is not an easy task either politically or from a management perspective.

Role of major stakeholders within the countries

There have recently been promising examples in some of the new EU Member States indicating that major stakeholders are reaching understanding and moving towards decisions in favour of de-institutionalization policies and practices. These examples include strong political statements of high-level politicians in Bulgaria, the Czech Republic, and Slovakia, among others.

But changes in policies happen only if other stakeholders are seriously involved and civil society is the driving force behind change. It takes time for NGOs to consolidate their activities, overcome go-it-alone tendencies and form powerful coalitions that can make a difference.

However, in many countries, within the EU and particularly in non-EU countries of Eastern Europe, the situation of independent NGOs and their relations with governments remains difficult. There are many strong NGOs in the region working in the field of human rights and child rights. Many support de-institutionalization processes. But their activities are often merely tolerated; the level of trust between authorities and independent NGOs remains too low to bear fruitful relations based on equal partnership and mutual respect. This climate creates a risk of parallel infrastructures being developed, where governments protect “their” institutions, while NGOs, especially if they receive international support, develop “their” pilot activities, such as providing family-support services and different community-based services for children with disabilities and children who are in out-of-home situations. These pilot projects are needed to demonstrate the alternatives for institutional care. But the lack of trust and cooperation between NGOs and government agencies does not guarantee sustainability.

For example, in Lithuania many NGOs enjoyed support from international foundations for their initiatives and pilot services were set up. However, many donors left the country before or

[70] Disability Rights International, “Historic Victory against Segregation in Serbia”, 28 July 2011. Available from http://www.disabilityrightsintl.org/2011/07/28/historic-victory-against-segregation-in-serbia/

immediately after EU accession in 2004, expecting that sustainability of pilot community-based services would be ensured by support from newly-available EU funds, thus allowing these services to gradually replace institutional care. This turned out not to be the case: EU accession was followed by a quite different scenario, which was not favourable to NGOs or to sustainable investments in modern family-focused and community-based services. Indeed, the activities of many mature NGOs, with experience of provision of innovative services, have been under threat since the accession of CEE countries to the EU.

The role of the EU and EU funds

EU funds create a unique opportunity for facilitating the process of change and for presenting success stories of new EU countries to the non-EU countries on how to overcome the legacy of institutional culture. During the first wave of EU Structural Funds allocated for transformation of childcare services and other components in the healthcare and social welfare sectors, many financial resources were used to support the system of institutional care for children and adults, including institutions for children under the age of three. This disappointing phenomenon - which, sadly, continues in some EU countries – has been raised by numerous NGOs and experts and will perhaps be addressed at the highest political level by the European Commission and national governments. Even if the Member States have the primary responsibility for the delivery of effective services for children and families, the EU, which is now equipped with the Charter of Fundamental Rights, should view the problem of institutional care as a serious and systemic violation of human rights, thus providing clear policy guidance and financial assistance to the Member States.

This unexpected effect of EU enlargement was a major disappointment to reformers. Perhaps too much was expected from the mere fact of enlargement. Slowly, the sobering understanding sank in that alternatives to replace institutional care would not appear spontaneously, and that institutional care would not lose its appeal just because it ran against the EU value system. At least three bitter lessons have been learned by NGOs and other activists in this field that:

- EU funds are managed by groups friendly to the institutional lobby;
- there are major obstacles for NGOs in competing with State institutions for EU funds; and
- at a national level, the EU does not have a mandate to manage EU funds and transform the child-protection system.

Recently, important reports have been published on the issue of EU Funds – how they have been used and how they should be used in the new EU and candidate countries.[71]

The ECCL report highlights the serious concern that EU Structural Funds are being used in EU Member States of the CEE to renovate, or build new, long-stay residential institutions for people with disabilities, rather than to develop community-based alternatives. The report argues that the practice of using Structural Funds to maintain this system of institutional care is contrary to EU policy objectives, EU law and European and international human rights standards. It also highlights concerns that the rules on the operation of Structural Funds have created unnecessary barriers to establishing projects that would develop alternatives to institutional care.

Examples from most of the new EU Member States show that during the first years of EU membership and the availability of EU Structural Funds, these countries did not appear ready to use the opportunity effectively for strengthening alternative services to significantly reduce numbers of

[71] See European Coalition for Community Living (2006). Focus on the Right of Children with Disabilities to Live in the Community. Focus Report. Brussels. European Coalition for Community Living; European Commission. Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care (2009). Brussels, EC Directorate-General for Employment, Social Affairs and Equal Opportunities. OHCHR Regional Office for Europe (2012). "Getting a Life Living Independently and Being Included in the community. Available at: www.europe.ohchr.org/Documents/Publications/Getting_a_Life.pdf

children in institutional care. Although many positive initiatives were taken, they were fragmented, not sustainable and not fully supported by the governments.

It is clear that EU Structural Funds have been used by a skilful lobby of managers of institutional care. This issue should be made the subject of a public debate. Unfortunately, decisions are still generated and controlled by the lower level of the executive branch in the ministries of the countries concerned, and it is only when a critical mass of programmes and services is reached that governments in this area will finally stop supporting the system of residential institutions with EU funds.

One of the lessons learned is that serious investment in the transformation of systems of care without a clear political decision, and without a budgeted plan of transformation, approved at the highest level is not recommended. Unless governments make a clear decision, supported by sustainable funding, for the development of community-based, family-focused and other services, there will be insufficient lobbying for EU funds to be invested in this new direction and investments such as EU funds will continue to feed the existing system.

6.8. FINAL WORD

- The legacy of institutional care will probably be evaluated as one of the last fortresses of the totalitarian system, deeply entrenched in the mindsets of individuals and organizations, and will remain as one of the most painful paradoxes in the history of the new Europe. At the beginning of the third decade after liberation from a totalitarian system that violated the human rights of entire populations, new democracies are still failing to protect the civil rights of their own citizens, including the most vulnerable ones – children under three years of age with disabilities or those deprived of parental care.

- There is no justification for the fact that child-protection and family-support policies and practices in many countries of Europe, including EU Member States, are still guided by stigma, social exclusion, systemic violations of basic human rights, poor governance, and simple ignorance. As a result, thousands of the very youngest citizens suffer from neglect and other forms of violence in institutional placements, while most of them have parents who are blamed and judged even if they have not received adequate supportive services from the State. After over 20 years of ineffective attempts to end dependency on institutional culture, the vicious circle of learned helplessness and social exclusion needs to be broken, and effective solutions implemented in a sustainable way.

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